

No. \_\_\_\_\_

LEGISLATIVE REFERENCE BUREAU

AN ACT

Amending Title 42 (Judiciary and Judicial Procedure) of the Pennsylvania Consolidated Statutes, in recordings by law enforcement officers, further providing for definitions, for scope of chapter, for requests for law enforcement audio recordings or video recordings, for procedure and for petition for judicial review.

INTRODUCED \_\_\_\_\_ 20 \_\_\_\_\_

By \_\_\_\_\_ District NO. \_\_\_\_\_

By \_\_\_\_\_ District NO. \_\_\_\_\_

By \_\_\_\_\_ District NO. \_\_\_\_\_

By \_\_\_\_\_ District NO. \_\_\_\_\_

See next page for additional co-sponsors.

Prior Session \_\_\_\_\_

|                                 |          |
|---------------------------------|----------|
| <b>Referred to Committee on</b> |          |
| Date _____                      | 20 _____ |
| Reported _____                  | 20 _____ |
| <b>As Committed-Amended</b>     |          |
| <b>Recommendation</b>           |          |
| _____                           |          |
| <b>By Hon.</b> _____            |          |

STATE OF TEXAS  
COUNTY OF [illegible]

[illegible text]

[illegible text]

## AN ACT

1 Amending Title 42 (Judiciary and Judicial Procedure) of the  
2 Pennsylvania Consolidated Statutes, in recordings by law  
3 enforcement officers, further providing for definitions, for  
4 scope of chapter, for requests for law enforcement audio  
5 recordings or video recordings, for procedure and for  
6 petition for judicial review.

7 The General Assembly of the Commonwealth of Pennsylvania  
8 hereby enacts as follows:

9 Section 1. Section 67A01 of Title 42 of the Pennsylvania  
10 Consolidated Statutes is amended by adding a definition to read:  
11 § 67A01. Definitions.

12 The following words and phrases when used in this chapter  
13 shall have the meanings given to them in this section unless the  
14 context clearly indicates otherwise:

15 "Body camera." A device that is approved under 18 Pa.C.S. §  
16 5706(b)(4) (relating to exceptions to prohibitions in  
17 possession, sale, distribution, manufacture or advertisement of  
18 electronic, mechanical or other devices) and affixed or  
19 otherwise in the possession of a law enforcement officer.

1 \* \* \*

2 Section 2. Section 67A02(a) of Title 42 is amended to read:

3 § 67A02. Scope of chapter.

4 (a) Exemption.--The provisions of this chapter, and not the  
5 act of February 14, 2008 (P.L.6, No.3), known as the Right-to-  
6 Know Law, shall apply to any audio recording or video recording  
7 made by a law enforcement agency[.] using body cameras or other  
8 recording devices not fixed to the exterior or interior of a  
9 building or a vehicle under circumstances within paragraph (2)  
10 of the definition of "oral communication" in 18 Pa.C.S. § 5702  
11 (relating to definitions).

12 \* \* \*

13 Section 3. Section 67A03(1) and (2) of Title 42 are amended  
14 and the section is amended by adding a paragraph to read:

15 § 67A03. Requests for law enforcement audio recordings or video  
16 recordings.

17 The following shall apply:

18 (1) An individual who requests an audio recording or  
19 video recording made by a law enforcement agency shall,  
20 within [60] 180 days of the date when the audio recording or  
21 video recording was made, serve a written request to the  
22 individual who is designated as the open-records officer for  
23 the law enforcement agency under section 502 of the act of  
24 February 14, 2008 (P.L.6, No.3), known as the Right-to-Know  
25 Law. Service is effective upon receipt of the written request  
26 by the open-records officer from personal delivery[ or  
27 certified mail with proof of service.], mail, e-mail,  
28 facsimile or, to the extent provided by the rules of the law  
29 enforcement agency, other electronic means.

30 (2) The request under paragraph (1) shall [specify with

1 particularity the incident or event that is the subject of  
2 the audio recording or video recording, including the date,  
3 time and location of the incident or event.] identify or  
4 describe the records sought with sufficient specificity to  
5 enable the law enforcement agency to ascertain which records  
6 are being requested and shall include the name and address to  
7 which the law enforcement agency should address a response. A  
8 written request need not include an explanation of the  
9 requester's reason for requesting or intended use of the  
10 records unless otherwise required by law.

11 \* \* \*

12 (5) The Office of Open Records shall develop a uniform  
13 request form that shall be accepted by all law enforcement  
14 agencies regarding a request under this section.

15 Section 4. Sections 67A05(a), (c) and (d) and 67A06 of Title  
16 42 are amended to read:

17 § 67A05. Procedure.

18 (a) Disclosure.--A law enforcement agency that receives a  
19 request under section 67A03 (relating to requests for law  
20 enforcement audio recordings or video recordings) for an audio  
21 recording or video recording shall provide the audio recording  
22 or video recording or identify in writing the basis for denying  
23 the request within [30] five business days of receiving the  
24 request, unless the requester and law enforcement agency agree  
25 to a longer time period[.] or unless the open-records officer  
26 determines that one of the factors under section 902(a) of the  
27 act of February 14, 2008 (P.L.6, No.3), known as the Right-to-  
28 Know Law, applies, in which case the notice provisions under  
29 section 902(b) of the Right-to-Know Law shall govern. If an  
30 agreement under section 67A04(b) (2) (relating to law enforcement

1 review) is in effect between the law enforcement agency and the  
2 Attorney General or district attorney with jurisdiction, then an  
3 agreement to a longer time period must be between the requester  
4 and the Attorney General or district attorney with jurisdiction.

