

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2400 Session of 2012

INTRODUCED BY MARSICO, CALTAGIRONE, STEPHENS, TURZAI, AUMENT, BAKER, BARBIN, BARRAR, BOBACK, BOYD, CLYMER, D. COSTA, DELOZIER, ELLIS, EVERETT, GEIST, GILLESPIE, GINGRICH, GRELL, GROVE, HACKETT, HARPER, HARRIS, HELM, HENNESSEY, HICKERNELL, KAUFFMAN, M. K. KELLER, KILLION, KNOWLES, KOTIK, MAJOR, MILLARD, MILLER, MILNE, MOUL, O'NEILL, PAYNE, PETRI, PICKETT, PYLE, QUINN, ROCK, SAYLOR, SCAVELLO, TAYLOR, TOBASH, TOOHL, VEREB, VULAKOVICH, WATSON, CARROLL, HESS, SWANGER AND CREIGHTON, MAY 21, 2012

SENATOR GREENLEAF, JUDICIARY, IN SENATE, AS AMENDED, SEPTEMBER 25, 2012

AN ACT

1 Amending Title 18 (Crimes and Offenses) of the Pennsylvania
2 Consolidated Statutes, further providing for definitions, for
3 exceptions to prohibition of interception and disclosure of
4 communications, for possession, sale, distribution,
5 manufacture or advertisement of electronic, mechanical or
6 other devices, for issuance of order and effect; providing
7 for target-specific orders; and further providing for
8 emergency hostage and barricade situations, for investigative
9 disclosure or use of contents of wire, electronic or oral
10 communications or derivative evidence, for evidentiary
11 disclosure of contents of intercepted communication or
12 derivative evidence, for requirements for governmental
13 access, for cost reimbursement, for mobile tracking devices,
14 for application for an order for use of certain devices and
15 for issuance of an order for use of certain devices.

16 The General Assembly of the Commonwealth of Pennsylvania
17 hereby enacts as follows:

18 Section 1. The definitions of "electronic communication
19 service," "electronic communication system," "oral
20 communication," "INTERCEPT," "trap and trace device" and "wire



1 communication" in section 5702 of Title 18 of the Pennsylvania
2 Consolidated Statutes are amended and the section is amended by
3 adding definitions to read:

4 § 5702. Definitions.

5 As used in this chapter, the following words and phrases
6 shall have the meanings given to them in this section unless the
7 context clearly indicates otherwise:

8 * * *

9 "Communication service." Any service which provides to users
10 the ability to send or receive wire or electronic
11 communications.

12 "Communication system." Any wire, radio, electromagnetic,
13 photo-optical or photoelectronic facilities for the transmission
14 of communications, and any computer facilities or related
15 electronic equipment for the electronic storage of such
16 communications.

17 ~~"Constructive notice." Notice provided by any means~~ ←
18 ~~sufficient to apprise a reasonable person that an oral~~
19 ~~communication is or may be subject to interception.~~

20 * * *

21 "Crime of violence." Any of the following:

22 (1) Any of the following crimes:

23 (i) Murder in any degree. ←

24 ~~(ii) A crime of violence as defined in 42 Pa.C.S. §~~
25 ~~9714(g) (relating to sentences for second and subsequent~~
26 ~~offenses).~~

27 ~~(iii) Intimidation of witness or victim.~~

28 ~~(iv) Retaliation against witness, victim or party.~~

29 ~~(v) Criminal attempt, criminal conspiracy or~~
30 ~~criminal solicitation to commit any of the offenses under~~

1 this paragraph.

2 ~~(2) Any crime requiring registration under 42-~~
3 ~~Pa.C.S. Ch. 97 Subch. H (relating to registration of~~
4 ~~sexual offenders).~~ AS DEFINED IN SECTION 2502(A), (B) OR ←
5 (C) (RELATING TO MURDER).

