

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

SENATOR GREENLEAF, JUDICIARY, AS AMENDED, OCTOBER 27, 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 SECTION 1. PARAGRAPH (3) OF THE DEFINITION OF "ELECTRONIC, <--
14 MECHANICAL OR OTHER DEVICE" IN SECTION 5702 OF TITLE 18 OF THE
15 PENNSYLVANIA CONSOLIDATED STATUTES IS AMENDED AND THE SECTION IS
16 AMENDED BY ADDING DEFINITIONS TO READ:

17 § 5702. Definitions.

18 As used in this chapter, the following words and phrases
19 shall have the meanings given to them in this section unless the

1 context clearly indicates otherwise:

2 \* \* \*

3 ~~"Crime of violence." [Any] Subject to section 5704(19)(i)(B) <--~~  
4 ~~(III) (relating to exceptions to prohibition of interception and~~  
5 ~~disclosure of communications), any of the following:~~

6 \* \* \*

7 "Custodial interrogation." An interview:

8 (1) which occurs when an individual interviewed is in  
9 custody; and

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

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

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

16 (2) placed in a situation in which the individual  
17 reasonably believes that his freedom of action or movement is  
18 restricted.

19 \* \* \*

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

25 \* \* \*

26 (3) Equipment or devices used to conduct interceptions  
27 under section 5704(15) [(relating to exceptions to  
28 prohibition of interception and disclosure of  
29 communications)].

30 "Electronic recording." An audiovisual or audio recording of

1 a statement.

2 \* \* \*

3 "Interview." A conversation between a law enforcement  
4 officer and another individual which takes place in the course  
5 of a criminal investigation.

6 \* \* \*

7 "Law enforcement agency." A government entity charged with  
8 enforcement of criminal statutes or the investigation of  
9 suspected criminal activity.

10 \* \* \*

11 Section 2. Section 5704 of Title 18 is amended by adding a ~~para-~~ <--  
12 ~~graph~~ PARAGRAPHS to read: <--

13 § 5704. Exceptions to prohibition of interception and  
14 disclosure of communications.

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

17 \* \* \*

18 (19) A law enforcement officer, whether or not certified  
19 under section 5724, acting in the performance of official  
20 duties to intercept and record an oral communication between  
21 an individual and the law enforcement OFFICER in accordance <--  
22 with the following:

23 ~~(i) Except as set forth in subparagraph (iv), at the~~ <--  
24 ~~time of the interception, all of the following apply:~~

25 ~~(A) The oral communication occurs inside a room~~  
26 ~~which:~~

27 ~~(I) is designated or used for interrogations~~  
28 ~~and interviews within a police facility; and~~

29 ~~(II) has a clearly visible notice posted to~~  
30 ~~inform individuals that they may be recorded.~~

1                   ~~(B) The law enforcement officer complies with~~  
2                   ~~all of the following:~~

3                   ~~(I) Is in uniform or otherwise clearly~~  
4                   ~~identifiable as a law enforcement officer.~~

5                   ~~(II) Is using an electronic, mechanical or~~  
6                   ~~other device to make an electronic recording of~~  
7                   ~~the the oral communication.~~

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

14                   ~~(IV) Records the law enforcement officer's~~  
15                   ~~warning of constitutional rights to the~~  
16                   ~~individual.~~

17                   ~~(V) Records the entire exchange in an~~  
18                   ~~unedited and unaltered manner between the law~~  
19                   ~~enforcement officer and the individual.~~

20                   ~~(VI) Documents the interception and~~  
21                   ~~recording for administrative and evidentiary~~  
22                   ~~obligations in compliance with section 5749~~  
23                   ~~(relating to retention of certain records).~~

24                   ~~(ii) The law enforcement officer shall explain and~~  
25                   ~~document an exception under subparagraph (iv).~~  
26                   ~~Documentation under this subparagraph must include all of~~  
27                   ~~the following as to the interview or custodial~~  
28                   ~~interrogation:~~

29                   ~~(A) Date.~~

30                   ~~(B) Time and duration.~~

1 ~~(C) Names of participants.~~

2 ~~(D) Summary of the content of each oral~~  
3 ~~communication.~~

4 ~~(E) Explanation of the justification under~~  
5 ~~subparagraph (iv).~~

6 ~~(iii) An electronic recording under this paragraph~~  
7 ~~shall be preserved until:~~

