



SENATE OF PENNSYLVANIA BILL SUMMARY

Senate Bill 976 Printer's No. 1205

Prime Sponsor: Senator Greenleaf
Committee: Judiciary

SYNOPSIS:

This bill amends Title 18 (Crimes and Offenses) to amend the Wiretap Act to allow audio and audiovisual recording by law enforcement officers under certain circumstances.

SUMMARY:

The Wiretap Act identifies in Section 5704 of Title 18 a number of exceptions to the general prohibition of interception and recording of communications. This bill creates a new exception that would allow law enforcement officers to record communications with another person when the communications occur inside a police interrogation room. The bill requires that a visible sign be posted warning that communications may be recorded. The recording must be preserved until the applicable statutes of limitation and deadlines for the filing of appeals or other postconviction relief expire.

In order for the exception to apply, the law enforcement officer must be in uniform or otherwise clearly identifiable as a police officer. The officer must use an electronic or mechanical device to record communications with a person about an actual or suspected crime of violence. The officer must record the warning to the person of constitutional rights. The recording must capture the entire exchange in an unedited fashion. The officer must document the recording for evidentiary purposes.

The bill contains exceptions to the recording requirements, and the occurrence of an exception must be documented. Under the exceptions, a recording may lawfully be made even in the absence of an interrogation room with a uniformed officer and full warning of constitutional rights. Those instances include the recording of routine questions during processing of an individual under arrest, the malfunctioning of equipment such that the recording does not shut off, and the good-faith and inadvertent failure by an officer to turn off the recording. In addition, an officer may turn off part of the recording if a person agrees to answer questions only if the answers are not recorded. The recording protocol may be excused under exigent circumstances, when the recording is made in another jurisdiction under that jurisdiction's law, and when the officer reasonably believes that recording the communications could jeopardize a person's safety or the identity of a confidential informant.

Amendment A03776

The Interrogation Room. The amendment expands the mandatory notice of recording to the person who is communicating with law enforcement officers. The notice may be in the form of a clearly visible sign, orally, or in writing. Instead of an "actual or suspected crime of violence," the subject of the

communications being recorded may be “any reported crime.” If the reported crime is a crime of violence, the law enforcement officer is excused from following the protocol for the interrogation room if an electronic recording is not feasible, if the recording equipment malfunctions, if there is a spontaneous statement made outside the interrogation room, if a statement is made during routine processing after an arrest, or if a suspect refuses to have the interrogation recorded and the refusal itself is recorded. Additionally, the protocol is excused if a statement is given in another jurisdiction under that jurisdiction’s law or if there are exigent circumstances that render a recording infeasible.

The amendment lists offenses that fall under the definition of “violent crime,” which offenses include criminal homicide, murder, voluntary and involuntary manslaughter, causing or aiding a suicide, drug delivery resulting in death, rape, and other sexual assaults.

Inside a Residence. The amendment creates a new exception for audio and audiovisual recording by a law enforcement officer that occurs inside a residence. Under this exception, the law enforcement officer may record an oral communication between individuals inside a residence if (1) the officer is executing an arrest or search warrant, (2) an individual with actual or apparent authority has consented to the recording, or (3) exigent circumstances are present.

Preservation and Production. Any audio or audiovisual recording made under these exceptions to the Wiretap Act must be preserved until the expiration of the statutes of limitations and deadlines for the filing of appeals and other postconviction relief. Any audio or audiovisual recording made under these exceptions to the Wiretap Act are not subject to production under the Right to Know Law.

Effective Date: This bill is effective in 60 days.

BILL HISTORY:

There is no bill history during this legislative session.

Prepared by: Cawley 10/26/2015