6 (II) VOLUNTARY MANSLAUGHTER AS DEFINED IN SECTION
7 2503 (RELATING TO VOLUNTARY MANSLAUGHTER), DRUG DELIVERY
8 RESULTING IN DEATH AS DEFINED IN SECTION 2506(A)
9 (RELATING TO DRUG DELIVERY RESULTING IN DEATH),
10 AGGRAVATED ASSAULT AS DEFINED IN SECTION 2702(A) (1) OR
11 (2) (RELATING TO AGGRAVATED ASSAULT), KIDNAPPING AS
12 DEFINED IN SECTION 2901(A) OR (A.1) (RELATING TO
13 KIDNAPPING), RAPE AS DEFINED IN SECTION 3121(A), (C) OR
14 (D) (RELATING TO RAPE), INVOLUNTARY DEVIATE SEXUAL
15 INTERCOURSE AS DEFINED IN SECTION 3123(A), (B) OR (C)
16 (RELATING TO INVOLUNTARY DEVIATE SEXUAL INTERCOURSE),
17 SEXUAL ASSAULT AS DEFINED IN SECTION 3124.1 (RELATING TO
18 SEXUAL ASSAULT), AGGRAVATED INDECENT ASSAULT AS DEFINED
19 IN SECTION 3125(A) OR (B) (RELATING TO AGGRAVATED
20 INDECENT ASSAULT), INCEST AS DEFINED IN SECTION 4302(A)
21 OR (B) (RELATING TO INCEST), ARSON AS DEFINED IN SECTION
22 3301(A) (RELATING TO ARSON AND RELATED OFFENSES),
23 BURGLARY AS DEFINED IN SECTION 3502(A) (1) (RELATING TO
24 BURGLARY), ROBBERY AS DEFINED IN SECTION 3701(A) (1) (I),
25 (II) OR (III) (RELATING TO ROBBERY) OR ROBBERY OF A MOTOR
26 VEHICLE AS DEFINED IN SECTION 3702(A) (RELATING TO
27 ROBBERY OF A MOTOR VEHICLE).

28 (III) INTIMIDATION OF WITNESS OR VICTIM AS DEFINED
29 IN SECTION 4952(A) AND (B) (RELATING TO INTIMIDATION OF
30 WITNESSES OR VICTIMS).

1 (IV) RETALIATION AGAINST WITNESS, VICTIM OR PARTY AS
2 DEFINED IN SECTION 4953 (A) AND (B) (RELATING TO
3 RETALIATION AGAINST WITNESS, VICTIM OR PARTY).

4 (V) CRIMINAL ATTEMPT AS DEFINED IN SECTION 901 (A)
5 (RELATING TO CRIMINAL ATTEMPT), CRIMINAL SOLICITATION AS
6 DEFINED IN SECTION 902 (A) (RELATING TO CRIMINAL
7 SOLICITATION) OR CRIMINAL CONSPIRACY AS DEFINED IN
8 SECTION 903 (A) (RELATING TO CRIMINAL CONSPIRACY) TO
9 COMMIT ANY OF THE OFFENSES SPECIFIED IN THIS DEFINITION.

10 ~~(3)~~ (2) Any offense equivalent to an offense under ←
11 paragraph (1) or ~~(2)~~ under the laws of this Commonwealth in ←
12 effect at the time of the commission of that offense or under
13 the laws of another jurisdiction.

14 * * *

15 ["Electronic communication service." Any service which
16 provides to users the ability to send or receive wire or
17 electronic communications.

18 "Electronic communication system." Any wire, radio,
19 electromagnetic, photo-optical or photoelectronic facilities for
20 the transmission of electronic communications, and any computer
21 facilities or related electronic equipment for the electronic
22 storage of such communications.]

23 * * *

24 "INTERCEPT." AURAL OR OTHER ACQUISITION OF THE CONTENTS OF ←
25 ANY WIRE, ELECTRONIC OR ORAL COMMUNICATION THROUGH THE USE OF
26 ANY ELECTRONIC, MECHANICAL OR OTHER DEVICE. THE TERM SHALL
27 INCLUDE THE POINT AT WHICH THE CONTENTS OF THE COMMUNICATION ARE
28 MONITORED BY INVESTIGATIVE OR LAW ENFORCEMENT OFFICERS. THE TERM
29 SHALL NOT INCLUDE THE ACQUISITION OF THE CONTENTS OF A
30 COMMUNICATION MADE THROUGH ANY ELECTRONIC, MECHANICAL OR OTHER

