

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2362 Session of
1996

INTRODUCED BY DIGIROLAMO, MAYERNIK, PERZEL, BARLEY, FARGO,
BELARDI, MUNDY, MASLAND, CLARK, BROWN, M. N. WRIGHT, CLYMER,
SCHRODER, ADOLPH, MARSICO, HENNESSEY, BROWNE, D. W. SNYDER,
E. Z. TAYLOR, SEMMEL AND EGOLF, FEBRUARY 2, 1996

AS AMENDED IN COMMITTEE ON JUDICIARY, HOUSE OF REPRESENTATIVES,
MARCH 12, 1996

AN ACT

1 Amending Title 18 (Crimes and Offenses) of the Pennsylvania
2 Consolidated Statutes, further providing for wiretapping and
3 electronic surveillance.

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

6 ~~Section 1. Section 5702 of Title 18 of the Pennsylvania~~ <—
7 ~~Consolidated Statutes is amended by adding a definition to read:~~
8 ~~§ 5702. Definitions.~~

9 ~~As used in this chapter, the following words and phrases~~
10 ~~shall have the meanings given to them in this section unless the~~
11 ~~context clearly indicates otherwise:~~

12 * * *

13 ~~"Home." The primary residence of a nonconsenting party to an~~
14 ~~interception, provided that access to the residence is not~~
15 ~~generally permitted to members of the public and the party has a~~
16 ~~reasonable expectation of privacy in the residence.~~

17 * * *

~~Section 2. Section 5704(2) of Title 18 is amended and the section is amended by adding a paragraph to read:~~

~~§ 5704. Exceptions to prohibition of interception and disclosure of communications.~~

~~It shall not be unlawful under this chapter for:~~

~~* * *~~

~~(2) Any investigative or law enforcement officer or any person acting at the direction or request of an investigative or law enforcement officer to intercept a wire, electronic or oral communication involving suspected criminal activities where:~~

~~(i) such officer or person is a party to the communication; or~~

~~(ii) one of the parties to the communication has given prior consent to such interception. However, no interception under this paragraph shall be made unless the Attorney General or a deputy attorney general designated in writing by the Attorney General, or the district attorney, or an assistant district attorney designated in writing by the district attorney, of the county wherein the interception is to be made, has reviewed the facts and is satisfied that the consent is voluntary and has given prior approval for the interception; however such interception shall be subject to the recording and record keeping requirements of section 5714(a) (relating to recording of intercepted communications) and that the Attorney General, deputy attorney general, district attorney or assistant district attorney authorizing the interception shall be the custodian of recorded evidence obtained therefrom.~~

~~(iii) If an interception otherwise authorized under this paragraph will take place in the home of a nonconsenting party, then, in addition to the requirements of subparagraphs (i) and (ii), the interception shall not be conducted until an order is first obtained from a court of common pleas, authorizing such in home interception, based upon an affidavit by an investigative or law enforcement officer that establishes probable cause for the issuance of such an order. For the purposes of this paragraph, an interception shall be deemed to take place in the home of a nonconsenting party only if both the consenting and nonconsenting parties are physically present in the home at the time of the interception.~~

~~* * *~~

~~(14) A law enforcement officer who stops a vehicle and, before or during such vehicle stop, develops reasonable suspicion to believe that the driver is under the influence of alcohol, to use an audio/video device to record the communications occurring during the vehicle stop.~~

~~Section 3. Sections 5708(a)(1), 5709(3) and 5710(a)(4) of Title 18 are amended to read:~~

~~§ 5708. Order authorizing interception of wire, electronic or oral communications.~~

~~(a) Authorization. Except in cases referred to in subsection (b), the Attorney General, or, during the absence or incapacity of the Attorney General, a deputy attorney general designated in writing by the Attorney General, or the district attorney or, during the absence or incapacity of the district attorney, an assistant district attorney designated in writing~~

1 ~~by the district attorney of the county wherein the interception~~
2 ~~is to be made, may make written application to any Superior~~
3 ~~Court judge for an order authorizing the interception of a wire,~~
4 ~~electronic or oral communication by the investigative or law~~
5 ~~enforcement officers or agency having responsibility for an~~
6 ~~investigation involving suspected criminal activities when such~~
7 ~~interception may provide evidence of the commission of any of~~
8 ~~the following offenses, or may provide evidence aiding in the~~
9 ~~apprehension of the perpetrator or perpetrators of any of the~~
10 ~~following offenses:~~

