

Pennsylvania State Police Testimony

**Pennsylvania House of Representatives
House Judiciary Committee
Subcommittee on Courts**

**Public Hearing: Audio Recording Equipment on School Buses
September 30, 2008**

**Presented by:
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Good morning Chairman Walko and members of the House Judiciary Committee's Subcommittee on Courts. I am Major John F. Duignan, Director of the Bureau of Patrol for the Pennsylvania State Police. On behalf of Lieutenant Colonel Frank E. Pawlowski, the Acting Commissioner of the Pennsylvania State Police, I would like to thank you for the invitation to provide testimony at this public hearing concerning the use of audio-visual recording equipment on school buses.

Improving the quality of life for Pennsylvania's residents and guests by prioritizing highway safety is one of the highest goals of the Pennsylvania State Police. In working toward this goal, one objective of the Pennsylvania State Police is to ensure the safety of all school buses that transport students to and from school and school-related activities. We recognize that these school buses are transporting some of the most precious cargo on the Commonwealth's highway system.

As mandated by the Pennsylvania Vehicle Code, Section 4705, relating to Inspection of Vehicles for Transportation of School Children, the Pennsylvania State Police engages in the inspection of school buses. This section requires that the owner of every school bus shall, in addition to any other inspection required by Chapter 47, submit the vehicle to the Pennsylvania State Police annually prior to operating the vehicle for the transportation of school children during the school year. The purpose of the inspection is to determine whether

the school bus conforms to the provisions of Chapter 47, including regulations promulgated by the Pennsylvania Department of Transportation.

In addition to the annual school bus inspection campaign, the Pennsylvania State Police monitors school bus safety and compliance with the regulations throughout the school year through a spot check inspection process. The spot check inspection is unannounced, and it is normally performed at schools after the students have disembarked. A spot check includes an examination of the operator's credentials and at least a walk around inspection of the school bus. This inspection also includes, but is not limited to, the eight way school bus warning light system, side signal stop arm, front crossing control gate, and other parts and accessories visible during a walk around inspection such as tires and lights.

While conducting these inspections in the past, members of the Pennsylvania State Police have encountered the presence of audio-video recording equipment mounted inside some school buses and have been unsure how to proceed. While there is no specific prohibition against the use of video recorders to monitor activities on a school bus, the use of such equipment to record oral communications is problematic. The complication arises when considering the current language in the Pennsylvania Crimes Code, Chapter 57, Subchapter B, relating to Wire, Electronic or Oral Communication. Specifically, section 5704, relating to Exceptions to Prohibition of Interception and Disclosure

of Communications, does not specifically allow for the interception of oral communications on a school bus. In the absence of such an exception, the use of a video recorder that simultaneously records oral communications on a school bus could be challenged as a potential violation of Chapter 57.

Pennsylvania courts have held that whether the presence of audio recording equipment on a school bus is a violation of the Wiretap Act is dependant on the facts of each situation. Among the factors to be considered are the size of the bus, the equipment's reception range, the location of each student on the bus relative to the equipment, whether each student exhibited an expectation of privacy and whether such expectation was reasonable.

On April 11, 2006, the Allegheny County District Attorney, Stephen A. Zappala, Jr., issued a written opinion regarding the use of this type of equipment to make audio-visual recordings on school buses. In this document he concluded in part:

Until the Legislature and/or the Appellate Courts have spoken to this issue, the use of audio equipment on school buses within Allegheny County will not be considered a criminal matter if the following measures are taken:

1. The adoption of a school board policy that authorizes audio interception on school buses for disciplinary purposes,

2. Advance communication of that policy to both students and their parents/guardians by letter, and,
3. Clearly visible notice on the buses which are equipped with audio interception, with unequivocal language that audio as well as video interception is occurring on the school bus.

District Attorney Zappala's correspondence did acknowledge that his opinion addressed criminal prosecutions within Allegheny County, but was not intended to undermine civil causes of action for unlawful interception set forth within the Wiretap Act.

Based on a request from solicitors for the Carlisle Area School District, the Cumberland County District Attorney, David J. Freed, issued a written opinion regarding this topic on July 31, 2006. He referenced the opinion published by the Allegheny County District Attorney, and took the same position in determining that the use of audio-video recording devices would not result in a criminal prosecution. He echoed the concerns of District Attorney Zappala with regard to the potential for civil actions based upon violations of the Act.

Although these District Attorneys have determined that the use of audio recording equipment on school buses in their counties of jurisdiction will not be criminally prosecuted, school buses normally do not travel solely within the confines of a single county. Problems may result when audio recording

equipment is used while these school buses are transporting students in counties beyond those where the District Attorney has a policy of non-prosecution.

As an example, on May 8, 2007, Lackawanna County District Attorney Andrew Jarbola advised members of the Pennsylvania State Police, Troop R, that the audio recording feature on equipment in school buses must be disconnected, not merely turned off, or it would constitute a violation of the Wiretap Act. Considering these conflicting opinions, a Cumberland County school bus driver who transports children to Lackawanna County for an athletic event could face potential criminal charges in that county if a complaint were made regarding the use of audio recording equipment. In the absence of legislative direction or instructive case law, Pennsylvania's District Attorneys are rendering contradictory opinions regarding the potential for criminal prosecutions related to the interception of oral communications on school buses.

The Pennsylvania State Police is in support of legislation, such as House Bill 797, which seeks to allow the use of audio recording equipment on school buses. According to statistics from the Pennsylvania Department of Education, during the 2006 – 2007 school year there were over 1.5 million students transported almost 400 million miles on the Commonwealth's highways, in 21,516 school buses. Clearly, the number of hours our children spend within these vehicles is staggering.

There are several benefits to enacting legislation that will permit the capturing of both video and oral recordings on school buses. Due to genuine concerns about school violence and gang-related activities, uniformed school resource police officers have become commonplace in the Commonwealth's school system. The lawful use of audio-visual recording equipment on school buses will serve as a strong deterrent to some students who would otherwise take advantage of the lack of close supervision. Criminal conduct jeopardizes not only the students who are the victims of harassment or assaults, but all occupants of the school bus. School bus drivers become distracted during these incidents, greatly increasing the risk that the school bus will be involved in a traffic crash. The use of this equipment also acts as a deterrent to any school bus drivers who may be tempted to act inappropriately with school children. Without a doubt, allowing audio-video recording equipment to be used on school buses will promote public safety and protect our children.

The passage of this legislation would provide clear guidance to Pennsylvania's school bus industry professionals and law enforcement regarding the interception of oral communications on school buses. Respectfully, the Pennsylvania State Police also recommends that this Subcommittee consider addressing the issue of storage, retention, disclosure and disposition of recordings made under the proposed legislation.

In conclusion, on behalf of Lieutenant Colonel Pawlowski and the entire Pennsylvania State Police, I again want to thank you for the opportunity to address your Subcommittee. I will be happy to answer any questions you may have.