1 DEVICE OR TELEPHONE INSTRUMENT TO AN INVESTIGATIVE OR LAW
2 ENFORCEMENT OFFICER, OR BETWEEN A PERSON AND AN INVESTIGATIVE OR
3 LAW ENFORCEMENT OFFICER, WHERE THE INVESTIGATIVE OR LAW
4 ENFORCEMENT OFFICER POSES AS AN ACTUAL PERSON WHO IS THE
5 INTENDED RECIPIENT OF THE COMMUNICATION, PROVIDED THAT THE
6 ATTORNEY GENERAL, A DEPUTY ATTORNEY GENERAL DESIGNATED IN
7 WRITING BY THE ATTORNEY GENERAL, A DISTRICT ATTORNEY OR AN
8 ASSISTANT DISTRICT ATTORNEY DESIGNATED IN WRITING BY A DISTRICT
9 ATTORNEY OF THE COUNTY WHEREIN THE INVESTIGATIVE OR LAW
10 ENFORCEMENT OFFICER IS TO RECEIVE OR MAKE THE COMMUNICATION HAS
11 REVIEWED THE FACTS AND IS SATISFIED THAT THE COMMUNICATION
12 INVOLVES SUSPECTED CRIMINAL ACTIVITIES AND HAS GIVEN PRIOR
13 APPROVAL FOR THE COMMUNICATION.

14 * * *

15 "Mobile communications tracking information." Information
16 generated by a communication common carrier or a communication
17 service which indicates the location of an electronic device
18 supported by the communication common carrier or communication
19 service.

20 * * *

21 ~~"Oral communication." Any oral communication uttered by a~~ ←
22 ~~person possessing an expectation that such communication is not~~
23 ~~subject to interception under circumstances justifying such~~
24 ~~expectation. An expectation is not justified if it is~~
25 ~~objectively reasonable that what is spoken will or could be~~
26 ~~overheard by another person not directly participating in the~~
27 ~~communication, if actual or constructive notice has been given~~
28 ~~that audio recording or other interception is or may be~~
29 ~~occurring or if equipment commonly used for video and audio~~
30 ~~recording is plainly visible. The term does not include any~~

1 ~~electronic communication.~~

2 * * *

3 "Signed, written record." A memorialization of the contents
4 of any wire, electronic or oral communication intercepted in
5 accordance with this subchapter, including the name of the
6 investigative or law enforcement officer who transcribed the
7 record, kept in electronic, paper or any form. The signature of
8 the transcribing officer shall not be required to be written,
9 but may be electronic.

10 * * *

11 "Trap and trace device." A device which captures the
12 incoming electronic or other impulses which identify the
13 originating number of an instrument or device from which a wire
14 or [electronic] communication was transmitted. The term includes
15 caller ID, deluxe caller ID or any other features available to
16 ascertain the telephone number, location or subscriber
17 information of a facility contacting the facility whose
18 communications are to be intercepted.

19 * * *

20 "Wire communication." Any aural transfer made in whole or in
21 part through the use of facilities for the transmission of
22 communication by wire, cable or other like connection between
23 the point of origin and the point of reception, including the
24 use of such a connection in a switching station, furnished or
25 operated by a telephone, telegraph or radio company for hire as
26 a communication common carrier. [The term includes any
27 electronic storage of such communication.]

28 Section 2. Section 5704(2)(ii), (12)(ii), (13)(i)(B) and
29 (14)(i)(B) of Title 18 are amended, ~~paragraph (2) is amended by~~ ←
30 ~~adding a subparagraph~~ and the section is amended by adding a

1 paragraph to read:

2 § 5704. Exceptions to prohibition of interception and
3 disclosure of communications.

4 It shall not be unlawful and no prior court approval shall be
5 required under this chapter for:

6 * * *

7 (2) Any investigative or law enforcement officer or any
8 person acting at the direction or request of an investigative
9 or law enforcement officer to intercept a wire, electronic or
10 oral communication involving suspected criminal activities,
11 including, but not limited to, the crimes enumerated in
12 section 5708 (relating to order authorizing interception of
13 wire, electronic or oral communications), where:

14 ~~(i) the communication was knowingly transmitted in~~ ←
15 ~~any fashion to a third party by its author or another~~
16 ~~sender and an investigative or law enforcement officer~~
17 ~~legally obtains from the third party the communication or~~
18 ~~a copy of the communication or the device to which it is~~
19 ~~sent. Notwithstanding any other provision of this~~
20 ~~chapter, an investigative or law enforcement officer may~~
21 ~~contemporaneously intercept and respond to communications~~
22 ~~sent to a third party, if he has legally obtained the~~
23 ~~device to which the communications are being sent,~~
24 ~~without disclosing his identity to the sender or author;~~

