

THE GENERAL ASSEMBLY OF PENNSYLVANIA

**HOUSE BILL**  
**No. 1303** Session of  
1977

INTRODUCED BY FREIND, PITTS, REED, MANMILLER, D. M. O'BRIEN,  
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DIETZ, VROON, BURD, FISCHER, ANDERSON, O'KEEFE, PANCOAST,  
WENGER, WILT, POTT AND BRANDT, JUNE 13, 1977

REFERRED TO COMMITTEE ON JUDICIARY, JUNE 13, 1977

AN ACT

1 Amending Title 18 (Crimes and Offenses) of the Pennsylvania  
2 Consolidated Statutes, authorizing wiretaps and electronic  
3 eavesdropping by certain persons under certain conditions and  
4 providing for the admissibility of evidence obtained thereby.

5 The General Assembly of the Commonwealth of Pennsylvania  
6 hereby enacts as follows:

7 Section 1. Section 5702 of Title 18, act of November 25,  
8 1970 (P.L.707, No.230), known as the Pennsylvania Consolidated  
9 Statutes, amended April 7, 1976 (No.30), is amended to read:

10 § 5702. Breach of privacy of telephone or telegraph  
11 communications.

12 (a) Offense defined.--A person commits a misdemeanor of the  
13 second degree if he:

14 (1) intercepts without permission of the parties to the  
15 communication a message or other communication by telephone  
16 or telegraph;

17 (2) installs or employs any device for overhearing or  
18 recording communications passing through a telephone or

1 telegraph line with intent to intercept a communication in  
2 violation of this chapter; or

3 (3) divulges or uses without the consent of the sender  
4 or receiver the existence or contents of any such message or  
5 other communication if the actor knows that the message was  
6 illegally intercepted, or if he learned of the message in the  
7 course of employment with an agency engaged in transmitting  
8 it.

9 (b) Telephone and telegraph personnel.--Subsection (a) shall  
10 not extend to acts done by personnel of any telephone or  
11 telegraph common carrier in the performance of their duties in  
12 connection with the construction, maintenance or operation of a  
13 telephone or telegraph system.

14 (c) Police and emergency communications systems.--Subsection  
15 (a) shall not extend to the recording of telephone  
16 communications coming into and going out of the communications  
17 system of a police department, fire department, or county  
18 emergency center: Provided, That the telephones thereof are  
19 limited to the exclusive use of the communication system for  
20 administrative purposes and provided the communication system  
21 employs a periodic warning tone to indicate to the parties to  
22 the conversation that the call is being recorded: And provided  
23 That:

24 (1) No use shall be made of any recording made pursuant  
25 to this subsection including, but not limited to, direct or  
26 indirect use in any court or administrative proceeding,  
27 except:

28 (i) as required to aid police, fire or county  
29 emergency personnel or authorized personnel thereof, in  
30 responding to the call;

1 (ii) with the written consent of the person calling  
2 the communication center;

3 (iii) by court order or in accordance with  
4 established court-approved procedures to evaluate  
5 performance in responding to a call; or

6 (iv) in a departmental disciplinary proceeding.

7 (2) All recordings made pursuant to this subsection, all  
8 notes made therefrom, and all transcriptions thereof shall be  
9 destroyed within two years after said call has been recorded,  
10 except as specifically required with regard to a pending  
11 matter pursuant to paragraph (1)(ii) through (iv).

12 (3) The police department, fire department or county  
13 emergency center operating the communication center shall  
14 make available at least one nonrecorded line for public use.

15 (d) Federal agents or designees.--Subsection (a) shall not  
16 extend to acts done by agents or designees of any Federal agency  
17 acting pursuant to a lawful Federal wiretapping order.

18 Section 2. Sections 5703 and 5705 of Title 18 are amended to  
19 read:

20 § 5703. Admissibility in evidence.

21 (a) General rule.--Except as proof in a suit or prosecution  
22 for a violation of this chapter, or as otherwise provided in  
23 this section, no evidence obtained as a result of a violation of  
24 privacy or breach of privacy of messages shall be admissible as  
25 evidence in any legal proceeding.

26 (b) Exception.--Evidence obtained as a result of a lawful  
27 Federal wiretapping or electronic eavesdropping order shall be  
28 admissible in State criminal proceedings in this Commonwealth.

29 § 5705. Breach of privacy by eavesdropping with electronic,  
30 mechanical or other devices.