11 ~~(1) Under this title:~~

12 ~~Section 911 (relating to corrupt organizations)~~

13 ~~Section 2501 (relating to criminal homicide)~~

14 ~~Section 2502 (relating to murder)~~

15 ~~Section 2503 (relating to voluntary manslaughter)~~

16 ~~Section 2706 (relating to terroristic threats)~~

17 ~~Section 2901 (relating to kidnapping)~~

18 ~~Section 3121 (relating to rape)~~

19 ~~Section 3123 (relating to involuntary deviate sexual~~
20 ~~intercourse)~~

21 ~~Section 3301 (relating to arson and related offenses)~~

22 ~~Section 3302 (relating to causing or risking~~
23 ~~catastrophe)~~

24 ~~Section 3502 (relating to burglary)~~

25 ~~Section 3701 (relating to robbery)~~

26 ~~Section 3921 (relating to theft by unlawful taking or~~
27 ~~disposition)~~

28 ~~Section 3922 (relating to theft by deception)~~

29 ~~Section 3923 (relating to theft by extortion)~~

30 ~~Section 4701 (relating to bribery in official and~~

~~political matters)~~

~~Section 4702 (relating to threats and other improper
influence in official and political matters)~~

~~Section 5512 (relating to lotteries, etc.)~~

~~Section 5513 (relating to gambling devices, gambling,
etc.)~~

~~Section 5514 (relating to pool selling and
bookmaking)~~

~~Section 7313 (relating to buying or exchanging
Federal food order stamps)~~

~~* * *~~

~~§ 5709. Application for order.~~

~~Each application for an order of authorization to intercept a
wire, electronic or oral communication shall be made in writing
upon the personal oath or affirmation of the Attorney General or
a district attorney of the county wherein the interception is to
be made and shall contain all of the following:~~

~~* * *~~

~~(3) A sworn statement by the investigative or law
enforcement officer who has knowledge of relevant information
justifying the application, which shall include:~~

~~(i) The identity of the particular person, if known,
committing the offense and whose communications are to be
intercepted.~~

~~(ii) The details as to the particular offense that
has been, is being, or is about to be committed.~~

~~(iii) The particular type of communication to be
intercepted.~~

~~(iv) [A] Except as provided in section 5712(h)
(relating to issuance of order and effect), a showing~~

1 ~~that there is probable cause to believe that such~~
2 ~~communication will be communicated on the wire~~
3 ~~communication facility involved or at the particular~~
4 ~~place where the oral communication is to be intercepted.~~

5 ~~(v) [The] Except as provided in section 5712(h), the~~
6 ~~character and location of the particular wire~~
7 ~~communication facility involved or the particular place~~
8 ~~where the oral communication is to be intercepted.~~

9 ~~(vi) A statement of the period of time for which the~~
10 ~~interception is required to be maintained, and, if the~~
11 ~~character of the investigation is such that the~~
12 ~~authorization for interception should not automatically~~
13 ~~terminate when the described type of communication has~~
14 ~~been first obtained, a particular statement of facts~~
15 ~~establishing probable cause to believe that additional~~
16 ~~communications of the same type will occur thereafter.~~

17 ~~(vii) A particular statement of facts showing that~~
18 ~~other normal investigative procedures with respect to the~~
19 ~~offense have been tried and have failed, or reasonably~~
20 ~~appear to be unlikely to succeed if tried or are too~~
21 ~~dangerous to employ.~~

22 ~~* * *~~

23 ~~§ 5710. Grounds for entry of order.~~

24 ~~(a) Application. Upon consideration of an application, the~~
25 ~~judge may enter an ex parte order, as requested or as modified,~~
26 ~~authorizing the interception of wire, electronic or oral~~
27 ~~communications anywhere within the Commonwealth, if the judge~~
28 ~~determines on the basis of the facts submitted by the applicant~~
29 ~~that there is probable cause for belief that all the following~~
30 ~~conditions exist:~~

1 * * *

2 ~~(4) except as provided in section 5712(h) (relating to~~
3 ~~issuance of order and effect), the facility from which, or~~
4 ~~the place where, the wire, electronic or oral communications~~
5 ~~are to be intercepted, is, has been, or is about to be used,~~
6 ~~in connection with the commission of such offense, or is~~
7 ~~leased to, listed in the name of, or commonly used by, such~~
8 ~~person;~~

