

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 626 Session of 2021

INTRODUCED BY D. MILLER, A. DAVIS, HILL-EVANS, LEE, SANCHEZ, HOHENSTEIN, GALLOWAY, MADDEN, SCHLOSSBERG, INNAMORATO, CIRESI, McCLINTON AND CONKLIN, MARCH 10, 2021

REFERRED TO COMMITTEE ON JUDICIARY, MARCH 10, 2021

AN ACT

1 Amending Title 42 (Judiciary and Judicial Procedure) of the
 2 Pennsylvania Consolidated Statutes, in recordings by law
 3 enforcement officers, further providing for definitions, for
 4 scope of chapter, for requests for law enforcement audio
 5 recordings or video recordings, for procedure and for
 6 petition for judicial review; and, in actions, proceedings
 7 and other matters generally, providing for recordings of law
 8 enforcement officers.

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

11 Section 1. Section 67A01 of Title 42 of the Pennsylvania
 12 Consolidated Statutes is amended by adding a definition to read:
 13 § 67A01. Definitions.

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

17 "Body camera." A device that is approved under 18 Pa.C.S. §
 18 5706(b)(4) (relating to exceptions to prohibitions in
 19 possession, sale, distribution, manufacture or advertisement of
 20 electronic, mechanical or other devices) and affixed or

1 otherwise in the possession of a law enforcement officer.

2 * * *

3 Section 2. Section 67A02(a) of Title 42 is amended to read:
4 § 67A02. Scope of chapter.

5 (a) Exemption.--The provisions of this chapter, and not the
6 act of February 14, 2008 (P.L.6, No.3), known as the Right-to-
7 Know Law, shall apply to any audio recording or video recording
8 made by a law enforcement agency[.] using body cameras or other
9 recording devices not fixed to the exterior or interior of a
10 building or a vehicle under circumstances within paragraph (2)
11 of the definition of "oral communication" in 18 Pa.C.S. § 5702
12 (relating to definitions).

13 * * *

14 Section 3. Section 67A03(1) and (2) of Title 42 are amended
15 and the section is amended by adding a paragraph to read:
16 § 67A03. Requests for law enforcement audio recordings or video
17 recordings.

18 The following shall apply:

19 (1) An individual who requests an audio recording or
20 video recording made by a law enforcement agency shall,
21 within [60] 180 days of the date when the audio recording or
22 video recording was made, serve a written request to the
23 individual who is designated as the open-records officer for
24 the law enforcement agency under section 502 of the act of
25 February 14, 2008 (P.L.6, No.3), known as the Right-to-Know
26 Law. Service is effective upon receipt of the written request
27 by the open-records officer from personal delivery[or
28 certified mail with proof of service.], mail, email,
29 facsimile or, to the extent provided by the rules of the law
30 enforcement agency, other electronic means.

1 (2) The request under paragraph (1) shall [specify with
2 particularity the incident or event that is the subject of
3 the audio recording or video recording, including the date,
4 time and location of the incident or event.] identify or
5 describe the records sought with sufficient specificity to
6 enable the law enforcement agency to ascertain which records
7 are being requested and shall include the name and address to
8 which the law enforcement agency should address a response. A
9 written request need not include an explanation of the
10 requester's reason for requesting or intended use of the
11 records unless otherwise required by law.

12 * * *

13 (5) The Office of Open Records shall develop a uniform
14 request form that shall be accepted by all law enforcement
15 agencies regarding a request under this section.

16 Section 4. Sections 67A05(a), (c) and (d) and 67A06 of Title
17 42 are amended to read:

18 § 67A05. Procedure.

19 (a) Disclosure.--A law enforcement agency that receives a
20 request under section 67A03 (relating to requests for law
21 enforcement audio recordings or video recordings) for an audio
22 recording or video recording shall provide the audio recording
23 or video recording or identify in writing the basis for denying
24 the request within [30] five business days of receiving the
25 request, unless the requester and law enforcement agency agree
26 to a longer time period[.] or unless the open-records officer
27 determines that one of the factors under section 902(a) of the
28 act of February 14, 2008 (P.L.6, No.3), known as the Right-to-
29 Know Law, applies, in which case the notice provisions under
30 section 902(b) of the Right-to-Know Law shall govern. If an

1 agreement under section 67A04(b) (2) (relating to law enforcement
2 review) is in effect between the law enforcement agency and the
3 Attorney General or district attorney with jurisdiction, then an
4 agreement to a longer time period must be between the requester
5 and the Attorney General or district attorney with jurisdiction.