25 (ii) one of the parties to the communication has
26 given prior consent to such interception. However, no
27 interception under this paragraph shall be made unless
28 the Attorney General or a deputy attorney general
29 designated in writing by the Attorney General, or the
30 district attorney, or an assistant district attorney

1 designated in writing by the district attorney, of the
2 county wherein the interception is to be [made]
3 initiated, has reviewed the facts and is satisfied that
4 the consent is voluntary and has given prior approval for
5 the interception; however, such interception shall be
6 subject to the recording and record keeping requirements
7 of section 5714(a) (relating to recording of intercepted
8 communications) and that the Attorney General, deputy
9 attorney general, district attorney or assistant district
10 attorney authorizing the interception shall be the
11 custodian of recorded evidence obtained therefrom;

12 * * *

13 (12) Any investigative or law enforcement officer or any
14 person acting at the direction or request of an investigative
15 or law enforcement officer to intercept a wire or oral
16 communication involving suspected criminal activities where
17 the officer or the person is a party to the communication and
18 there is reasonable cause to believe that:

19 * * *

20 (ii) that party:

21 (A) [will] may resist with the use of weapons;

22 or

23 (B) is threatening suicide or harm to himself or

24 others.

25 (13) An investigative officer, a law enforcement officer
26 or employees of the Department of Corrections for State
27 correctional facilities to intercept, record, monitor or
28 divulge any telephone calls from or to an inmate in a
29 facility under the following conditions:

30 (i) The Department of Corrections shall adhere to

1 the following procedures and restrictions when
2 intercepting, recording, monitoring or divulging any
3 telephone calls from or to an inmate in a State
4 correctional facility as provided for by this paragraph:

5 * * *

6 (B) Unless otherwise provided for in this
7 paragraph, after intercepting or recording a
8 telephone conversation, only the superintendent,
9 warden or a designee of the superintendent or warden
10 or other chief administrative official or his or her
11 designee, or law enforcement officers shall have
12 access to that recording.

13 * * *

14 (14) An investigative officer, a law enforcement officer
15 or employees of a county correctional facility to intercept,
16 record, monitor or divulge any telephone calls from or to an
17 inmate in a facility under the following conditions:

18 (i) The county correctional facility shall adhere to
19 the following procedures and restrictions when
20 intercepting, recording, monitoring or divulging any
21 telephone calls from or to an inmate in a county
22 correctional facility as provided for by this paragraph:

23 * * *

24 (B) Unless otherwise provided for in this
25 paragraph, after intercepting or recording a
26 telephone conversation, only the superintendent,
27 warden or a designee of the superintendent or warden
28 or other chief administrative official or his or her
29 designee, or law enforcement officers shall have
30 access to that recording.

1 identification interception device.

2 Section 4. Sections 5712(a) introductory paragraph and (f)
3 of Title 18 are amended to read:

4 § 5712. Issuance of order and effect.

5 (a) Authorizing orders.--[Each] An order authorizing the
6 interception of any wire, electronic or oral communication shall
7 state the following:

8 * * *

9 (f) Assistance.--An order authorizing the interception of a
10 wire, electronic or oral communication shall, upon request of
11 the applicant, direct that a provider of [electronic]
12 communication service shall furnish the applicant forthwith all
13 information, facilities and technical assistance necessary to
14 accomplish the interception unobtrusively and with a minimum of
15 interference with the services that such service provider is
16 affording the person whose communications are to be intercepted.
17 The obligation of a provider of [electronic] communication
18 service under such an order may include, but is not limited to,
19 installation of a pen register or of a trap and trace device
20 [and], providing caller ID, deluxe caller ID or any other
21 features available to ascertain the telephone number, location
22 or subscriber information of a facility contacting the facility
23 whose communications are to be intercepted, disclosure of a
24 record or other information otherwise available under section
25 5743 (relating to requirements for governmental access),
26 including conducting an in-progress trace during an
27 interception, provided that such obligation of a provider of
28 [electronic] communications service is technologically feasible.
29 The order shall apply regardless of whether the electronic
30 service provider is headquartered within this Commonwealth, if