9 * * *

10 Section 4. ~~Section 5712 of Title 18 is amended by adding a~~
11 ~~subsection to read:~~

12 ~~§ 5712. Issuance of order and effect.~~

13 * * *

14 ~~(h) Roving wiretaps. The requirements of subsection (a)(3)~~
15 ~~relating to the specification of the facilities from which, or~~
16 ~~the place where, the communication is to be intercepted do not~~
17 ~~apply if:~~

18 ~~(1) In the case of an application with respect to the~~
19 ~~interception of an oral communication:~~

20 ~~(i) the application contains a full and complete~~
21 ~~statement as to why such specification is not practical~~
22 ~~and identifies the person committing the offense and~~
23 ~~whose communications are to be intercepted; and~~

24 ~~(ii) the judge finds that such specification is not~~
25 ~~practical.~~

26 ~~(2) In the case of an application with respect to a wire~~
27 ~~or electronic communication:~~

28 ~~(i) the application identifies the person believed~~
29 ~~to be committing the offense and whose communications are~~
30 ~~to be intercepted and the applicant makes a showing of a~~

~~purpose, on the part of that person, to thwart
interception by changing facilities; and
(ii) the judge finds that such purpose has been
adequately shown.~~

~~Section 5. Section 5717 of Title 18 is amended to read:~~

~~§ 5717. [Disclosure] Investigative disclosure or use of
contents of wire, electronic or oral communications
or derivative evidence.~~

~~(a) [Investigative activities] Law enforcement personnel.~~

~~Any investigative or law enforcement officer who under
subsection (b) or (c), by any means authorized by this chapter,
has obtained knowledge of the contents of any wire, electronic
or oral communication, or evidence derived therefrom, or who has
otherwise obtained such knowledge in good faith reliance on the
provisions of this chapter, may disclose such contents or
evidence to another investigative or law enforcement officer,
including another investigative or law enforcement officer of
another state or political subdivision thereof, or make use of
such contents or evidence to the extent that such disclosure or
use is appropriate to the proper performance of the official
duties of the officer making or receiving the disclosure.~~

~~(b) [Evidence] Otherwise authorized personnel. Any person
who, by any means authorized by this chapter and upon good faith
reliance on the laws of another state or the Federal Government,
has obtained knowledge of the contents of any wire, electronic
or oral communication, or evidence derived therefrom, may
disclose such contents or evidence to an investigative or law
enforcement officer and may disclose such contents or evidence
while giving testimony under oath or affirmation in any criminal
proceeding in any court of this Commonwealth or of another state~~

~~or of the United States or before any state or Federal grand jury or investigating grand jury.~~

~~(c) Otherwise authorized personnel. Any person who, by any means authorized by the laws of another state or the Federal Government, has obtained knowledge of the contents of any wire, electronic or oral communication, or evidence derived therefrom, may disclose such contents or evidence to an investigative or law enforcement officer and may disclose such contents or evidence where otherwise admissible while giving testimony under oath or affirmation in any proceeding in any court of this Commonwealth.~~

~~Section 6. Section 5721 of Title 18 is repealed.~~

~~Section 7. Title 18 is amended by adding a section to read:~~

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

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

~~(1) Except as provided in paragraph (2), no person shall disclose the contents of any wire, electronic or oral communication, or evidence derived therefrom, in any proceeding in any court, board or agency of this Commonwealth.~~

~~(2) Any investigative or law enforcement officer who has obtained knowledge of the contents of any wire, electronic or oral communication, or evidence derived therefrom, which is properly discloseable under section 5717(a) (relating to investigative disclosure or use of contents of wire, electronic or oral communications or derivative evidence), may also disclose such contents or evidence in referrals, complaints, pleadings, discovery or testimony in any criminal, quasi criminal, forfeiture, administrative~~

~~enforcement or professional disciplinary proceedings in any court, board or agency of this Commonwealth or of another state or of the United States or before any state or Federal grand jury or investigating grand jury. Once such disclosure has been made by an investigative or law enforcement officer, then any person may disclose such contents or evidence in any such proceeding.~~

