

CHAPTER 67A
RECORDINGS BY LAW ENFORCEMENT OFFICERS

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- § 67A01. Definitions.

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

"Confidential information." Any of the following:

- (1) The identity of a confidential source.
- (2) The identity of a suspect or witness to whom confidentiality has been assured.
- (3) Information made confidential by law or court order.

"Information pertaining to an investigation." An audio recording or video recording which contains any of the following:

- (1) Complaints or depictions of criminal conduct, including all actions or statements made before or after the criminal conduct that are part of or relate to the same incident or occurrence.
- (2) Upon disclosure, information that would:
 - (i) reveal the institution, progress or result of a criminal investigation;
 - (ii) deprive an individual of the right to a fair trial or an impartial adjudication;
 - (iii) impair the ability of the Attorney General, a district attorney or a law enforcement officer to locate a defendant or codefendant;
 - (iv) hinder the ability of the Attorney General, a district attorney or a law enforcement officer to secure an arrest, prosecution or conviction; or
 - (v) endanger the life or physical safety of an individual.
- (3) Upon disclosure, information that would:
 - (i) Reveal the institution, progress or result of an agency investigation.

(ii) Deprive a person of the right to an impartial administrative adjudication.

(iii) Constitute an unwarranted invasion of privacy.

(iv) Hinder an agency's ability to secure an administrative or civil sanction.

(v) Endanger the life or physical safety of an individual.

"Law enforcement agency." The Office of Attorney General, a district attorney's office or an agency that employs a law enforcement officer.

"Law enforcement officer." An officer of the United States, the Commonwealth or a political subdivision thereof, another state or political subdivision thereof or who is empowered by law to conduct investigations of or to make arrests for offenses enumerated in this chapter or an equivalent crime in another jurisdiction, a sheriff or deputy sheriff and any attorney authorized by law to prosecute or participate in the prosecution of the offense.

"Victim." An individual who was subjected to an act that was committed by another individual, including a juvenile, which constitutes any of the following:

(1) An offense committed under any of the following:

(i) The act of April 14, 1972 (P.L.233, No.64), known as The Controlled Substance, Drug, Device and Cosmetic Act.

(ii) 18 Pa.C.S. (relating to crimes and offenses).

(iii) 30 Pa.C.S. § 5502 (relating to operating watercraft under influence of alcohol or controlled substance).

(iv) 30 Pa.C.S. § 5502.1 (relating to homicide by watercraft while operating under influence).

(v) 75 Pa.C.S. § 3732 (relating to homicide by vehicle).

(vi) 75 Pa.C.S. § 3735 (relating to homicide by vehicle while driving under influence).

(vii) 75 Pa.C.S. § 3735.1 (relating to aggravated assault by vehicle while driving under the influence).

(viii) 75 Pa.C.S. § 3742 (relating to accidents involving death or personal injury).

(ix) 75 Pa.C.S. Ch. 38 (relating to driving after imbibing alcohol or utilizing drugs).

(x) Any other Federal or State law.

(2) An offense similar to an offense listed under paragraph (1) committed outside of this Commonwealth.

(3) An offense which would constitute grounds for the issuance of relief under Chapter 62A (relating to protection of victims of sexual violence or intimidation) or 23 Pa.C.S. Ch. 61 (relating to protection from abuse).

(4) An offense against a resident of this Commonwealth which is an act of international terrorism. "Victim information." Information that would disclose the identity or jeopardize the safety of a victim.
§ 67A02. Scope of chapter.

(a) Exemption.--The provisions of this chapter, and not the act of February 14, 2008 (P.L.6, No.3), known as the Right-to-Know Law, shall apply to any audio recording or video recording made by a law enforcement agency.

(b) Limitation.--Nothing in this chapter nor the Right-to-Know Law shall establish a right to production of an audio recording or video recording made inside a facility owned or operated by a law enforcement agency or to any communications between or within law enforcement agencies concerning an audio or video recording.

§ 67A03. Requests for law enforcement audio recordings or video recordings.

The following shall apply:

(1) An individual who requests an audio recording or video recording made by a law enforcement agency shall, within 60 days of the date when the audio recording or video recording was made, serve a written request to the individual who is designated as the open-records officer for the law enforcement agency under section 502 of the act of February 14, 2008 (P.L.6, No.3), known as the Right-to-Know Law. Service is effective upon receipt of the written request by the open-records officer from personal delivery or certified mail with proof of service.

(2) The request under paragraph (1) shall specify with particularity the incident or event that is the subject of the audio recording or video recording, including the date, time and location of the incident or event.

(3) The request shall include a statement describing the requester's relationship to the incident or event that is the subject of the audio or video recording.

(4) If the incident or event that is the subject of the audio recording or video recording occurred inside

a residence, the request shall identify each individual who was present at the time of the audio recording or video recording unless not known and not reasonably ascertainable.

§ 67A04. Law enforcement review.

(a) Determination.--Except as provided in this section, if a law enforcement agency determines that an audio recording or video recording contains potential evidence in a criminal matter, information pertaining to an investigation or a matter in which a criminal charge has been filed, confidential information or victim information and the reasonable redaction of the audio or video recording would not safeguard potential evidence, information pertaining to an investigation, confidential information or victim information, the law enforcement agency shall deny the request in writing. The written denial shall state that reasonable redaction of the audio recording or video recording will not safeguard potential evidence, information pertaining to an investigation, confidential information or victim information.

(b) Agreement.--A law enforcement agency may enter into a memorandum of understanding with the Attorney General or the district attorney with jurisdiction to:

(1) ensure consultation regarding the reviewing of audio recordings or video recordings in order to make a determination; or

(2) require the Attorney General or district attorney with jurisdiction to issue a denial permitted under subsection (a).

§ 67A05. Procedure.

