



|| SENATE OF PENNSYLVANIA || BILL SUMMARY

Senate Bill 560 Printer's No. 595

Prime Sponsor: Senator Greenleaf
Committee: Judiciary

SYNOPSIS:

This bill amends Title 18 (Crimes and Offenses) and Title 42 (Judiciary and Judicial Procedure) to expand the scope of permissible audio and video recording by law enforcement officers and to allow for public access to those recordings.

SUMMARY:

Law Enforcement Recordings under the Wiretap Act. This bill amends the definition of "oral communication" in the Wiretapping and Electronic Surveillance Control Act ("Wiretap Act") so that there is no expectation that communications in the presence of an identifiable law enforcement officer will be private and free from recording. The law enforcement officer must, however, intercept or record communications with a device that is approved by the Pennsylvania State Police.

This definitional change eliminates the current prohibition against police intercepting and recording communications inside a residence and the requirement in any location that a law enforcement officer inform all individuals in the vicinity that the officer is recording. Law enforcement officers will not be criminally or civilly liable for making audio recordings inside a residence. This amended definition affects only the applicability of the Wiretap Act, and does not excuse law enforcement officers from the requirements of the United States and Pennsylvania Constitutions to enter a residence.

Prison Recordings. The Pennsylvania Supreme Court in 2016 decided *Commonwealth v. Fant*, holding that prisons may not record inmate communications that take place over a telephone handset while the parties to the communication are separated by plexiglass. The decision turned on the definition of "telephone." This bill eliminates the term "telephone" and uses the broader defined terms "oral communication, electronic communication or wire communication." The effect of this change will be to permit county and state prisons to record inmate communications. The change does not alter existing law that protects the attorney-client privilege.

Storage of Law Enforcement Recordings. The Pennsylvania State Police will be tasked with publishing guidelines for the storage of audio and video recordings made by law enforcement officers. The standards shall comply with the FBI's Criminal Justice Information Services ("CJIS") Security Policy. This standard will apply to any vendor to law enforcement agencies that store data related to body cameras.

Public Access to Law Enforcement Recordings. As a general rule, law enforcement recordings will not be subject to the Right-to-Know Law. Instead, the bill establishes a special process for the public to obtain the audio and video recordings.

- First, the requester must submit a written request to the law enforcement agency that made the recording. The request must be made within 60 days of the date when the recording was made. The law enforcement agency must within 60 days of receipt of the request produce the recording or explain why it will not produce the recording. If the law enforcement agency fails to respond within 60 days, the request will be deemed denied. Requests must describe specific incidents and locations, and cannot be general requests for all recordings made during a certain time period. The law enforcement agency must deny the request if the recording relates to a criminal case or contains information involving a crime victim or confidential informant.

- Second, the requester may appeal the denial of a recording to the court of common pleas with jurisdiction. If the law enforcement agency denied the recording based on a criminal case, victim information, or confidential informant information, the court may overrule that denial only if the law enforcement decision was "arbitrary and capricious." Otherwise the court will weigh the interests of the public and the requester in obtaining the recording against the interest of law enforcement and any other individual in not producing the recording.

Law Enforcement Agency Policies. This bill will require that every law enforcement agency using making audio and video recordings to have a policy that is published on its web site. The policy must include the training each officer must receive, when the camera is to be recording and when it may be turned off, guidelines for maintaining the cameras, how the recordings will be stored, and a policy governing facial recognition software. The Pennsylvania Commission on Crime and Delinquency will approve all policies and condition any funding and training on having an approved policy.

Amendment: The amendment does the following:

- (1) Corrects the definition of "confidential information" to include cooperating witnesses who have been charged with an offense.
- (2) Clarifies that the term "information pertaining to an investigation" includes any information that would "reveal the institution, progress or result of a criminal investigation."
- (3) Changes the time period from 30 days to 60 days for a request to a law enforcement agency for an audio or video recording.
- (4) Eliminates conflicting language regarding judicial review of the certification that a recording pertains to a criminal matter, a victim, or a confidential informant.
- (5) Eliminates a provision invoking the substantive standards of the Right-to-Know Law during judicial review of a petition for a recording.

EFFECTIVE DATE: This bill is effective in 60 days.

BILL HISTORY:

None.

Prepared by: Cawley 3/24/2017