6 * * *

7 (c) Preservation.--A law enforcement agency that has
8 received a request for an audio recording or video recording
9 shall preserve the unaltered audio recording or video recording
10 that has been requested for no less than the time periods
11 provided in this chapter for service of and responses to written
12 requests for the production of the audio recording or video
13 recording and any period within which a petition for [judicial]
14 review is allowable or pending.

15 (d) Fees.--A law enforcement agency may establish reasonable
16 fees relating to the costs incurred to disclose audio recordings
17 or video recordings. The fees [shall be paid by the requesting
18 party at the time of disclosure of the audio recording or video
19 recording.];

- 20 (1) shall not be greater than actual costs;
21 (2) shall be publicly displayed;
22 (3) may be required to be paid in full or in part before
23 disclosure of the audio recording or video recording; and
24 (4) shall be paid by the requester before transfer.

25 * * *

26 § 67A06. Petition for [judicial] review.

27 (a) Petition.--

28 (1) If a request under section 67A03 (relating to
29 requests for law enforcement audio recordings or video
30 recordings) is denied, the requester may file a petition for

1 [judicial] review in the [court of common pleas with
2 jurisdiction] Office of Open Records within 30 days of the
3 date of denial.

4 (2) The respondent to a petition filed under this
5 section shall be the entity that denied the request for the
6 audio recording or video recording under section 67A05(a)
7 (relating to procedure) unless the request is denied under
8 section 67A05(b), in which case the law enforcement agency
9 that created the audio recording or video recording shall be
10 the respondent.

11 (b) Duties of petitioner.--A petitioner under this section
12 shall have the following duties:

13 (1) The petitioner shall pay a filing fee of \$125.

14 (2) If the incident or event that is the subject of the
15 request occurred inside a residence, the petitioner shall
16 certify that notice of the petition has been served or that
17 service was attempted on each individual who was present at
18 the time of the audio recording or video recording and on the
19 owner and occupant of the residence. Notice shall not be
20 required under this paragraph if the identity of an
21 individual present or the location is unknown and not
22 reasonably ascertainable by the petitioner. Service shall be
23 effective upon receipt from personal delivery [or certified
24 mail with proof of service.], mail, email, facsimile or, to
25 the extent provided by the rules of the law enforcement
26 agency, other electronic means.

27 (3) The petitioner shall include with the petition a
28 copy of the written request under section 67A03 that was
29 served on the law enforcement agency and any written
30 responses to the request that were received.

1 (4) The petitioner shall serve the petition on the open-
2 records officer of the respondent within five days of the
3 date that the petitioner files the petition with the [court
4 of common pleas with jurisdiction] Office of Open Records,
5 and service shall be effective upon receipt by the open-
6 records officer for personal delivery [or certified mail with
7 proof of service.], mail, email, facsimile or, to the extent
8 provided by the rules of the law enforcement agency, other
9 electronic means.

10 (c) Intervention as matter of right.--If not a respondent, a
11 prosecuting attorney with jurisdiction may intervene in the
12 action as a matter of right.

13 (d) Summary dismissal.--It shall be grounds for summary
14 dismissal of a petition filed under this section if:

15 (1) the request to the law enforcement agency under
16 section 67A03 or the filing of the petition under subsection
17 (a) is untimely;

18 (2) the request to the law enforcement agency failed to
19 describe with sufficient [particularity the incident or event
20 that is the subject of the audio recording or video
21 recording, including the date, time and location of the
22 incident or event] specificity to enable the law enforcement
23 agency to ascertain which records are being requested; or

24 (3) the petitioner has not complied with the
25 requirements of subsection (b) (1), (2), (3) and (4).

