
THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 976 Session of
2015

INTRODUCED BY GREENLEAF, BREWSTER, TEPLITZ, BROOKS, COSTA,
RAFFERTY, ALLOWAY, TARTAGLIONE, VULAKOVICH, HUGHES AND
BROWNE, AUGUST 13, 2015

REFERRED TO JUDICIARY, AUGUST 13, 2015

AN ACT

1 Amending Title 18 (Crimes and Offenses) of the Pennsylvania
2 Consolidated Statutes, in wiretapping and electronic
3 surveillance, further providing for definitions and for
4 exceptions to prohibition of interception and disclosure of
5 communications.

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

8 Section 1. The introductory paragraph of the definition of
9 "crime of violence" and paragraph (3) of the definition of
10 "electronic, mechanical or other device" in section 5702 of
11 Title 18 of the Pennsylvania Consolidated Statutes are amended
12 and the section is amended by adding definitions to read:

13 § 5702. Definitions.

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

17 * * *

18 "Crime of violence." [Any] Subject to section 5704(19)(i)(B)
19 (III) (relating to exceptions to prohibition of interception and

1 disclosure of communications), any of the following:

2 * * *

3 "Custodial interrogation." An interview:

4 (1) which occurs when an individual interviewed is in
5 custody; and

6 (2) in which a question, statement or other conduct is
7 reasonably likely to elicit an incriminating response from
8 the individual.

9 "Custody." A state of affairs in which an individual is:

10 (1) physically deprived of freedom in a significant way
11 while being interviewed by a law enforcement officer; or

12 (2) placed in a situation in which the individual
13 reasonably believes that his freedom of action or movement is
14 restricted.

15 * * *

16 "Electronic, mechanical or other device." Any device or
17 apparatus, including, but not limited to, an induction coil or a
18 telecommunication identification interception device, that can
19 be used to intercept a wire, electronic or oral communication
20 other than:

21 * * *

22 (3) Equipment or devices used to conduct interceptions
23 under section 5704(15) [(relating to exceptions to
24 prohibition of interception and disclosure of
25 communications)].

26 "Electronic recording." An audiovisual or audio recording of
27 a statement.

28 * * *

29 "Interview." A conversation between a law enforcement
30 officer and another individual which takes place in the course

1 of a criminal investigation.

2 * * *

3 "Law enforcement agency." A government entity charged with
4 enforcement of criminal statutes or the investigation of
5 suspected criminal activity.

6 * * *

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

9 § 5704. Exceptions to prohibition of interception and
10 disclosure of communications.

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

13 * * *

14 (19) A law enforcement officer, whether or not certified
15 under section 5724, acting in the performance of official
16 duties to intercept and record an oral communication between
17 an individual and the law enforcement in accordance with the
18 following:

19 (i) Except as set forth in subparagraph (iv), at the
20 time of the interception, all of the following apply:

21 (A) The oral communication occurs inside a room
22 which:

23 (I) is designated or used for interrogations
24 and interviews within a police facility; and

25 (II) has a clearly visible notice posted to
26 inform individuals that they may be recorded.

27 (B) The law enforcement officer complies with
28 all of the following:

29 (I) Is in uniform or otherwise clearly
30 identifiable as a law enforcement officer.

1 (II) Is using an electronic, mechanical or
2 other device to make an electronic recording of
3 the the oral communication.

4 (III) Is interrogating or interviewing the
5 individual about an actual or suspected crime of
6 violence. As used in this subclause, the term
7 "crime of violence" includes an offense under
8 Chapter 25 (relating to criminal homicide) or 31
9 Subch. B (relating to definition of offenses).

10 (IV) Records the law enforcement officer's
11 warning of constitutional rights to the
12 individual.

13 (V) Records the entire exchange in an
14 unedited and unaltered manner between the law
15 enforcement officer and the individual.

16 (VI) Documents the interception and
17 recording for administrative and evidentiary
18 obligations in compliance with section 5749
19 (relating to retention of certain records).

20 (ii) The law enforcement officer shall explain and
21 document an exception under subparagraph (iv).
22 Documentation under this subparagraph must include all of
23 the following as to the interview or custodial
24 interrogation:

25 (A) Date.

26 (B) Time and duration.

27 (C) Names of participants.

28 (D) Summary of the content of each oral
29 communication.

30 (E) Explanation of the justification under

1 subparagraph (iv).

2 (iii) An electronic recording under this paragraph
3 shall be preserved until:

4 (A) the applicable Federal and State limitation
5 of actions expires; or

6 (B) appellate, postconviction and habeas corpus
7 relief applicable to the individual are concluded or
8 barred by time.

9 (iv) Subparagraph (i) shall not apply in any of the
10 following circumstances:

11 (A) A question and response is part of the
12 routine processing of the individual for arrest.

13 (B) The individual agrees to respond to the law
14 enforcement officer's questions only if the
15 individual's statements are not electronically
16 recorded.

17 (C) The law enforcement officer acts in good
18 faith and inadvertently fails to operate the
19 recording equipment properly.

20 (D) Without the knowledge of the law enforcement
21 officer, the recording equipment malfunctions.

22 (E) The interview or custodial interrogation
23 takes place in another jurisdiction and is conducted
24 by officials of that jurisdiction in compliance with
25 the law of that jurisdiction.

26 (F) The law enforcement officer reasonably
27 believes that making the electronic recording would
28 jeopardize the safety of a person or the identity of
29 a confidential informant.

30 (G) The law enforcement officer reasonably

1 believes that subparagraph (i) (B) (III) is not
2 applicable.

3 (H) There are exigent circumstances which
4 prevent or impede making the electronic recording.

5 Section 3. The addition of 18 Pa.C.S. § 5704(19) shall apply
6 to law enforcement actions which take place on or after the
7 effective date of this section.

8 Section 4. This act shall take effect in 60 days.