

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1933 Session of
2001

INTRODUCED BY MAYERNIK, PERZEL, COLAFELLA, GEIST, CALTAGIRONE,
CLARK, CORNELL, CORRIGAN, CREIGHTON, D. EVANS, J. EVANS,
FEESE, FRANKEL, GABIG, GEORGE, HARHAI, HENNESSEY, HERSHEY,
LAUGHLIN, MARKOSEK, S. MILLER, PIPPY, PISTELLA, SAINATO,
SCHULER, B. SMITH, STERN, T. STEVENSON, J. TAYLOR, TRICH,
WALKO, WATERS, WATSON, WOJNAROSKI, M. WRIGHT, YOUNGBLOOD,
CAPPELLI, KAISER, CASORIO, C. WILLIAMS, McILHATTAN, McCALL,
WASHINGTON, PALLONE, COSTA, STEELMAN AND PICKETT,
SEPTEMBER 26, 2001

AS AMENDED ON THIRD CONSIDERATION, HOUSE OF REPRESENTATIVES,
DECEMBER 3, 2001

AN ACT

1 Amending Titles 18 (Crimes and Offenses) and 75 (Vehicles) of
2 the Pennsylvania Consolidated Statutes, authorizing police
3 officers to record certain oral communications; and further
4 providing for windshield obstructions and wipers.

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

7 Section 1. Sections 5704 and 5706(b) of Title 18 of the
8 Pennsylvania Consolidated Statutes are amended by adding
9 paragraphs to read:

10 § 5704. Exceptions to prohibition of interception and
11 disclosure of communications.

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

14 * * *

15 ~~(16) (i) A law enforcement officer acting in the (16)~~

<—

1 A LAW ENFORCEMENT OFFICER, WHETHER OR NOT CERTIFIED UNDER
2 SECTION 5724 (RELATING TO TRAINING), ACTING IN THE
3 performance of his official duties to intercept and
4 record an oral communication between individuals if, at <—
5 the time of the interception, the oral communication
6 occurs outside the home of the individuals and the law <—
7 IN ACCORDANCE WITH THE FOLLOWING:

8 (I) AT THE TIME OF THE INTERCEPTION, THE ORAL
9 COMMUNICATION DOES NOT OCCUR INSIDE THE RESIDENCE OF ANY
10 OF THE INDIVIDUALS.

11 (II) AT THE TIME OF THE INTERCEPTION, THE LAW
12 enforcement officer:

13 (A) is operating the visual or audible warning
14 system of the law enforcement officer's vehicle
15 authorized by 75 Pa.C.S. § 4571 (relating to visual
16 and audible signals on emergency vehicles) or
17 otherwise identifies himself as a law enforcement
18 officer;

19 (B) is in close proximity to the individuals'
20 oral communication; and

21 (C) notifies, as soon as practicable, the
22 individuals identifiably present at the location that
23 the oral communication is being or has been
24 intercepted and recorded.

25 ~~(ii) For the purposes of this paragraph, "law~~ <—
26 ~~enforcement officer" shall be a member of the~~

27 (III) THE COMMANDER SHALL MAINTAIN ALL RECORDINGS OF <—
28 ORAL COMMUNICATIONS INTERCEPTED UNDER THIS PARAGRAPH FOR
29 A MINIMUM OF 31 DAYS AFTER THE DATE OF THE INTERCEPTION.
30 ALL RECORDINGS MADE UNDER THIS PARAGRAPH SHALL BE

1 RECORDED OVER OR OTHERWISE DESTROYED NO LATER THAN 90
2 DAYS AFTER THE DATE OF THE RECORDING UNLESS ANY OF THE
3 FOLLOWING APPLY:

4 (A) THE CONTENTS OF THE RECORDING MAY RESULT IN
5 THE ISSUANCE OF A CITATION OR THE FILING OF CRIMINAL
6 CHARGES. EXCEPT AS OTHERWISE AUTHORIZED UNDER THIS
7 SUBPARAGRAPH, IF NO CRIMINAL CHARGES ARE FILED WITHIN
8 THE APPLICABLE STATUTE OF LIMITATIONS, ANY RECORDING
9 MAINTAINED UNDER THIS CLAUSE SHALL BE RECORDED OVER
10 OR DESTROYED NO LATER THAN 90 DAYS AFTER THE
11 EXPIRATION OF THE STATUTE OF LIMITATIONS. ALL
12 RECORDINGS UNDER THIS CLAUSE SHALL BE MAINTAINED IN
13 ACCORDANCE WITH SECTION 5714(A), EXCEPT THAT MONITORS
14 NEED NOT BE CERTIFIED UNDER SECTION 5724.

15 (B) THE COMMANDER OR A LAW ENFORCEMENT OFFICER
16 ON THE RECORDING REASONABLY BELIEVES THAT THE
17 CONTENTS OF THE RECORDING, OR EVIDENCE DERIVED FROM
18 THE RECORDING, MAY BE NECESSARY IN A PROCEEDING FOR
19 WHICH DISCLOSURE IS AUTHORIZED UNDER SECTION 5717 OR
20 5721.1 (RELATING TO EVIDENTIARY DISCLOSURE OF
21 CONTENTS OF INTERCEPTED COMMUNICATION OR DERIVATIVE
22 EVIDENCE) OR IN A CIVIL PROCEEDING. ALL RECORDINGS
23 UNDER THIS CLAUSE SHALL BE MAINTAINED IN ACCORDANCE
24 WITH SECTION 5714(A), EXCEPT THAT MONITORS NEED NOT
25 BE CERTIFIED UNDER SECTION 5724.