26 (e) Approval.--[A court of common pleas with jurisdiction]
27 The Office of Open Records may grant a petition under this
28 section, in whole or in part, and order the disclosure of the
29 audio recording or video recording only if the [court] Office of
30 Open Records determines that the petitioner has established all

1 of the following by a preponderance of the evidence:

2 (1) The request was not denied under section 67A04
3 (relating to law enforcement review) or the request was
4 denied under section 67A04 and the [court of common pleas
5 with jurisdiction] Office of Open Records determines that the
6 denial was arbitrary and capricious.

7 (2) The public interest in disclosure of the audio
8 recording or video recording or the interest of the
9 petitioner outweighs the interests of the Commonwealth, the
10 law enforcement agency or an individual's interest in
11 nondisclosure. In making a determination under this
12 paragraph, the [court of common pleas] Office of Open Records
13 may consider the public's interest in understanding how law
14 enforcement officers interact with the public, the interests
15 of crime victims, law enforcement and others with respect to
16 safety and privacy and the resources available to review and
17 disclose the audio recording or video recording.

18 Section 5. Title 42 is amended by adding a chapter to read:

19 CHAPTER 67B

20 RECORDINGS OF LAW ENFORCEMENT OFFICERS

21 Sec.

22 67B01. Definitions.

23 67B02. Permissible recording.

24 67B03. Prohibited activities of law enforcement officers.

25 67B04. Agency policies.

26 67B05. Effect of chapter.

27 § 67B01. Definitions.

28 The following words and phrases when used in this chapter
29 shall have the meanings given to them in this section unless the
30 context clearly indicates otherwise:

1 "Law enforcement agency." An agency that employs a law
2 enforcement officer.

3 "Law enforcement officer." As follows:

4 (1) An individual who by virtue of the individual's
5 office or public employment is vested by law with a duty to
6 maintain public order or make arrests for offenses, whether
7 or not that duty extends to all offenses or is limited to
8 specific offenses.

9 (2) The term includes the following:

10 (i) A full-time or part-time employee assigned to
11 criminal or traffic law enforcement duties of a police
12 department of a county, region, city, borough, town,
13 township or school entity.

14 (ii) A member of the Pennsylvania State Police.

15 (iii) A sheriff, deputy sheriff or constable.

16 (iv) An individual on active State duty under 51
17 Pa.C.S. § 508 (relating to active duty for emergency).

18 "Recording device." A device that is capable of recording
19 images, audio or video, or any combination thereof.

20 § 67B02. Permissible recording.

21 (a) Conditions.--A person has a right to record a law
22 enforcement officer engaged in the public discharge of duties if
23 the person:

24 (1) is in a location in which the person is lawfully
25 permitted; and

26 (2) does not interfere with the official duties of the
27 law enforcement officer when recording.

28 (b) Other permission unnecessary.--A person recording a law
29 enforcement officer in accordance with subsection (a) does not
30 need the permission of any other person to make the recording.

1 § 67B03. Prohibited activities of law enforcement officers.

2 (a) Interference with recording.--A law enforcement officer
3 may not interfere with the lawful recording under this chapter,
4 which includes intentionally blocking, obstructing or
5 discouraging the recording through intimidation or other forms
6 of coercion.

7 (b) Arrest, detention and confiscation.--The seizure of a
8 recording or recording device must comply with the Constitution
9 of the United States and the Constitution of Pennsylvania. The
10 recording shall not by itself be grounds for arrest, detention
11 or confiscation of the recording device, and no retaliation of
12 any type shall be permissible for recording a law enforcement
13 officer in accordance with this chapter.

14 (c) Destruction or alteration.--Under no circumstances shall
15 a recording device or its recording be intentionally damaged,
16 altered or deleted.

17 § 67B04. Agency policies.

18 Each law enforcement agency shall develop and promulgate
19 policies outlining this chapter, as well as possible
20 disciplinary actions, consistent with collective bargaining
21 procedures, for violation of this chapter.

22 § 67B05. Effect of chapter.

23 Nothing in this chapter is intended to limit a law
24 enforcement officer's responsibility to maintain safety or
25 otherwise perform official duties in a manner consistent with
26 law and procedures of the law enforcement agency.

27 Section 6. This act shall take effect in 60 days.