

CRIMES CODE (18 PA.C.S.) - EXCEPTIONS TO PROHIBITION OF
INTERCEPTION AND DISCLOSURE OF COMMUNICATIONS, PUBLIC ACCESS,
DEPARTMENT OF CORRECTIONS RETENTION POLICY AND EXPIRATION OF
CHAPTER

Act of Dec. 14, 2023, P.L. 425, No. 53

Cl. 18

Session of 2023
No. 2023-53

HB 1278

AN ACT

Amending Title 18 (Crimes and Offenses) of the Pennsylvania Consolidated Statutes, in wiretapping and electronic surveillance, further providing for definitions and for exceptions to prohibition of interception and disclosure of communications, providing for public access and for Department of Corrections retention policy and further providing for expiration of chapter.

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

Section 1. The definition of "oral communication" in section 5702 of Title 18 of the Pennsylvania Consolidated Statutes is amended by adding paragraphs to read:
§ 5702. Definitions.

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

* * *

"Oral communication." Any oral communication uttered by a person possessing an expectation that such communication is not subject to interception under circumstances justifying such expectation. The term does not include the following:

* * *

(3) A communication made in the presence of an agent, as defined in 61 Pa.C.S. § 6101 (relating to definitions), who meets all of the following:

(i) Is clearly identifiable and on official duty.
(ii) Is using an electronic, mechanical or other device that has been approved under section 5706(b)(4) to intercept a wire, electronic or oral communication in the course of official duties.

(iii) Has received training on the device.

(iv) Has provided prior written notice to a person under the lawful supervision of State parole that an agent, as defined in 61 Pa.C.S. § 6101, may intercept communications with the person.

(4) A communication made in the presence of an individual employed in the Department of Corrections, Bureau of Investigations and Intelligence holding a police officer commission under the act of May 21, 1943 (P.L.469, No.210), entitled "An act providing for commissioning as police officers certain employees of institutions maintained in whole or in part by the Commonwealth; conferring upon them the powers of constables in certain cases; and imposing duties on wardens and keepers of jails, police stations and lock-ups," who meets all of the following:

(i) Is clearly identifiable and on official duty.

(ii) Is using an electronic, mechanical or other device that has been approved under section 5706(b)(4) to intercept a wire, electronic or oral communication in the course of official duties.

(iii) Has received training on the device.

(iv) Is not intercepting a communication from inside the residence of an employee of the Department of Corrections without the consent of the employee or prior court approval.

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Section 2. Section 5704 of Title 18 is amended by adding a paragraph to read:

§ 5704. Exceptions to prohibition of interception and disclosure of communications.

It shall not be unlawful and no prior court approval shall be required under this chapter for:

* * *

(19) A person to intercept the wire communications of a telemarketer, telemarketing business or an individual or entity that initiates robocalls, as those terms are defined in section 2 of the act of December 4, 1996 (P.L.911, No.147), known as the Telemarketer Registration Act, provided that the person who received the telephone call has consented to the interception, for purposes of enforcing any of the following:

(i) 47 U.S.C. § 227 (relating to restrictions on use of telephone equipment).

(ii) The act of December 17, 1968 (P.L.1224, No.387), known as the Unfair Trade Practices and Consumer Protection Law.

(iii) The Telemarketer Registration Act.

Section 3. Subchapter B of Chapter 57 of Title 18 is amended by adding a section to read:

§ 5729. Public access.

A request for access to audio and video recordings made by an agent, as defined in 61 Pa.C.S. § 6101 (relating to definitions), under this chapter shall not be subject to the act of February 14, 2008 (P.L.6, No.3), known as the Right-to-Know Law, and shall follow the access procedures provided for under 42 Pa.C.S. Ch. 67A (relating to recordings by law enforcement officers).

Section 4. Subchapter C of Chapter 57 of Title 18 is amended by adding a section to read:

§ 5750. Department of Corrections retention policy.

The Secretary of Corrections shall develop a record retention policy for all communications lawfully intercepted by employees of the Department of Corrections. By January 1, 2024, the Secretary of Corrections shall issue a notice of the record retention policy developed under this section. The notice shall be published on the Department of Corrections' publicly accessible Internet website and transmitted to the Legislative Reference Bureau for publication in the next available issue of the Pennsylvania Bulletin.

Section 5. Section 5781 of Title 18 is amended to read: § 5781. Expiration of chapter.

This chapter expires December 31, [2023] **2029**, unless extended by statute.

Section 6. This act shall take effect as follows:

(1) The following shall take effect in 60 days:

(i) The amendment of the definition of "oral communication" in 18 Pa.C.S. § 5702.

(ii) The addition of 18 Pa.C.S. § 5704(19).
(2) The remainder of this act shall take effect
immediately.

APPROVED--The 14th day of December, A.D. 2023.

JOSH SHAPIRO