



## MEMORANDUM

**TO:** The Pennsylvania Senate

**FROM:** Elizabeth Randol, Legislative Director, ACLU of Pennsylvania

**DATE:** December 11, 2023

**RE: OPPOSITION TO HB 1278 P.N. 2303 (PIELLI)**

**Bill summary:** [HB 1278](#) (PN 2303) would amend the Wiretap Act to exempt parole agents from restrictions on recording oral communications. This would permit parole agents to wear body cameras, including when meeting with people they are supervising.

**On behalf of over 100,000 members and supporters of the ACLU of Pennsylvania, I respectfully urge you to oppose House Bill 1278.**

It is not clear what problem this legislation is attempting to solve. The use of body-worn cameras by community supervision agents (probation or parole) is almost non-existent in the rest of the country. The supervisory relationship between parole agents and their clients are, by definition, interpersonal, and more often than not, occur in private settings—treatment centers, home visits, and work visits. As such, the use of body cameras in those settings not only raises significant privacy concerns when recording confidential or personal health conversations, but it has very serious implications for third parties who may be recorded, but ***who retain an expectation of privacy and protection against unlawful searches because they are not under criminal supervision.***

The ACLU-PA was previously neutral on HB 1278 [PN 2037](#). This was the result of very carefully negotiated amendment language between multiple stakeholders, including (but not limited to) the prime bill sponsor, the majority chair and members of the House Judiciary Committee, the Department of Corrections, the Public Defenders Association of Pennsylvania, and the ACLU-PA.

**HB 1278 PN 2303 guts nearly all the hard-fought language that was successfully negotiated between stakeholders.** As a result, [PN 2303](#) resurrects most of the ACLU-PA's strenuous opposition to the underlying bill, specifically the concerns outlined below that had previously been addressed by PN 2037.

**The exemption in HB 1278 allowing parole agents to intercept audio and visual communications is dangerously broad and permissive, threatening the privacy rights of third parties.**

HB 1278 would allow **any** agent to record **anyone**, at any time, for **any reason** as long as they are on duty, identifiable as an agent, wearing an approved device, and received training on that device. But parole agents are not law enforcement officers. Unlike police officers, most of the interactions parole agents have with clients are (a) with clients and (b) in settings that are not public. They supervise people released from prison, and in that role, they routinely enter people's homes without permission. If parole agents enter a home wearing a body camera, then the person under supervision AND any other third person residing in or even visiting the home would be subject to video and audio surveillance every time a parole agent enters. In other words, this would include recording those not under supervision—children or other family members, a partner, roommate, friend, co-workers when agents visit a client at their place of employment—and capturing footage of their property or other belongings.

Unlike most members of the public, people on parole have minimal expectations of privacy, particularly when interacting with their parole officer. However, people under supervision do not live in a vacuum—they live with family members, friends, or partners and work with colleagues. HB 1278 would ignore those inconveniences, and instead would (1) not only permit audio and video recordings of anyone in the vicinity of an agent engaged in conversation with a client, in places where those people retain an expectation of privacy, *but (2) even worse, would broadly permit intercepting any “communication made in the presence of an agent.”*

**HB 1278 PN 2303 strikes the negotiated language that limited body camera recordings only to interactions between a parole agent and a client.** Without this limitation, parole agents, who are often **not** clearly identifiable, can freely record any interactions while on duty. Specifically, PN 2303 eliminates critical elements of the exemption that would have only allowed interception of communication made in the “physical presence” of an agent “from or to an individual subject to State supervision or parole.”

### **HB 1278 fails to limit how body camera footage can be shared, specifically with outside law enforcement agencies.**

Interactions between parole agents and clients are vastly different from interactions between police officers and the public. Communication about supervision often includes confidential or personal information pertaining to issues such as medical treatment, custody and visitation of minor children, relationships with family members or partners, and the like. And unlike police officers, parole agents do not need probable cause or a warrant to enter a home or search a person they are supervising. As a result, it is absolutely critical that footage captured by parole agents not be freely shared with other law enforcement agencies, particularly when such footage could implicate a third party. Unfettered sharing of parole agents’ body camera interceptions with law enforcement—from local police to ICE—invites serious Fourth Amendment concerns.

### **HB 1278 PN 2303 eliminates the negotiated limitations on how recordings may be used and shared, specifically eliminating:**

- Limitations on the ability to share recordings with an “investigative or law enforcement officer unless pursuant to a lawful warrant.”
- Limitations on access to recordings to “only the secretary, an agent, other administrative officials of the Department designated by the Secretary and employees of the Pennsylvania Parole Board.”
- Limitations on disclosure of the contents of recordings “only as necessary to safeguard the orderly operation of state supervision, parole hearing purposes, in response to a court order or in the prosecution or investigation of a crime.”

Stakeholders who were invested in the provisions of this bill had reached a successful, negotiated balance between the interests of parole agents and protections for people on parole and third parties who are not under supervision. Without any notification or outreach to those stakeholders, HB 1278 PN 2303 gutted agreed-to limitations intended to protect against unnecessary privacy intrusions, potential constitutional violations, and will instead leave many people vulnerable to having footage of their conversations, property, and even their bedrooms shared with outside law enforcement agencies.

**For these reasons, we urge you to oppose House Bill 1278.**