8 ~~(A) the applicable Federal and State limitation~~  
9 ~~of actions expires; or~~

10 ~~(B) appellate, postconviction and habeas corpus~~  
11 ~~relief applicable to the individual are concluded or~~  
12 ~~barred by time.~~

13 ~~(iv) Subparagraph (i) shall not apply in any of the~~  
14 ~~following circumstances:~~

15 ~~(A) A question and response is part of the~~  
16 ~~routine processing of the individual for arrest.~~

17 ~~(B) The individual agrees to respond to the law~~  
18 ~~enforcement officer's questions only if the~~  
19 ~~individual's statements are not electronically~~  
20 ~~recorded.~~

21 ~~(C) The law enforcement officer acts in good~~  
22 ~~faith and inadvertently fails to operate the~~  
23 ~~recording equipment properly.~~

24 ~~(D) Without the knowledge of the law enforcement~~  
25 ~~officer, the recording equipment malfunctions.~~

26 ~~(E) The interview or custodial interrogation~~  
27 ~~takes place in another jurisdiction and is conducted~~  
28 ~~by officials of that jurisdiction in compliance with~~  
29 ~~the law of that jurisdiction.~~

30 ~~(F) The law enforcement officer reasonably~~

1 ~~believes that making the electronic recording would~~  
2 ~~jeopardize the safety of a person or the identity of~~  
3 ~~a confidential informant.~~

4 ~~(G) The law enforcement officer reasonably~~  
5 ~~believes that subparagraph (i)(B)(III) is not~~  
6 ~~applicable.~~

7 ~~(H) There are exigent circumstances which~~  
8 ~~prevent or impede making the electronic recording.~~

9 (I) AT THE TIME OF THE INTERCEPTION, THE ORAL <--  
10 COMMUNICATION OCCURS INSIDE A ROOM DESIGNATED OR USED FOR  
11 INTERROGATIONS OR INTERVIEWS WITHIN A POLICE FACILITY.

12 (II) AT THE TIME OF THE INTERCEPTION, THE LAW  
13 ENFORCEMENT OFFICER:

14 (A) IS IN UNIFORM OR OTHERWISE CLEARLY  
15 IDENTIFIABLE AS A LAW ENFORCEMENT OFFICER.

16 (B) PLACES THE OTHER PARTY ON NOTICE OF THE  
17 INTERCEPTION AND RECORDING, ORALLY OR IN WRITING OR  
18 BY THE POSTING OF A CLEARLY VISIBLE NOTICE THAT THE  
19 INDIVIDUAL'S WORDS AND ACTIONS ARE BEING RECORDED.

20 (C) IS USING AN ELECTRONIC, MECHANICAL OR OTHER  
21 DEVICE TO INTERCEPT AND RECORD THE ORAL  
22 COMMUNICATION.

23 (D) IS CONDUCTING A CUSTODIAL INTERROGATION OF  
24 AN INDIVIDUAL ABOUT ANY REPORTED CRIME.

25 (E) RECORDS A WARNING OF CONSTITUTIONAL RIGHTS  
26 TO THE INDIVIDUAL.

27 (F) RECORDS THE ENTIRE INTERACTION OCCURRING IN  
28 THE INTERROGATION ROOM BETWEEN THE LAW ENFORCEMENT  
29 OFFICER AND THE INDIVIDUAL INTERROGATED IN AN  
30 UNEDITED AND UNALTERED MANNER.

1                   (G) DOCUMENTS THE INTERCEPTION AND RECORDING OF  
2                   THE INTERROGATION.

3                   (III) AN ORAL AND VIDEO RECORDING MADE UNDER THIS  
4                   PARAGRAPH SHALL NOT BE SUBJECT TO PRODUCTION UNDER THE  
5                   ACT OF FEBRUARY 14, 2008 (P.L.6, NO.3), KNOWN AS THE  
6                   RIGHT-TO-KNOW LAW, AND MUST BE PRESERVED UNTIL ALL:

7                   (A) APPEALS, POSTCONVICTION AND HABEAS CORPUS  
8                   PROCEEDINGS REGARDING THE INDIVIDUAL RECORDED ARE  
9                   CONCLUDED; OR

10                  (B) APPLICABLE FEDERAL AND STATE STATUTES OF  
11                  LIMITATIONS BAR PROSECUTION OF THE INDIVIDUAL  
12                  RECORDED.