1 the interception is otherwise conducted within this Commonwealth
2 as provided under this chapter. The order regarding disclosure
3 of a record or other information otherwise available under
4 section 5743 shall apply to all electronic service providers who
5 service facilities which contact or are contacted by the
6 facility whose communications are to be intercepted, regardless
7 of whether the order specifically names any provider of
8 communication service. The order may specify the period of time
9 an electronic service provider has to furnish to the applicant
10 who requests disclosure of a record or other information
11 otherwise available under section 5743. Any provider of
12 [electronic] communication service furnishing such facilities or
13 technical assistance shall be compensated therefor by the
14 applicant for reasonable expenses incurred in providing the
15 facilities or assistance. The service provider shall be immune
16 from civil and criminal liability for any assistance rendered to
17 the applicant pursuant to this section.

18 * * *

19 Section 5. Title 18 is amended by adding a section to read:
20 § 5712.1. Target-specific orders.

21 (a) Target-specific wiretaps.--The requirements of sections
22 5712(a)(3) (relating to issuance of order and effect) and
23 5709(3)(iv) and (v) (relating to application for order) shall
24 not apply if:

25 (1) In the case of an application with respect to the
26 interception of an oral communication, all of the following
27 apply:

28 (i) The application contains a full and complete
29 statement as to why specification is not practical and
30 identifies the person committing the offense and whose

1 communications are to be intercepted.

2 (ii) The judge finds the specification is not
3 practical.

4 (2) In the case of an application with respect to a wire
5 or electronic communication, all of the following apply:

6 (i) The application identifies the person believed
7 to be committing the offense and whose communications are
8 to be intercepted and the applicant makes a showing that
9 there is probable cause to believe that the person's
10 actions could have the effect of thwarting interception
11 by changing facilities or devices.

12 (ii) The judge finds that the purpose has been
13 adequately shown.

14 (b) Supplementary orders.--Following the issuance of a
15 target-specific wiretap order, the judge shall sign
16 supplementary orders upon request and in a timely manner,
17 authorizing the investigative or law enforcement officers or
18 agency to intercept additional communications devices or
19 facilities upon a showing of reasonable suspicion that all of
20 the following apply:

21 (1) The target of the original order has in fact changed
22 communications devices or facilities or is presently using
23 additional communications devices, communications facilities
24 or places.

25 (2) The target of the original order is likely to use
26 the specified communications device or facility for criminal
27 purposes similar to or related to those specified in the
28 original order.

29 (c) Application for supplementary orders.--An application
30 for a supplementary order shall contain all of the following:

1 (1) The identity of the investigative or law enforcement
2 officers or agency to whom the authority to intercept wire,
3 electronic or oral communications is given and the name and
4 official identity of the person who made the application.

5 (2) The identity of or a particular description of the
6 person, if known, whose communications are to be intercepted.

7 (3) The period of time during which the interception is
8 authorized, including a statement as to whether or not the
9 interception shall automatically terminate when the described
10 communication has been first obtained.

11 (4) A showing of reasonable suspicion that the target of
12 the original order has in fact changed communications devices
13 or facilities.

14 (5) A showing of reasonable suspicion that the target of
15 the original order is likely to use the additional facility
16 or device or place for criminal purposes similar to or
17 related to those specified in the original order.

18 (d) Time limits.--A supplementary order shall not act as an
19 extension of the time limit identified in section 5712(b).

20 (e) Responsibility.--The order shall require the Attorney
21 General or the district attorney, or their designees, to be
22 responsible for the supervision of the interception.

23 (f) Progress reports.--If an order authorizing an
24 interception is entered, the order may require reports to be
25 made to the judge who issued the order showing what progress has
26 been made toward achievement of the authorized objective and the
27 need for continued interception. The reports shall be made at
28 intervals as the judge may require.

29 (g) Final report.--If an interception is authorized under
30 this section, a complete written list of names of participants

1 and evidence of offenses discovered, including those not stated
2 in the application for order, shall be filed with the court as
3 soon as practical after the authorized interception is
4 terminated.

5 (h) Assistance.--

6 (1) An order authorizing the interception of a wire,
7 electronic or oral communication shall, upon request of the
8 applicant, direct that a provider of communication service
9 furnish the applicant with all information, facilities and
10 technical assistance necessary to accomplish the interception
11 unobtrusively and with a minimum of interference with the
12 services that the service provider is affording the person
13 whose communications are to be intercepted.