~~(3) Notwithstanding the provisions of paragraph (2), no disclosure in any such proceeding shall be made so long as any order excluding such contents or evidence pursuant to the provisions of subsection (b) is in effect.~~

~~(b) Motion to exclude. Any aggrieved person who is a party to any proceeding in any court, board or agency of this Commonwealth may move to exclude the contents of any wire, electronic or oral communication, or evidence derived therefrom, on any of the following grounds:~~

~~(1) Unless intercepted in good faith reliance upon an exception set forth in section 5704 (relating to exceptions to prohibition of interception and disclosure of communications), the interception was made without prior procurement of an order of authorization under section 5712 (relating to issuance of order and effect).~~

~~(2) The order of authorization issued under section 5712 was not supported by probable cause with respect to the matters set forth in section 5710(a)(1) and (2) (relating to grounds for entry of order).~~

~~(3) The order of authorization issued under section 5712 is materially insufficient on its face and the interception was not made in good faith reliance on the order.~~

~~(4) The interception materially deviated from the~~

~~requirements of the order of authorization and was not made in good faith.~~

~~(5) With respect to interceptions pursuant to section 5704(2), the consent to the interception was coerced by the Commonwealth.~~

~~(6) With respect to interceptions pursuant to section 5704(2)(iii), the interception was made without prior procurement of a court order, or the order of authorization was not supported by probable cause.~~

~~(c) Procedure.~~

~~(1) The motion shall be made in accordance with the applicable rules of procedure governing such proceedings. The court, board or agency, upon the filing of such motion, shall make available to the movant or his counsel the intercepted communication and evidence derived therefrom.~~

~~(2) In considering a motion to exclude under subsection (b)(2), both the written application under section 5710(a) and all matters that were presented to the judge under section 5710(b) shall be admissible.~~

~~(3) The movant shall bear the burden of proving by a preponderance of the evidence the grounds for exclusion asserted under subsection (b)(3) and (4), provided, however, that the respondent shall have the burden of demonstrating the Commonwealth's good faith by a preponderance of the evidence.~~

~~(4) With respect to exclusion claims under subsection (b)(1), (2) and (5), the respondent shall bear the burden of proof by a preponderance of the evidence.~~

~~(5) With respect to exclusion claims under subsection (b)(6), the movant shall have the initial burden of~~

~~demonstrating by a preponderance of the evidence that the interception took place in his home. Once he meets this burden, the burden shall shift to the respondent to demonstrate by a preponderance of the evidence the procurement of a court order supported by probable cause.~~

~~(6) Evidence shall not be deemed to have been derived from communications excludable under subsection (b) if the respondent can demonstrate by a preponderance of the evidence that the Commonwealth or the respondent had a basis independent of the excluded communication for discovering such evidence, or that such evidence would have been inevitably discovered by the Commonwealth or the respondent absent the excluded communication.~~

~~(d) Appeal. In addition to any other right of appeal, the Commonwealth shall have the right to appeal from an order granting a motion to suppress if the official to whom the order authorizing the intercept was granted shall certify to the court that the appeal is not taken for purposes of delay. The appeal shall be taken in accordance with the provisions of Title 42 (relating to judiciary and judicial procedure).~~

~~(e) Exclusiveness of remedies and sanctions. Except as provided in this section, no exclusion remedy shall exist or be created for violations of this chapter.~~

~~Section 8. This act shall take effect in 60 days.~~

SECTION 1. THE DEFINITIONS OF "ELECTRONIC COMMUNICATION,"
"INTERCEPT," "INVESTIGATIVE OR LAW ENFORCEMENT OFFICER,"
"JUDGE," "PEN REGISTER" AND "WIRE COMMUNICATION" IN SECTION 5702
OF TITLE 18 OF THE PENNSYLVANIA CONSOLIDATED STATUTES ARE
AMENDED AND THE SECTION IS AMENDED BY ADDING DEFINITIONS TO
READ:

1 § 5702. DEFINITIONS.