13                  (IV) AN ELECTRONIC RECORDING OF A CUSTODIAL  
14                  INTERROGATION REGARDING A REPORTED VIOLENT CRIME MUST BE  
15                  CONDUCTED PURSUANT TO THIS PARAGRAPH UNLESS:

16                  (A) AN ELECTRONIC RECORDING OF THE CUSTODIAL  
17                  INTERROGATION IS NOT FEASIBLE, INCLUDING, BUT NOT  
18                  LIMITED TO, CASES IN WHICH RECORDING EQUIPMENT  
19                  MALFUNCTIONS;

20                  (B) A SPONTANEOUS STATEMENT IS MADE OUTSIDE THE  
21                  COURSE OF CUSTODIAL INTERROGATION;

22                  (C) A STATEMENT IS MADE IN RESPONSE TO  
23                  QUESTIONING THAT IS ROUTINELY ASKED DURING THE  
24                  PROCESSING OF THE ARREST OF THE SUSPECT;

25                  (D) A STATEMENT IS MADE BY AN ACCUSED IN OPEN  
26                  COURT DURING TRIAL, BEFORE A GRAND JURY OR AT A  
27                  PRELIMINARY HEARING;

28                  (E) A SUSPECT REFUSES TO HAVE THE CUSTODIAL  
29                  INTERROGATION ELECTRONICALLY RECORDED AND THE REFUSAL  
30                  ITSELF IS ELECTRONICALLY RECORDED;

1           (F) A STATEMENT IS MADE DURING A CUSTODIAL  
2           INTERROGATION THAT IS CONDUCTED IN ANOTHER STATE BY  
3           LAW ENFORCEMENT OFFICERS OF THAT STATE;

4           (G) A STATEMENT IS GIVEN THAT OCCURS AT A TIME  
5           WHEN THE INTERROGATORS HAVE NO KNOWLEDGE THAT A CRIME  
6           FOR WHICH RECORDING IS REQUIRED HAS BEEN COMMITTED;

7           (H) A STATEMENT IS GIVEN IN ANOTHER JURISDICTION  
8           AND IS CONDUCTED BY OFFICIALS OF THAT JURISDICTION IN  
9           COMPLIANCE WITH THE LAW OF THAT JURISDICTION; OR

10          (I) EXIGENT CIRCUMSTANCES EXIST WHICH PREVENT  
11          THE MAKING OF OR RENDER IT NOT FEASIBLE TO MAKE AN  
12          ELECTRONIC RECORDING OF THE CUSTODIAL INTERROGATION.

13          (V) A FAILURE OF A LAW ENFORCEMENT OFFICER TO  
14          INTERCEPT AND RECORD AN ORAL COMMUNICATION UNDER  
15          SUBPARAGRAPH (IV) ABOUT A REPORTED VIOLENT CRIME MUST BE  
16          DOCUMENTED IN WRITING, EXCEPT THAT A FAILURE TO COMPLY  
17          WITH THE PROVISIONS OF SUBPARAGRAPH (IV) OR OF THIS  
18          SUBPARAGRAPH SHALL NOT RENDER THE STATEMENT OR  
19          COMMUNICATION INADMISSIBLE.

20          (VI) THE TERM "VIOLENT CRIME" WHEN USED IN THIS  
21          PARAGRAPH SHALL MEAN ANY OF THE FOLLOWING CRIMES:

22           (A) CRIMINAL HOMICIDE AS DEFINED IN SECTION 2501  
23           (RELATING TO CRIMINAL HOMICIDE).

24           (B) MURDER AS DEFINED IN SECTION 2502 (RELATING  
25           TO MURDER).

26           (C) VOLUNTARY MANSLAUGHTER AS DEFINED IN SECTION  
27           2503 (RELATING TO VOLUNTARY MANSLAUGHTER).

