

## SUMMARY OF AMENDMENT TO SB 976

Senate Bill 976 addresses the use of body-worn cameras by police, recorded interviews and confessions, and other recordings by law enforcement officers. After two public hearings by the Senate Judiciary Committee, this amendment was negotiated with the Pennsylvania District Attorneys Association, the Fraternal Order of Police, the Pennsylvania State Police and State Troopers Association, and the Pennsylvania Chiefs of Police Association. The ACLU of Pennsylvania and the Pennsylvania NewsMedia Association provided testimony at each hearing and input into the amendment. The amendment does the following:

1. **Police Liability:** Under current law, a police officer would commit a felony of the third degree under the Wiretap Act if he or she were to enter a residence while operating a body-worn camera that makes an audio recording. The amendment changes the definition of “oral communication” under the Wiretap Act to exclude oral communications made to a law enforcement officer who is in uniform or otherwise identifiable as law enforcement. An officer may, therefore, record with a body camera without being prosecuted under the Wiretap Act.
  - a. This change recognizes the original intent of the Wiretap Act that its prohibition on recording other people only applies when there is a reasonable expectation that the conversation is private. No one who speaks to a uniformed police officer reasonably expects it to be a private conversation.
  - b. The change also avoids a threat to officer safety. If a police officer must think about whether to turn off the audio recording when entering a residence, the officer’s attention is diverted from the evolving circumstances that may pose a threat to his or her safety.
2. **Prison Recordings:** The Pennsylvania Supreme Court recently decided that a prevalent method of recording inmate conversations violates the Wiretap Act. When visitors speak to inmates through plexiglass using a telephone handset, the court held that this does not fit within the “telephone” provisions of the Act because the telephone is not connected to outside lines. The amendment eliminates the undefined term “telephone” and uses the terms “oral, electronic and wire communications,” which are defined and would allow recording of all types of inmate communication.
3. **Public Access to Police Recordings:** The amendment excludes all audio and video recordings by police from the Right to Know Law, but creates a new procedure to allow public access to such recordings. Instead of the Right to Know Law, which presumes that government records will be disclosed to the public, a requestor will first make a written request to the police agency that possesses the recording. If the police agency does not disclose the recording, the requestor may petition a common pleas court for an order compelling disclosure. The requestor must establish that (1) Neither the District Attorney nor the Attorney General has certified that the recording is part of an investigation, (2) the recording would be available under the standards of the Right to Know Law, and (3) the public’s interest in disclosure outweighs the government’s and other individuals’ interests in nondisclosure.