2 AS USED IN THIS CHAPTER, THE FOLLOWING WORDS AND PHRASES
3 SHALL HAVE THE MEANINGS GIVEN TO THEM IN THIS SECTION UNLESS THE
4 CONTEXT CLEARLY INDICATES OTHERWISE:

5 * * *

6 "ELECTRONIC COMMUNICATION." ANY TRANSFER OF SIGNS, SIGNALS,
7 WRITING, IMAGES, SOUNDS, DATA OR INTELLIGENCE OF ANY NATURE
8 TRANSMITTED IN WHOLE OR IN PART BY A WIRE, RADIO,
9 ELECTROMAGNETIC, PHOTOELECTRONIC OR PHOTO-OPTICAL SYSTEM,
10 EXCEPT:

11 [(1) THE RADIO PORTION OF A CORDLESS TELEPHONE
12 COMMUNICATION THAT IS TRANSMITTED BETWEEN THE CORDLESS
13 TELEPHONE HANDSET AND THE BASE UNIT.]

14 (2) ANY WIRE OR ORAL COMMUNICATION.

15 (3) ANY COMMUNICATION MADE THROUGH A TONE-ONLY PAGING
16 DEVICE.

17 (4) ANY COMMUNICATION FROM A TRACKING DEVICE (AS DEFINED
18 IN THIS SECTION).

19 * * *

20 "HOME." THE PRIMARY RESIDENCE OF A NONCONSENTING PARTY TO AN
21 INTERCEPTION, PROVIDED THAT ACCESS TO THE RESIDENCE IS NOT
22 GENERALLY PERMITTED TO MEMBERS OF THE PUBLIC AND THE PARTY HAS A
23 REASONABLE EXPECTATION OF PRIVACY IN THE RESIDENCE UNDER THE
24 CIRCUMSTANCES.

25 * * *

26 "INTERCEPT." AURAL OR OTHER ACQUISITION OF THE CONTENTS OF
27 ANY WIRE, ELECTRONIC OR ORAL COMMUNICATION THROUGH THE USE OF
28 ANY ELECTRONIC, MECHANICAL OR OTHER DEVICE. THE TERM SHALL
29 INCLUDE THE POINT AT WHICH THE CONTENTS OF THE COMMUNICATION ARE
30 MONITORED BY INVESTIGATIVE OR LAW ENFORCEMENT OFFICERS.

1 "INVESTIGATIVE OR LAW ENFORCEMENT OFFICER." ANY OFFICER OF
2 THE UNITED STATES, OF ANOTHER STATE OR POLITICAL SUBDIVISION
3 THEREOF, OR OF THE COMMONWEALTH OR POLITICAL SUBDIVISION
4 THEREOF, WHO IS EMPOWERED BY LAW TO CONDUCT INVESTIGATIONS OF OR
5 TO MAKE ARRESTS FOR OFFENSES ENUMERATED IN THIS CHAPTER OR AN
6 EQUIVALENT CRIME IN ANOTHER JURISDICTION, AND ANY ATTORNEY
7 AUTHORIZED BY LAW TO PROSECUTE OR PARTICIPATE IN THE PROSECUTION
8 OF SUCH OFFENSE. [THE TERM SHALL INCLUDE, BUT NOT BE LIMITED TO,
9 EMPLOYEES OF THE PENNSYLVANIA CRIME COMMISSION, AUTHORIZED TO
10 INVESTIGATE CRIMES ENUMERATED IN SECTION 5708 (RELATING TO ORDER
11 AUTHORIZING INTERCEPTION OF WIRE OR ORAL COMMUNICATIONS).]

12 "JUDGE." WHEN REFERRING TO A JUDGE AUTHORIZED TO RECEIVE
13 APPLICATIONS FOR, AND TO ENTER, ORDERS AUTHORIZING INTERCEPTIONS
14 OF WIRE, ELECTRONIC OR ORAL COMMUNICATIONS PURSUANT TO [THIS
15 CHAPTER] SUBCHAPTER B (RELATING TO WIRE, ELECTRONIC OR ORAL
16 COMMUNICATION), ANY JUDGE OF THE SUPERIOR COURT.

