

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, in actions, proceedings and other matters generally, providing for recordings of law enforcement officers.

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

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

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

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

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

(a) Exemption.--The provisions of this chapter, and not the act of February 14, 2008 (P.L.6, No.3), known as the Right-to-Know Law, shall apply to any audio recording or video recording made by a law enforcement agency[.] using body cameras or other recording devices not fixed to the exterior or interior of a building or a vehicle under circumstances within paragraph (2)

of the definition of "oral communication" in 18 Pa.C.S. § 5702 (relating to definitions).

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

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

The following shall apply:

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

(2) The request under paragraph (1) shall [specify with particularity the incident or event that is the subject of the audio recording or video recording, including the date, time and location of the incident or event.] identify or describe the records sought with sufficient specificity to enable the law enforcement agency to ascertain which records are being requested and shall include the name and address to which the law enforcement agency should address a response. A

written request need not include an explanation of the requester's reason for requesting or intended use of the records unless otherwise required by law.

* * *

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

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

§ 67A05. Procedure.

(a) Disclosure.--A law enforcement agency that receives a request under section 67A03 (relating to requests for law enforcement audio recordings or video recordings) for an audio recording or video recording shall provide the audio recording or video recording or identify in writing the basis for denying the request within [30] five business days of receiving the request, unless the requester and law enforcement agency agree to a longer time period[.] or unless the open-records officer determines that one of the factors under section 902(a) of the act of February 14, 2008 (P.L.6, No.3), known as the Right-to-Know Law, applies, in which case the notice provisions under section 902(b) of the Right-to-Know Law shall govern. If an agreement under section 67A04(b) (2) (relating to law enforcement review) is in effect between the law enforcement agency and the Attorney General or district attorney with jurisdiction, then an agreement to a longer time period must be between the requester and the Attorney General or district attorney with jurisdiction.

* * *

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

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

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

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§ 67A06. Petition for [judicial] review.

(a) Petition.--

(1) If a request under section 67A03 (relating to requests for law enforcement audio recordings or video recordings) is denied, the requester may file a petition for [judicial] review in the [court of common pleas with jurisdiction] Office of Open Records within 30 days of the date of denial.

(2) The respondent to a petition filed under this

section shall be the entity that denied the request for the audio recording or video recording under section 67A05(a) (relating to procedure) unless the request is denied under section 67A05(b), in which case the law enforcement agency that created the audio recording or video recording shall be the respondent.

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

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

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

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

(4) The petitioner shall serve the petition on the open-records officer of the respondent within five days of the

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

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

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

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

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

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

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

of the following by a preponderance of the evidence:

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

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

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CHAPTER 67B

RECORDINGS OF LAW ENFORCEMENT OFFICERS

Sec.

67B01. Definitions.

67B02. Permissible recording.

67B03. Prohibited activities of law enforcement officers.

67B04. Agency policies.

67B05. Effect of chapter.

§ 67B01. Definitions.

The following words and phrases when used in this chapter

shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Law enforcement agency." An agency that employs a law enforcement officer.

"Law enforcement officer." As follows:

(1) An individual who by virtue of the individual's office or public employment is vested by law with a duty to maintain public order or make arrests for offenses, whether or not that duty extends to all offenses or is limited to specific offenses.

(2) The term includes, but is not limited to, the following:

(i) A full-time or part-time employee assigned to criminal or traffic law enforcement duties of a police department of a county, region, city, borough, town, township or school entity.

(ii) A member of the Pennsylvania State Police.

(iii) A sheriff, deputy sheriff or constable.

(iv) An individual on active State duty under 51 Pa.C.S. § 508 (relating to active duty for emergency).

"Recording device." A device that is capable of recording images, audio or video, or any combination thereof.

§ 67B02. Permissible recording.

(a) Conditions.--A person has a right to record a law enforcement officer engaged in the public discharge of duties if the person:

(1) is in a location in which the person is lawfully permitted; and

(2) does not interfere with the official duties of the law enforcement officer when recording.

(b) Other permission unnecessary.--A person recording a law enforcement officer in accordance with subsection (a) does not need the permission of any other person to make the recording.
§ 67B03. Prohibited activities of law enforcement officers.

(a) Interference with recording.--A law enforcement officer may not interfere with the lawful recording under this chapter, which includes intentionally blocking, obstructing or discouraging the recording through intimidation or other forms of coercion.

(b) Arrest, detention and confiscation.--The seizure of a recording or recording device must comply with the Constitution of the United States and the Constitution of Pennsylvania. The recording shall not by itself be grounds for arrest, detention or confiscation of the recording device, and no retaliation of any type shall be permissible for recording a law enforcement officer in accordance with this chapter.

(c) Destruction or alteration.--Under no circumstances shall a recording device or its recording be intentionally damaged, altered or deleted.

§ 67B04. Agency policies.

Each law enforcement agency shall develop and promulgate policies outlining this chapter, as well as possible disciplinary actions, consistent with collective bargaining procedures, for violation of this chapter.

§ 67B05. Effect of chapter.

Nothing in this chapter is intended to limit a law

enforcement officer's responsibility to maintain safety or
otherwise perform official duties in a manner consistent with
law and procedures of the law enforcement agency.

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