1 (a) Offense defined.--A person commits a misdemeanor of the  
2 second degree if he:

3 (1) makes, sells, buys, makes use of, possesses,  
4 installs or employs any electronic, mechanical or other  
5 device for the purpose of eavesdropping; or

6 (2) divulges or uses any information, knowing or having  
7 reason to know that such information was obtained by  
8 eavesdropping unless such divulgence or use is with the  
9 permission of the person or persons whose voice, voices or  
10 actions were the subject of the eavesdropping.

11 (b) Confiscation of eavesdropping devices.--Any electronic,  
12 mechanical or other device made, sold, bought, made use of,  
13 possessed, installed or employed in violation of subsection (a)  
14 of this section shall be seized by and forfeited to the  
15 Commonwealth of Pennsylvania.

16 (c) Exceptions.--Subsections (a) and (b) of this section  
17 shall not apply to devices used or acts done by any of the  
18 following:

19 (1) Personnel of any telephone or telegraph common  
20 carrier or their corporate affiliates in the performance of  
21 their duties in connection with the construction, maintenance  
22 or operation of a telephone or telegraph system.

23 (2) The President of the United States or those acting  
24 at his direction in the exercise of his constitutional power  
25 to take such measures as he deems necessary to protect the  
26 Nation against actual or potential attack or other hostile  
27 acts of a foreign power or to protect National security  
28 information against foreign intelligence activities. No  
29 information obtained in the exercise of such power by  
30 eavesdropping, otherwise prohibited by this section, shall be

1 received in evidence in any judicial or administrative  
2 proceeding. Neither shall such information be otherwise used  
3 or divulged except as necessary to implement such power.

4 (3) Duly appointed public Pennsylvania State and local  
5 law enforcement officers in the performance of their law  
6 enforcement duties when acting pursuant to an order of court  
7 issued in accordance with the provisions of subsection (d) of  
8 this section. This exception shall be limited to those  
9 situations in which the personal safety of such law  
10 enforcement officers is in jeopardy and shall not include any  
11 right of recordation. The electronic recording of any  
12 conversation overheard by electronic or mechanical means or  
13 other device in the exercise of this exception shall not be  
14 admissible in any judicial or administrative proceeding.

15 (4) Authorized agents or designees of any Federal agency  
16 acting pursuant to a lawful Federal electronic eavesdropping  
17 order. No State court approval as provided in subsection (d)  
18 shall be required.

19 (d) Procedure for granting exception to law enforcement  
20 officers.--The exception provided for in paragraph (3) of  
21 subsection (c) of this section relative to law enforcement  
22 officers shall be exercised only in compliance with the  
23 following procedure:

24 (1) The Attorney General or any district attorney or any  
25 deputy of the Attorney General or any district attorney so  
26 designated may authorize an application to be made to any  
27 judge of a court of record having jurisdiction for an order  
28 granting such exception.

29 (2) Each application shall be made in writing upon oath  
30 or affirmation and shall state the applicant's authority to

1 make such application and shall include the following  
2 information:

3 (i) The identity of the law enforcement agency  
4 making the application and the official authorizing the  
5 application.

6 (ii) A full and complete statement of facts and  
7 circumstances relied upon by the applicant to justify his  
8 belief that an order should be issued, including details  
9 as to the particular offense that has been, is being, or  
10 is about to be committed; a description of the equipment  
11 to be used; the identity of person or persons, if known,  
12 committing the offenses; and the reasons why the personal  
13 safety of law enforcement officers may be in jeopardy in  
14 the matter at hand.

15 (iii) The period of time for which the exercise of  
16 the exception is required.

17 (iv) A full and complete statement of the facts  
18 concerning all previous applications relating to the same  
19 matter known to the individual authorizing or making the  
20 application, made to any other judge and the action taken  
21 by such judge.

22 (v) When the application is for the extension of an  
23 order, a statement setting forth the results thus far  
24 obtained and justification for such continuance.

25 (vi) Any additional information which the judge may  
26 require.

27 (3) Any judge authorized to receive such application for  
28 an exception may issue an order as requested or a modified  
29 order if such judge determines on the basis of the facts  
30 submitted by the applicant that there is probable cause that

1 a crime has been, is being or is about to be committed and  
2 that the personal safety of law enforcement officers assigned  
3 thereto may be in jeopardy.

4 (4) Any such order shall specify the identity of the  
5 alleged criminals, if known, and the nature of the offense;  
6 the law enforcement agency or officers authorized to exercise  
7 the exception; and the period of time during which the  
8 exercise of the exception is authorized. No such order may be  
9 for a period in excess of 30 days, although extensions may be  
10 granted upon the filing of a new application.

11 Section 3. This act shall take effect in 60 days.