17 * * *

18 "PEN REGISTER." A DEVICE WHICH [RECORDS OR DECODES] IS USED
19 TO RECORD OR DECODE ELECTRONIC OR OTHER IMPULSES WHICH IDENTIFY
20 THE NUMBERS DIALED OR OTHERWISE TRANSMITTED, WITH RESPECT TO
21 WIRE COMMUNICATIONS, ON THE TELEPHONE LINE TO WHICH THE DEVICE
22 IS ATTACHED. THE TERM INCLUDES A DEVICE WHICH IS USED TO RECORD
23 OR DECODE ELECTRONIC OR OTHER IMPULSES WHICH IDENTIFY THE
24 EXISTENCE OF INCOMING AND OUTGOING WIRE COMMUNICATIONS ON THE
25 TELEPHONE LINE TO WHICH THE DEVICE IS ATTACHED. THE TERM DOES
26 NOT INCLUDE A DEVICE USED BY A PROVIDER OR CUSTOMER OF A WIRE OR
27 ELECTRONIC COMMUNICATION SERVICE FOR BILLING, OR RECORDING AS AN
28 INCIDENT TO BILLING, FOR COMMUNICATION SERVICE PROVIDED BY THE
29 PROVIDER, OR ANY DEVICE USED BY A PROVIDER, OR CUSTOMER OF A
30 WIRE COMMUNICATION SERVICE FOR COST ACCOUNTING OR OTHER LIKE

1 PURPOSES IN THE ORDINARY COURSE OF BUSINESS.

2 * * *

3 "STATE." ANY STATE OF THE UNITED STATES, THE DISTRICT OF
4 COLUMBIA, THE COMMONWEALTH OF PUERTO RICO AND ANY TERRITORY OR
5 POSSESSION OF THE UNITED STATES.

6 * * *

7 "WIRE COMMUNICATION." ANY AURAL TRANSFER MADE IN WHOLE OR IN
8 PART THROUGH THE USE OF FACILITIES FOR THE TRANSMISSION OF
9 COMMUNICATION BY WIRE, CABLE OR OTHER LIKE CONNECTION BETWEEN
10 THE POINT OF ORIGIN AND THE POINT OF RECEPTION, INCLUDING THE
11 USE OF SUCH A CONNECTION IN A SWITCHING STATION, FURNISHED OR
12 OPERATED BY A TELEPHONE, TELEGRAPH OR RADIO COMPANY FOR HIRE AS
13 A COMMUNICATION COMMON CARRIER. THE TERM [DOES NOT INCLUDE THE
14 RADIO PORTION OF A CORDLESS TELEPHONE COMMUNICATION TRANSMITTED
15 BETWEEN THE CORDLESS TELEPHONE HANDSET AND THE BASE UNIT]
16 INCLUDES ANY ELECTRONIC STORAGE OF SUCH COMMUNICATION.

17 SECTION 2. SECTION 5703 OF TITLE 18 IS AMENDED TO READ:

18 § 5703. INTERCEPTION, DISCLOSURE OR USE OF WIRE, ELECTRONIC OR
19 ORAL COMMUNICATIONS.

20 EXCEPT AS OTHERWISE PROVIDED IN THIS [CHAPTER] SUBCHAPTER, A
21 PERSON IS GUILTY OF A FELONY OF THE THIRD DEGREE IF HE:

22 (1) INTENTIONALLY INTERCEPTS, ENDEAVORS TO INTERCEPT, OR
23 PROCURES ANY OTHER PERSON TO INTERCEPT OR ENDEAVOR TO
24 INTERCEPT ANY WIRE, ELECTRONIC OR ORAL COMMUNICATION;

25 (2) INTENTIONALLY DISCLOSES OR ENDEAVORS TO DISCLOSE TO
26 ANY OTHER PERSON THE CONTENTS OF ANY WIRE, ELECTRONIC OR ORAL
27 COMMUNICATION, OR EVIDENCE DERIVED THEREFROM, KNOWING OR
28 HAVING REASON TO KNOW THAT THE INFORMATION WAS OBTAINED
29 THROUGH THE INTERCEPTION OF A WIRE, ELECTRONIC OR ORAL
30 COMMUNICATION; OR

1 (3) INTENTIONALLY USES OR ENDEAVORS TO USE THE CONTENTS
2 OF ANY WIRE, ELECTRONIC OR ORAL COMMUNICATION, OR EVIDENCE
3 DERIVED THEREFROM, KNOWING OR HAVING REASON TO KNOW, THAT THE
4 INFORMATION WAS OBTAINED THROUGH THE INTERCEPTION OF A WIRE,
5 ELECTRONIC OR ORAL COMMUNICATION.