(a) Disclosure.--A law enforcement agency that receives a request under section 67A03 (relating to requests for law enforcement audio recordings or video recordings) for an audio recording or video recording shall provide the audio recording or video recording or identify in writing the basis for denying the request within 30 days of receiving the request, unless the requester and law enforcement agency agree to a longer time period. If an agreement under section 67A04(b)(2) (relating to law enforcement review) is in effect between the law enforcement agency and the Attorney General or district attorney with jurisdiction, then an agreement to a longer time period must be between the requester and the Attorney General or district attorney with jurisdiction.

(b) Denials by operation of law.--The request under section 67A03 shall be deemed denied by operation of law if the law enforcement agency does not provide the audio

recording or video recording to the requester or explain why the request is denied within the time period specified or agreed to under subsection (a).

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

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

(e) Construction.--Nothing in this section shall be construed to prohibit a law enforcement agency from redacting an audio recording or video recording in order to protect potential evidence in a criminal matter, information pertaining to an investigation, confidential information or victim information.

§ 67A06. Petition for judicial review.

(a) Petition.--

(1) If a request under section 67A03 (relating to requests for law enforcement audio recordings or video recordings) is denied, the requester may file a petition for judicial review in the court of common pleas with jurisdiction within 30 days of the date of denial.

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

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

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

(2) If the incident or event that is the subject of the request occurred inside a residence, the petitioner shall certify that notice of the petition has been served or that service was attempted on each individual who was present at the time of the audio recording or video recording and on the owner and occupant of the residence. Notice shall not be required under this

paragraph if the identity of an individual present or the location is unknown and not reasonably ascertainable by the petitioner. Service shall be effective upon receipt from personal delivery or certified mail with proof of service.

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

(4) The petitioner shall serve the petition on the open-records officer of the respondent within five days of the date that the petitioner files the petition with the court of common pleas with jurisdiction, and service shall be effective upon receipt by the open-records officer for personal delivery or certified mail with proof of service.

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

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

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

(2) the request to the law enforcement agency failed to describe with sufficient particularity the incident or event that is the subject of the audio recording or video recording, including the date, time and location of the incident or event; or

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

(e) Approval.--A court of common pleas with jurisdiction may grant a petition under this section, in whole or in part, and order the disclosure of the audio recording or video recording only if the court determines that the petitioner has established all of the following by a preponderance of the evidence:

(1) The request was not denied under section 67A04 (relating to law enforcement review) or the request was denied under section 67A04 and the court of common pleas with jurisdiction determines that the denial was arbitrary and capricious.

(2) The public interest in disclosure of the audio recording or video recording or the interest of the petitioner outweighs the interests of the Commonwealth, the law enforcement agency or an individual's interest in nondisclosure. In making a determination under this

paragraph, the court of common pleas may consider the public's interest in understanding how law enforcement officers interact with the public, the interests of crime victims, law enforcement and others with respect to safety and privacy and the resources available to review and disclose the audio recording or video recording.

§ 67A07. Audio recording or video recording policies.

(a) Policies.--A municipal law enforcement agency or sheriff that makes audio recordings or video recordings of communications under circumstances within paragraph (2) of the definition of "oral communication" in 18 Pa.C.S. § 5702 (relating to definitions) shall comply with the guidelines established under 18 Pa.C.S. § 5706(b)(4), (5) and (6) (relating to exceptions to prohibitions in possession, sale, distribution, manufacture or advertisement of electronic, mechanical or other devices) and shall establish written policies, which shall be public, for the following:

(1) The training of law enforcement officers authorized to make audio recordings or video recordings.

(2) The time periods when an electronic, mechanical or other device shall be in operation to make audio recordings or video recordings.

(3) The proper use, maintenance and storage of the electronic, mechanical or other device to make audio recordings or video recordings, including equipment inspections and audits and procedures to address malfunctioning equipment.

(4) The information collected from audio recordings or video recordings, including the information's storage, accessibility and retrieval.

(5) Electronic records retention.

(6) The use of facial recognition software or programs.

(7) A statement that a violation of the agency's policy subjects the violator to the agency's disciplinary policy.

(8) Supervisory responsibilities.

(b) Pennsylvania Commission on Crime and Delinquency.--The Pennsylvania Commission on Crime and Delinquency is authorized to condition funding or a grant related to the implementation, use, maintenance or storage of body-worn cameras or recordings from body-worn cameras on the following:

(1) Requiring the grantee to have protocols, guidelines or written policies related to the

implementation, use, maintenance or storage of body-worn cameras.

(2) Requiring that such protocols, guidelines or written policies are publicly accessible, including being retrievable on a municipal website.

(3) Ensuring that the protocols, guidelines or written policies substantially comply with applicable recommendations by the commission.

§ 67A08. Construction.

The following shall apply:

(1) Nothing in this chapter shall be construed to alter the responsibilities of parties to any criminal or civil litigation to exchange information in accordance with applicable rules of procedure.

(2) Nothing in this chapter shall be construed to preclude a prosecuting attorney with jurisdiction or a law enforcement agency from disclosing an audio recording or video recording in the absence of a written request or beyond the time periods stated in this chapter.

(3) The prosecuting attorney with jurisdiction must agree in writing to the disclosure by a law enforcement agency if the prosecuting attorney determines that:

(i) the audio recording or video recording contains potential evidence in a criminal matter, information pertaining to an investigation, confidential information or victim information; and

(ii) reasonable redaction of the audio recording or video recording will not safeguard the potential evidence, information pertaining to an investigation, confidential information or victim information.

§ 67A09. Applicability.

Nothing in this chapter shall apply to an audio recording or video recording that is otherwise prohibited or protected from disclosure under any other Federal or State law.

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

APPROVED--The 7th day of July, A.D. 2017.

TOM WOLF