

RECORDING THE POLICE



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Can You Legally Record the Police in Pennsylvania?

Pennsylvania is a two-party-consent state — yet recording officers at work in public is generally lawful, and the First Amendment stands behind the person holding the phone.

The short answer is yes: in Pennsylvania you may generally record the police — by video, by audio, or both — while they perform their duties in public. Two independent bodies of law converge on that result. The First Amendment affirmatively protects the act of recording, and Pennsylvania's wiretap statute, properly read, does not reach the public officer's words at all. The risk arises only at the margins — inside a private home, or where the recording physically obstructs the police.

The instinct that gets people in trouble

Pennsylvania is one of a minority of "two-party" or "all-party" consent states. Many residents know that much, and they draw the wrong inference: that recording anyone without permission is a crime, and that an officer who says "stop filming" is invoking a real privacy right. That instinct is understandable, and it is wrong. The consent rule protects private conversations, not public conduct — and a uniformed officer performing public duties on a public street is the very opposite of a private conversation.

Consider the absurd places the contrary rule would lead. If an officer could forbid recording merely by objecting, then the citizen's right would exist only when the government consented to it — which is no right at all. We do not let the subject of the First Amendment decide when the First Amendment applies. Why, then, would we let the officer decide when he may be filmed? Of course we would not.

The First Amendment protects the act of recording

The controlling authority is binding here. In [Fields v. City of Philadelphia](#), 862 F.3d 353 (3d Cir. 2017), the United States Court of Appeals for the Third Circuit — whose decisions govern the federal courts of Pennsylvania — held that "the First Amendment protects the act of photographing, filming, or otherwise recording police officers conducting their official duties in public." The court grounded the right in the public's interest in monitoring and discussing how the police use their considerable power. Recording is the raw material of that oversight; without it, accountability is a matter of competing memories.

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The decision did carry a sting for the particular plaintiffs. Because the right had not been "clearly established" in 2012 and 2013 when their recordings were stopped, the court granted the individual officers qualified immunity, and it remanded the municipal-liability claims. But the right itself was recognized, and it is now clearly established going forward. An officer in Pennsylvania who today orders a bystander to stop filming public police work is acting against settled law.

The right is real, but it is not unlimited

A litigator concedes the obvious to deny the spurious. The right to record is not a license to interfere — and it should not be. The Fields court was explicit: "The right to record police is not absolute," because "it is subject to reasonable time, place, and manner restrictions." A person who shoves into the middle of an arrest, ignores lawful orders to step back, or physically impedes officers may forfeit the protection — not because he was recording, but because he was obstructing.

The distinction matters because officers sometimes blur it on purpose. "You are interfering" is easy to say and hard to credit when the only "interference" is a phone held

at a lawful distance. Annoyance is not obstruction. Standing on a public sidewalk, filming quietly, complying with genuine safety instructions — that is protected activity, and an order to stop is not made lawful by the officer's irritation.

The Wiretap Act reaches only "oral communication"

The second body of law is the Wiretapping and Electronic Surveillance Control Act, 18 Pa.C.S. ch. 57. Its core prohibition is serious: a person commits a felony when he "intentionally intercepts, endeavors to intercept, or procures any other person to intercept or endeavor to intercept any wire, electronic or oral communication." 18 Pa.C.S. § 5703. Read in isolation, that language seems to sweep in every recording. The definition section narrows it dramatically.

Under [18 Pa.C.S. § 5702](#), the Act protects only an "oral communication," and that term means "[a]ny oral communication uttered by a person possessing an expectation that such communication is not subject to interception under circumstances justifying such expectation." The hinge is the speaker's expectation, judged objectively. If the speaker has no justified expectation against interception, the words are not an "oral communication," and recording them is not a violation. The recorder's own expectation is irrelevant; the analysis fixes on the person speaking.

The officer in public has no justified expectation

That doctrinal hinge resolves the police case. A person performing public duties, in public, speaking to citizens and bystanders within earshot, cannot reasonably expect his words to be shielded from a phone held in plain view. The Pennsylvania Supreme Court framed the protected interest precisely in [Commonwealth v. Mason](#), 247 A.3d 1070 (Pa. 2021): the question is whether the speaker held a "justifiable expectation that her oral communications would not be subject to interception." Mason was a nanny-cam case,

not a police case — but it supplies the controlling Pennsylvania standard, and that standard is what defeats the officer's privacy claim.

Video versus audio. Silent video implicates the Wiretap Act not at all — no "oral communication" is captured. Audio is what triggers the Act, and even then only where the speaker had a justified expectation against interception. The public officer has none; a person in a closed private room may.

The Legislature has now said so directly

Lest any doubt linger, the General Assembly amended § 5702 in 2017 to exclude from the definition of "oral communication" any communication "made in the presence of a law enforcement officer on official duty who is in uniform or otherwise clearly identifiable as a law enforcement officer," when captured on an approved device. The amendment was aimed largely at body-worn cameras, but its premise is unmistakable and cuts the same way: the privacy the Act protects does not attach to the clearly identifiable officer doing public work.

Where the real risk lives

None of this makes every recording lawful. Step inside a private residence, a closed office, or any setting where a speaker reasonably expects privacy, and the Wiretap Act's protection can attach — to officers and civilians alike. Cross from documenting into physically obstructing, and the First Amendment shield can fall away. The lawful zone is wide, but it has edges.

What it means for you

If you are filming the police on a public street, you are on solid ground in Pennsylvania. Keep a reasonable distance, comply with genuine safety instructions, and do not let a phone become a pretext for stepping into the middle of an arrest. The right exists to keep power visible — use it, and use it carefully. If your recording will reach into a private space, or you are unsure whether a setting carries an expectation of privacy, speak with counsel before you press record.

Authorities Cited

1. Fields v. City of Philadelphia, 862 F.3d 353 (3d Cir. 2017) — [https://www.iadclaw.org/assets/1/7/7.5-Fields_v._Philadelphia_\(1171986x7A5C1\).pdf](https://www.iadclaw.org/assets/1/7/7.5-Fields_v._Philadelphia_(1171986x7A5C1).pdf)
 2. 18 Pa.C.S. § 5703 (quoted in Commonwealth v. Mason, 247 A.3d 1070 (Pa. 2021)) — <https://law.justia.com/cases/pennsylvania/supreme-court/2021/69-map-2019.html>
 3. 18 Pa.C.S. § 5702 (Definitions) — <https://codes.findlaw.com/pa/title-18-pacsa-crimes-and-offenses/pa-csa-sect-18-5702/>
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