6 SECTION 3. SECTION 5704(2) AND (5) OF TITLE 18 ARE AMENDED
7 AND THE SECTION IS AMENDED BY ADDING A PARAGRAPH TO READ:

8 § 5704. EXCEPTIONS TO PROHIBITION OF INTERCEPTION AND
9 DISCLOSURE OF COMMUNICATIONS.

10 IT SHALL NOT BE UNLAWFUL UNDER THIS [CHAPTER] SUBCHAPTER FOR:

11 * * *

12 (2) ANY INVESTIGATIVE OR LAW ENFORCEMENT OFFICER OR ANY
13 PERSON ACTING AT THE DIRECTION OR REQUEST OF AN INVESTIGATIVE
14 OR LAW ENFORCEMENT OFFICER TO INTERCEPT A WIRE, ELECTRONIC OR
15 ORAL COMMUNICATION INVOLVING SUSPECTED CRIMINAL ACTIVITIES,
16 INCLUDING, BUT NOT LIMITED TO, THE CRIMES ENUMERATED IN
17 SECTION 5708 (RELATING TO ORDER AUTHORIZING INTERCEPTION OF
18 WIRE, ELECTRONIC OR ORAL COMMUNICATIONS) WHERE:

19 (I) SUCH OFFICER OR PERSON IS A PARTY TO THE
20 COMMUNICATION; OR

21 (II) ONE OF THE PARTIES TO THE COMMUNICATION HAS
22 GIVEN PRIOR CONSENT TO SUCH INTERCEPTION.

23 HOWEVER, NO INTERCEPTION UNDER THIS PARAGRAPH SHALL BE MADE
24 UNLESS THE ATTORNEY GENERAL OR A DEPUTY ATTORNEY GENERAL
25 DESIGNATED IN WRITING BY THE ATTORNEY GENERAL, OR THE
26 DISTRICT ATTORNEY, OR AN ASSISTANT DISTRICT ATTORNEY
27 DESIGNATED IN WRITING BY THE DISTRICT ATTORNEY, OF THE COUNTY
28 WHEREIN THE INTERCEPTION IS TO BE MADE, HAS REVIEWED THE
29 FACTS AND IS SATISFIED THAT THE CONSENT IS VOLUNTARY AND HAS
30 GIVEN PRIOR APPROVAL FOR THE INTERCEPTION; HOWEVER SUCH

1 INTERCEPTION SHALL BE SUBJECT TO THE RECORDING AND RECORD
2 KEEPING REQUIREMENTS OF SECTION 5714(A) (RELATING TO
3 RECORDING OF INTERCEPTED COMMUNICATIONS) AND THAT THE
4 ATTORNEY GENERAL, DEPUTY ATTORNEY GENERAL, DISTRICT ATTORNEY
5 OR ASSISTANT DISTRICT ATTORNEY AUTHORIZING THE INTERCEPTION
6 SHALL BE THE CUSTODIAN OF RECORDED EVIDENCE OBTAINED
7 THEREFROM.

8 (III) IF AN ORAL INTERCEPTION OTHERWISE AUTHORIZED
9 UNDER THIS PARAGRAPH WILL TAKE PLACE IN THE HOME OF A
10 NONCONSENTING PARTY, THEN, IN ADDITION TO THE
11 REQUIREMENTS OF SUBPARAGRAPHS (I) AND (II), THE
12 INTERCEPTION SHALL NOT BE CONDUCTED UNTIL AN ORDER IS
13 FIRST OBTAINED FROM A COURT OF COMMON PLEAS, AUTHORIZING
14 SUCH IN-HOME INTERCEPTION, BASED UPON AN AFFIDAVIT BY AN
15 INVESTIGATIVE OR LAW ENFORCEMENT OFFICER THAT ESTABLISHES
16 PROBABLE CAUSE FOR THE ISSUANCE OF SUCH AN ORDER. NO SUCH
17 ORDER OR AFFIDAVIT SHALL BE REQUIRED WHERE PROBABLE CAUSE
18 AND EXIGENT CIRCUMSTANCES EXIST OR IN OTHER CIRCUMSTANCES
19 WHERE WARRANTS ARE NOT REQUIRED BY THE CONSTITUTION OF
20 THE UNITED STATES OR THE CONSTITUTION OF PENNSYLVANIA.
21 FOR THE PURPOSES OF THIS PARAGRAPH, AN ORAL INTERCEPTION
22 SHALL BE DEEMED TO TAKE PLACE IN THE HOME OF A
23 NONCONSENTING PARTY ONLY IF BOTH THE CONSENTING AND
24 NONCONSENTING PARTIES ARE PHYSICALLY PRESENT IN THE HOME
25 AT THE TIME OF THE INTERCEPTION.