5 \* \* \*

6 (c) Preservation.--A law enforcement agency that has  
7 received a request for an audio recording or video recording  
8 shall preserve the unaltered audio recording or video recording  
9 that has been requested for no less than the time periods  
10 provided in this chapter for service of and responses to written  
11 requests for the production of the audio recording or video  
12 recording and any period within which a petition for [judicial]  
13 review is allowable or pending.

14 (d) Fees.--A law enforcement agency may establish reasonable  
15 fees relating to the costs incurred to disclose audio recordings  
16 or video recordings. The fees [shall be paid by the requesting  
17 party at the time of disclosure of the audio recording or video  
18 recording.]:

- 19 (1) shall not be greater than actual costs;  
20 (2) shall be publicly displayed;  
21 (3) may be required to be paid in full or in part before  
22 disclosure of the audio recording or video recording; and  
23 (4) shall be paid by the requester before transfer.

24 \* \* \*

25 § 67A06. Petition for [judicial] review.

26 (a) Petition.--

27 (1) If a request under section 67A03 (relating to  
28 requests for law enforcement audio recordings or video  
29 recordings) is denied, the requester may file a petition for  
30 [judicial] review in the [court of common pleas with

1 jurisdiction] Office of Open Records within 30 days of the  
2 date of denial.

3 (2) The respondent to a petition filed under this  
4 section shall be the entity that denied the request for the  
5 audio recording or video recording under section 67A05(a)  
6 (relating to procedure) unless the request is denied under  
7 section 67A05(b), in which case the law enforcement agency  
8 that created the audio recording or video recording shall be  
9 the respondent.

10 (b) Duties of petitioner.--A petitioner under this section  
11 shall have the following duties:

12 (1) The petitioner shall pay a filing fee of \$125.

13 (2) If the incident or event that is the subject of the  
14 request occurred inside a residence, the petitioner shall  
15 certify that notice of the petition has been served or that  
16 service was attempted on each individual who was present at  
17 the time of the audio recording or video recording and on the  
18 owner and occupant of the residence. Notice shall not be  
19 required under this paragraph if the identity of an  
20 individual present or the location is unknown and not  
21 reasonably ascertainable by the petitioner. Service shall be  
22 effective upon receipt from personal delivery [or certified  
23 mail with proof of service.], mail, e-mail, facsimile or, to  
24 the extent provided by the rules of the law enforcement  
25 agency, other electronic means.

26 (3) The petitioner shall include with the petition a  
27 copy of the written request under section 67A03 that was  
28 served on the law enforcement agency and any written  
29 responses to the request that were received.

30 (4) The petitioner shall serve the petition on the open-

1 records officer of the respondent within five days of the  
2 date that the petitioner files the petition with the [court  
3 of common pleas with jurisdiction] Office of Open Records,  
4 and service shall be effective upon receipt by the open-  
5 records officer for personal delivery [or certified mail with  
6 proof of service.], mail, e-mail, facsimile or, to the extent  
7 provided by the rules of the law enforcement agency, other  
8 electronic means.

9 (c) Intervention as matter of right.--If not a respondent, a  
10 prosecuting attorney with jurisdiction may intervene in the  
11 action as a matter of right.

12 (d) Summary dismissal.--It shall be grounds for summary  
13 dismissal of a petition filed under this section if:

14 (1) the request to the law enforcement agency under  
15 section 67A03 or the filing of the petition under subsection  
16 (a) is untimely;

17 (2) the request to the law enforcement agency failed to  
18 describe with sufficient [particularity the incident or event  
19 that is the subject of the audio recording or video  
20 recording, including the date, time and location of the  
21 incident or event] specificity to enable the law enforcement  
22 agency to ascertain which records are being requested; or

23 (3) the petitioner has not complied with the  
24 requirements of subsection (b)(1), (2), (3) and (4).

25 (e) Approval.--[A court of common pleas with jurisdiction]  
26 The Office of Open Records may grant a petition under this  
27 section, in whole or in part, and order the disclosure of the  
28 audio recording or video recording only if the [court] Office of  
29 Open Records determines that the petitioner has established all  
30 of the following by a preponderance of the evidence:



1           (1) The request was not denied under section 67A04  
2           (relating to law enforcement review) or the request was  
3           denied under section 67A04 and the [court of common pleas  
4           with jurisdiction] Office of Open Records determines that the  
5           denial was arbitrary and capricious.

6           (2) The public interest in disclosure of the audio  
7           recording or video recording or the interest of the  
8           petitioner outweighs the interests of the Commonwealth, the  
9           law enforcement agency or an individual's interest in  
10          nondisclosure. In making a determination under this  
11          paragraph, the [court of common pleas] Office of Open Records  
12          may consider the public's interest in understanding how law  
13          enforcement officers interact with the public, the interests  
14          of crime victims, law enforcement and others with respect to  
15          safety and privacy and the resources available to review and  
16          disclose the audio recording or video recording.

17          Section 5. This act shall take effect in 60 days.