26 (C) A CRIMINAL DEFENDANT, WHO IS A PARTICIPANT
27 ON THE RECORDING, REASONABLY BELIEVES THAT THE
28 RECORDING MAY BE USEFUL FOR ITS EVIDENTIARY VALUE AT
29 SOME LATER TIME IN A SPECIFIC CRIMINAL PROCEEDING
30 AND, NO LATER THAN 30 DAYS FOLLOWING THE FILING OF

1 CRIMINAL CHARGES, PROVIDES WRITTEN NOTICE TO THE
2 COMMANDER INDICATING A DESIRE THAT THE RECORDING BE
3 MAINTAINED. THE WRITTEN NOTICE MUST SPECIFY THE DATE,
4 TIME AND LOCATION OF THE RECORDING; THE NAMES OF THE
5 PARTIES INVOLVED; AND, IF KNOWN, THE CASE DOCKET
6 NUMBER.

7 (D) AN INDIVIDUAL WHO IS A PARTICIPANT ON THE
8 RECORDING INTENDS TO PURSUE A CIVIL ACTION OR HAS
9 ALREADY INITIATED A CIVIL ACTION AND, NO LATER THAN
10 30 DAYS AFTER THE DATE OF THE RECORDING, GIVES
11 WRITTEN NOTICE TO THE COMMANDER INDICATING A DESIRE
12 THAT THE RECORDING BE MAINTAINED. THE WRITTEN NOTICE
13 MUST SPECIFY THE DATE, TIME AND LOCATION OF THE
14 RECORDING; THE NAMES OF THE PARTIES INVOLVED; AND, IF
15 A CIVIL ACTION HAS BE INITIATED, THE CASE CAPTION AND
16 DOCKET NUMBER.

17 (E) THE COMMANDER INTENDS TO USE THE RECORDING
18 FOR TRAINING PURPOSES.

19 (IV) IN ADDITION TO ANY DISCLOSURE AUTHORIZED UNDER
20 SECTIONS 5717 AND 5721.1, ANY RECORDING MAINTAINED:

21 (A) UNDER SUBPARAGRAPH (III)(D) SHALL BE
22 DISCLOSED PURSUANT TO AN ORDER OF COURT OR AS
23 REQUIRED BY THE PENNSYLVANIA RULES OF CIVIL PROCEDURE
24 OR THE PENNSYLVANIA RULES OF EVIDENCE; AND

25 (B) UNDER SUBPARAGRAPH (III)(E) SHALL BE
26 DISCLOSED CONSISTENT WITH WRITTEN CONSENT OBTAINED
27 FROM THE LAW ENFORCEMENT OFFICER AND ALL PARTICIPANTS
28 REQUIRED TO CONSENT TO SUCH USE.

29 (V) THE COMMISSIONER OF THE PENNSYLVANIA STATE
30 POLICE, IN CONSULTATION WITH THE ATTORNEY GENERAL, SHALL

1 PROMULGATE REGULATIONS CONSISTENT WITH THIS PARAGRAPH
2 SETTING FORTH PROCEDURES TO BE FOLLOWED BY LAW
3 ENFORCEMENT OFFICERS REGARDING THE INTERCEPTION,
4 MAINTENANCE AND DESTRUCTION OF RECORDINGS MADE UNDER THIS
5 PARAGRAPH.

6 (VI) AS USED IN THIS PARAGRAPH, THE FOLLOWING WORDS
7 AND PHRASES SHALL HAVE THE MEANINGS GIVEN TO THEM IN THIS
8 SUBPARAGRAPH:

9 "COMMANDER." THE:

10 (A) COMMISSIONER OR A DESIGNEE, IF THE RECORDING
11 AT ISSUE WAS MADE BY A MEMBER OF THE PENNSYLVANIA
12 STATE POLICE; OR

13 (B) CHIEF OR A DESIGNEE OF THE LAW ENFORCEMENT
14 AGENCY WHICH MADE THE RECORDING AT ISSUE.

15 "LAW ENFORCEMENT OFFICER." A MEMBER OF THE
16 Pennsylvania State Police or an individual employed as a
17 police officer ~~that requires~~ WHO RECEIVED training under <—
18 53 Pa.C.S. Ch. 21 Subch. D (relating to municipal police
19 education and training).

20 § 5706. Exceptions to prohibitions in possession, sale,
21 distribution, manufacture or advertisement of
22 electronic, mechanical or other devices.

23 * * *

24 (b) Responsibility.--

25 * * *

26 (4) The Pennsylvania State Police shall annually
27 establish equipment standards for any electronic, mechanical
28 or other device which is to be used by law enforcement
29 officers for purposes of interception as authorized under
30 section 5704(16). The equipment standards shall be published

1 annually in the Pennsylvania Bulletin.

2 Section 2. Section 4524 of Title 75 is amended by adding a
3 subsection to read:

4 § 4524. Windshield obstructions and wipers.

5 * * *

6 (f) Exception.--This section does not apply to mobile video
7 recording equipment installed in a vehicle exclusively used for
8 official police purposes.

9 Section 3. This act shall take effect in 60 days.