28           (D) INVOLUNTARY MANSLAUGHTER AS DEFINED IN  
29           SECTION 2504 (RELATING TO INVOLUNTARY MANSLAUGHTER).

30           (E) CAUSING OR AIDING SUICIDE AS DEFINED IN



1 SECTION 2505 (RELATING TO CAUSING OR AIDING SUICIDE).

2 (F) DRUG DELIVERY RESULTING IN DEATH AS DEFINED  
3 IN SECTION 2506 (RELATING TO DRUG DELIVERY RESULTING  
4 IN DEATH).

5 (G) CRIMINAL HOMICIDE OF LAW ENFORCEMENT OFFICER  
6 AS DEFINED IN SECTION 2507 (RELATING TO CRIMINAL  
7 HOMICIDE OF LAW ENFORCEMENT OFFICER).

8 (H) RAPE AS DEFINED IN SECTION 3121 (RELATING TO  
9 RAPE).

10 (I) STATUTORY SEXUAL ASSAULT AS DEFINED IN  
11 SECTION 3122.1 (RELATING TO STATUTORY SEXUAL  
12 ASSAULT).

13 (J) INVOLUNTARY DEVIATE SEXUAL INTERCOURSE AS  
14 DEFINED IN SECTION 3123 (RELATING TO INVOLUNTARY  
15 DEVIATE SEXUAL INTERCOURSE).

16 (K) SEXUAL ASSAULT AS DEFINED IN SECTION 3124.1  
17 (RELATING TO SEXUAL ASSAULT).

18 (L) INSTITUTIONAL SEXUAL ASSAULT AS DEFINED IN  
19 SECTION 3124.2 (RELATING TO INSTITUTIONAL SEXUAL  
20 ASSAULT).

21 (M) SEXUAL ASSAULT BY SPORTS OFFICIAL, VOLUNTEER  
22 OR EMPLOYEE OF NONPROFIT ASSOCIATION AS DEFINED IN  
23 SECTION 3124.3 (RELATING TO SEXUAL ASSAULT BY SPORTS  
24 OFFICIAL, VOLUNTEER OR EMPLOYEE OF NONPROFIT  
25 ASSOCIATION).

26 (N) AGGRAVATED INDECENT ASSAULT AS DEFINED IN  
27 SECTION 3125 (RELATING TO AGGRAVATED INDECENT  
28 ASSAULT).

29 (O) INDECENT ASSAULT AS DEFINED IN SECTION 3126  
30 (RELATING TO INDECENT ASSAULT).

1           (20) A LAW ENFORCEMENT OFFICER, WHETHER OR NOT CERTIFIED  
2 UNDER SECTION 5724, ACTING IN THE PERFORMANCE OF HIS OFFICIAL  
3 DUTIES TO INTERCEPT AND RECORD AN ORAL COMMUNICATION BETWEEN  
4 INDIVIDUALS IN ACCORDANCE WITH THE FOLLOWING:

5           (I) AT THE TIME OF THE INTERCEPTION, THE ORAL  
6 COMMUNICATION DOES NOT OCCUR INSIDE THE RESIDENCE OF ANY  
7 OF THE INDIVIDUALS EXCEPT UNDER THE FOLLOWING  
8 CIRCUMSTANCES:

9           (A) THE LAW ENFORCEMENT OFFICER IS EXECUTING AN  
10 ARREST OR SEARCH WARRANT;

11           (B) AN INDIVIDUAL WITH EITHER ACTUAL AUTHORITY  
12 OR APPARENT AUTHORITY HAS GIVEN CONSENT TO INTERCEPT  
13 AND RECORD; OR

14           (C) EXIGENT CIRCUMSTANCES ARE PRESENT.

15           (II) ORAL AND VIDEO RECORDINGS BY LAW ENFORCEMENT  
16 OFFICERS MADE UNDER THIS SECTION SHALL NOT BE SUBJECT TO  
17 PRODUCTION UNDER THE RIGHT-TO-KNOW LAW.

18       Section 3. The addition of 18 Pa.C.S. § 5704(19) AND (20)       <--  
19 shall apply to law enforcement actions which take place on or  
20 after the effective date of this section.

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