14 (2) The obligation of a provider of communication
15 service under an order may include installation of a pen
16 register or trap and trace device and disclosure of a record
17 or other information otherwise available under section 5743
18 (relating to requirements for governmental access), including
19 conducting an in-progress trace during an interception, if
20 the obligation of a provider of communications service is
21 technologically feasible.

22 (3) A provider of communication service furnishing
23 facilities or technical assistance shall be compensated by
24 the applicant for reasonable expenses incurred in providing
25 the facilities or assistance.

26 (4) A service provider shall be immune from civil and
27 criminal liability for any assistance rendered to an
28 applicant under this section.

29 (i) Entry by law enforcement officers.--An order authorizing
30 the interception of a wire, electronic or oral communication

1 shall, if requested, authorize the entry of premises or
2 facilities specified under subsection (c) (3) or premises
3 necessary to obtain access to the premises or facilities
4 specified under subsection (c) (3) by law enforcement officers
5 specified under subsection (c) (1) as often as necessary solely
6 for the purposes of installing, maintaining or removing an
7 electronic, mechanical or other device, if all of the following
8 apply:

9 (1) The entry is reasonably necessary to accomplish the
10 purposes of this subchapter.

11 (2) The judge who issues the order is notified of the
12 time and method of each entry prior to entry within 48 hours
13 of entry.

14 Section 6. Section 5713.1(d) of Title 18 is amended to read:
15 § 5713.1. Emergency hostage and barricade situations.

16 * * *

17 (d) Definitions.--As used in this section, the following
18 words and phrases shall have the meanings given to them in this
19 subsection:

20 "Emergency situation." Any situation where:

21 (1) a person is holding a hostage and is threatening
22 serious physical injury [will] and may resist with the use of
23 weapons; or

24 (2) a person has barricaded himself and taken a position
25 of confinement to avoid apprehension and:

26 (i) has [threatened] the ability to resist with the
27 use of weapons; or

28 (ii) is threatening suicide or harm to himself or
29 others.

30 "Supervising law enforcement officer."

1 (1) For designations by a district attorney, any law
2 enforcement officer trained pursuant to section 5724
3 (relating to training) to carry out interceptions under this
4 section who has attained the rank of lieutenant or higher in
5 a law enforcement agency within the county or who is in
6 charge of a county law enforcement agency.

7 (2) For designations by the Attorney General, any member
8 of the Pennsylvania State Police trained pursuant to section
9 5724 to carry out interceptions under this section and
10 designated by the Commissioner of the Pennsylvania State
11 Police who:

12 (i) has attained the rank of lieutenant or higher;

13 or

14 (ii) is in charge of a Pennsylvania State Police
15 barracks.

16 Section 7. Section 5717(a) of Title 18 is amended and the
17 section is amended by adding subsections to read:

18 § 5717. Investigative disclosure or use of contents of wire,
19 electronic or oral communications or derivative
20 evidence.

21 (a) Law enforcement personnel.--Any investigative or law
22 enforcement officer who, under subsection (a.1) [or (b)], ~~(a.2),~~ ←
23 ~~(b)~~ (B), (B.1) or (c), has obtained knowledge of the contents of ←
24 any wire, electronic or oral communication, or evidence derived
25 therefrom, may disclose such contents or evidence to another
26 investigative or law enforcement officer to the extent that such
27 disclosure is appropriate to the proper performance of the
28 official duties of the officer making or receiving the
29 disclosure.

30 * * *

1 ~~(a.2) Civilians. Any person other than an investigative or~~ ←
2 ~~law enforcement officer who, as party to the communication, has~~
3 ~~obtained knowledge of the contents of any wire, electronic or~~
4 ~~oral communication, or evidence derived from any wire,~~
5 ~~electronic or oral communication, may disclose the contents or~~
6 ~~evidence to an investigative or law enforcement officer, if the~~
7 ~~contents or evidence is evidence of a crime of violence or a~~
8 ~~felony of the first degree.~~

