
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1903 Session of
2019

INTRODUCED BY D. MILLER, HILL-EVANS, CALTAGIRONE, FRANKEL AND
JOHNSON-HARRELL, OCTOBER 15, 2019

REFERRED TO COMMITTEE ON JUDICIARY, OCTOBER 15, 2019

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.

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

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

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

15 "Body camera." A device that is approved under 18 Pa.C.S. §
16 5706(b)(4) (relating to exceptions to prohibitions in
17 possession, sale, distribution, manufacture or advertisement of
18 electronic, mechanical or other devices) and affixed or
19 otherwise in the possession of a law enforcement officer.

20 * * *

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

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

11 * * *

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

16 The following shall apply:

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

29 (2) The request under paragraph (1) shall [specify with
30 particularity the incident or event that is the subject of

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

10 * * *

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

14 Section 4. Sections 67A05(a), (c) and (d) and 67A06 of Title
15 42 are amended to read:

16 § 67A05. Procedure.

17 (a) Disclosure.--A law enforcement agency that receives a
18 request under section 67A03 (relating to requests for law
19 enforcement audio recordings or video recordings) for an audio
20 recording or video recording shall provide the audio recording
21 or video recording or identify in writing the basis for denying
22 the request within [30] five business days of receiving the
23 request, unless the requester and law enforcement agency agree
24 to a longer time period[.] or unless the open-records officer
25 determines that one of the factors under section 902(a) of the
26 act of February 14, 2008 (P.L.6, No.3), known as the Right-to-
27 Know Law, applies, in which case the notice provisions under
28 section 902(b) of the Right-to-Know Law shall govern. If an
29 agreement under section 67A04(b) (2) (relating to law enforcement
30 review) is in effect between the law enforcement agency and the

1 Attorney General or district attorney with jurisdiction, then an
2 agreement to a longer time period must be between the requester
3 and the Attorney General or district attorney with jurisdiction.

4 * * *

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

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

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

23 * * *

24 § 67A06. Petition for [judicial] review.

25 (a) Petition.--

26 (1) If a request under section 67A03 (relating to
27 requests for law enforcement audio recordings or video
28 recordings) is denied, the requester may file a petition for
29 [judicial] review in the [court of common pleas with
30 jurisdiction] Office of Open Records within 30 days of the

1 date of denial.

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

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

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

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

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

29 (4) The petitioner shall serve the petition on the open-
30 records officer of the respondent within five days of the

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

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

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

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

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

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

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

30 (1) The request was not denied under section 67A04

1 (relating to law enforcement review) or the request was
2 denied under section 67A04 and the [court of common pleas
3 with jurisdiction] Office of Open Records determines that the
4 denial was arbitrary and capricious.

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

16 Section 5. This act shall take effect in 60 days.