9 * * *

10 (B.1) CRIMINAL CASES.--ANY PERSON WHO BY MEANS AUTHORIZED BY ←
11 SECTION 5704(17) (RELATING TO EXCEPTIONS TO PROHIBITION OF
12 INTERCEPTION AND DISCLOSURE OF COMMUNICATIONS) HAS OBTAINED
13 KNOWLEDGE OF THE CONTENTS OF ANY WIRE, ELECTRONIC OR ORAL
14 COMMUNICATION, OR EVIDENCE DERIVED THEREFROM, MAY IN ADDITION TO
15 DISCLOSURES MADE UNDER SUBSECTION (B) DISCLOSE SUCH CONTENTS OR
16 EVIDENCE, ON THE CONDITION THAT SUCH DISCLOSURE IS MADE FOR THE
17 PURPOSE OF PROVIDING EXCULPATORY EVIDENCE IN AN OPEN OR CLOSED
18 CRIMINAL CASE.

19 (c) Otherwise authorized personnel.--

20 (1) Except as provided under paragraph (2), any person
21 who, by any means authorized by the laws of another state or
22 the Federal Government, has obtained knowledge of the
23 contents of any wire, electronic or oral communication, or
24 evidence derived from any wire, electronic or oral
25 communication, may disclose the contents or evidence to an
26 investigative or law enforcement officer and may disclose the
27 contents or evidence where otherwise admissible while giving
28 testimony under oath or affirmation in any proceeding in any
29 court of this Commonwealth.

30 (2) The contents of a nonconsensual interception

1 authorized by the laws of the Federal Government or another
2 state shall not be admissible unless the interception was
3 authorized by a court upon a finding of probable cause that
4 the target of the surveillance is engaged or will engage in a
5 violation of the criminal laws of the Federal Government or
6 any state.

7 ~~Section 8. Section 5721.1(a) of Title 18 is amended by~~ ←
8 ~~adding a paragraph to read:~~

9 ~~§ 5721.1. Evidentiary disclosure of contents of intercepted~~
10 ~~communication or derivative evidence.~~

11 ~~(a) Disclosure in evidence generally.~~

12 ~~* * *~~

13 ~~(4) Notwithstanding any provisions of this subchapter~~
14 ~~and if the knowledge was obtained from a person not acting at~~
15 ~~the direction or with the knowledge and consent of law~~
16 ~~enforcement, any law enforcement or investigative officer who~~
17 ~~has obtained knowledge of the contents of any wire,~~
18 ~~electronic or oral communication, or evidence derived from~~
19 ~~any wire, electronic or oral communication, may disclose the~~
20 ~~contents or evidence in any matter related to any criminal,~~
21 ~~quasi criminal, forfeiture, administrative enforcement or~~
22 ~~professional disciplinary proceedings as follows:~~

23 ~~(i) In any court, board or agency of this~~
24 ~~Commonwealth, another state or the United States.~~

25 ~~(ii) Before any Federal or state grand jury or~~
26 ~~investigating grand jury.~~

27 ~~* * *~~

28 Section 9 8. Section 5743(a) and (b) of Title 18 are amended ←
29 to read:

30 § 5743. Requirements for governmental access.

1 (a) Contents of [electronic] communications in electronic
2 storage.--Investigative or law enforcement officers may require
3 the disclosure by a provider of [electronic] communication
4 service of the contents of [an electronic] a communication which
5 is in electronic storage in [an electronic] a communication
6 system for:

7 (1) One hundred eighty days or less only pursuant to a
8 warrant issued under the Pennsylvania Rules of Criminal
9 Procedure.

10 (2) More than 180 days by the means available under
11 subsection (b).

12 (b) Contents of [electronic] communications in a remote
13 computing service.--

14 (1) Investigative or law enforcement officers may
15 require a provider of remote computing service to disclose
16 the contents of any [electronic] communication to which this
17 paragraph is made applicable by paragraph (2):

18 (i) without required notice to the subscriber or
19 customer if the investigative or law enforcement officer
20 obtains a warrant issued under the Pennsylvania Rules of
21 Criminal Procedure; or

22 (ii) with prior notice from the investigative or law
23 enforcement officer to the subscriber or customer if the
24 investigative or law enforcement officer:

25 (A) uses an administrative subpoena authorized
26 by a statute or a grand jury subpoena; or

27 (B) obtains a court order for the disclosure
28 under subsection (d);

29 except that delayed notice may be given pursuant to section
30 5745 (relating to delayed notice).

1 (2) Paragraph (1) is applicable with respect to [an
2 electronic] a communication which is held or maintained on
3 that service:

4 (i) On behalf of and received by means of electronic
5 transmission from, or created by means of computer
6 processing of communications received by means of
7 electronic transmission from, a subscriber or customer of
8 the remote computing service.

9 (ii) Solely for the purpose of providing storage or
10 computer processing services to the subscriber or
11 customer, if the provider is not authorized to access the
12 contents of any such communication for the purpose of
13 providing any services other than storage or computer
14 processing.

15 * * *

16 Section ~~10~~ 9. Section 5746 of Title 18 is amended by adding ←
17 a subsection to read:

18 § 5746. Cost reimbursement.

19 * * *

20 (d) Regulations.--The Attorney General shall promulgate
21 regulations to implement this section.

22 Section ~~11~~ 10. Sections 5761(b) and (c) (4), 5772(a) and ←
23 5773(a) and (c) of Title 18 are amended to read:

24 § 5761. Mobile tracking devices.

25 * * *

26 (b) Jurisdiction.--Orders permitted by this section may
27 authorize the use of mobile tracking devices [within the
28 jurisdiction of the court of common pleas, and outside that
29 jurisdiction,] if the device is installed and monitored within
30 [the jurisdiction of the court of common pleas.] this

1 Commonwealth. The court issuing the order must have jurisdiction
2 over the offense under investigation.

3 (c) Standard for issuance of order.--An order authorizing
4 the use of one or more mobile tracking devices may be issued to
5 an investigative or law enforcement officer by the court of
6 common pleas upon written application. Each application shall be
7 by written affidavit, signed and sworn to or affirmed before the
8 court of common pleas. The affidavit shall:

9 * * *

10 (4) provide a statement setting forth all facts and
11 circumstances which provide the applicant with [a reasonable
12 suspicion] probable cause that criminal activity has been, is
13 or will be in progress and that the use of a mobile tracking
14 device will yield information relevant to the investigation
15 of the criminal activity.

16 * * *

17 § 5772. Application for an order for use of certain devices.

18 (a) Application.--The Attorney General or a deputy attorney
19 general designated in writing by the Attorney General or a
20 district attorney or an assistant district attorney designated
21 in writing by the district attorney may make application for an
22 order or an extension of an order under section 5773 (relating
23 to issuance of an order for use of certain devices) authorizing
24 or approving disclosure of mobile communications tracking
25 information or, if necessary, the production and disclosure of
26 mobile communications tracking information, the installation and
27 use of a pen register, a trap and trace device or a
28 telecommunication identification interception device under this
29 subchapter, in writing, under oath or equivalent affirmation, to
30 a court of common pleas having jurisdiction over the offense

1 under investigation or to any Superior Court judge when an
2 application for an order authorizing interception of [wire or
3 electronic] communications is or has been made for the targeted
4 telephone or another application for interception under this
5 subchapter has been made involving the same investigation.

6 * * *

7 § 5773. Issuance of an order for use of certain devices.

8 (a) In general.--Upon an application made under section 5772
9 (relating to application for an order for use of certain
10 devices), the court shall enter an ex parte order authorizing
11 the disclosure of mobile communications tracking information,
12 the installation and use of a pen register, a trap and trace
13 device or a telecommunication identification interception device
14 within [the jurisdiction of the court if the court] this
15 Commonwealth if the court finds that there is probable cause to
16 believe that information relevant to an ongoing criminal
17 investigation will be obtained by such installation and use on
18 the targeted telephone. If exigent circumstances exist, the
19 court may verbally authorize the disclosure of mobile
20 communications tracking information, the installation and use of
21 a pen register, a trap and trace device or a telecommunication
22 identification interception device. The written order
23 authorizing the disclosure must be entered within 72 hours of
24 the court's verbal authorization.

25 * * *

26 (c) Time period and extensions.--

27 (1) An order issued under this section shall authorize
28 the installation and use of a pen register, trap and trace
29 device or a telecommunication identification interception
30 device for a period not to exceed [30] 60 days.

1 (2) Extensions of such an order may be granted but only
2 upon an application for an order under section 5772 and upon
3 the judicial finding required by subsection (a). The period
4 of each extension shall be for a period not to exceed 30
5 days.

6 * * *

7 Section ~~12~~ 11. This act shall take effect in 60 days.