26 * * *

27 (5) ANY INVESTIGATIVE OR LAW ENFORCEMENT OFFICER, OR
28 COMMUNICATION COMMON CARRIER ACTING AT THE DIRECTION OF AN
29 INVESTIGATIVE OR LAW ENFORCEMENT OFFICER OR IN THE NORMAL
30 COURSE OF ITS BUSINESS, TO USE A PEN REGISTER OR TRAP AND

TRACE DEVICE AS PROVIDED IN [THIS CHAPTER] SUBCHAPTER E
(RELATING TO PEN REGISTERS AND TRAP AND TRACE DEVICES).

* * *

(14) A LAW ENFORCEMENT OFFICER WHO STOPS A VEHICLE TO
INTERCEPT ORAL COMMUNICATIONS OCCURRING DURING THE VEHICLE
STOP.

SECTION 4. SECTIONS 5706, 5707, 5708, 5709(3), 5710(A)(4)
AND 5711 OF TITLE 18 ARE AMENDED TO READ:

§ 5706. EXCEPTIONS TO PROHIBITIONS IN POSSESSION, SALE,
DISTRIBUTION, MANUFACTURE OR ADVERTISEMENT OF
ELECTRONIC, MECHANICAL OR OTHER DEVICES.

(A) UNLAWFUL ACTIVITIES.--IT SHALL NOT BE UNLAWFUL UNDER
THIS [CHAPTER] SUBCHAPTER FOR:

(1) A PROVIDER OF WIRE OR ELECTRONIC COMMUNICATION
SERVICE OR AN OFFICER, AGENT OR EMPLOYEE OF, OR A PERSON
UNDER CONTRACT WITH, SUCH A PROVIDER, IN THE NORMAL COURSE OF
THE BUSINESS OF PROVIDING THE WIRE OR ELECTRONIC
COMMUNICATION SERVICE; OR

(2) A PERSON UNDER CONTRACT WITH THE UNITED STATES, THE
COMMONWEALTH OR A POLITICAL SUBDIVISION THEREOF, A STATE OR A
POLITICAL SUBDIVISION THEREOF, OR AN OFFICER, AGENT OR
EMPLOYEE OF THE UNITED STATES, THE COMMONWEALTH OR A
POLITICAL SUBDIVISION THEREOF, OR A STATE OR A POLITICAL
SUBDIVISION THEREOF,
TO POSSESS, SELL, DISTRIBUTE, MANUFACTURE, ASSEMBLE OR ADVERTISE
AN ELECTRONIC, MECHANICAL OR OTHER DEVICE, WHILE ACTING IN
FURTHERANCE OF THE APPROPRIATE ACTIVITIES OF THE UNITED STATES,
THE COMMONWEALTH OR A POLITICAL SUBDIVISION THEREOF, A STATE OR
A POLITICAL SUBDIVISION THEREOF OR A PROVIDER OF WIRE OR
ELECTRONIC COMMUNICATION SERVICE.

1 (B) RESPONSIBILITY.--

2 (1) THE ATTORNEY GENERAL AND THE DISTRICT ATTORNEY OR
3 THEIR DESIGNEES SO DESIGNATED IN WRITING SHALL HAVE THE SOLE
4 RESPONSIBILITY TO BUY, POSSESS AND LOAN ANY ELECTRONIC,
5 MECHANICAL OR OTHER DEVICE WHICH IS TO BE USED BY
6 INVESTIGATIVE OR LAW ENFORCEMENT OFFICERS FOR PURPOSES OF
7 INTERCEPTION AS AUTHORIZED UNDER SECTION 5704(2) AND (12)
8 (RELATING TO EXCEPTIONS TO PROHIBITION OF INTERCEPTION AND
9 DISCLOSURE OF COMMUNICATIONS), 5712 (RELATING TO ISSUANCE OF
10 ORDER AND EFFECT), 5713 (RELATING TO EMERGENCY SITUATIONS) OR
11 5713.1 (RELATING TO EMERGENCY HOSTAGE AND BARRICADE
12 SITUATIONS).

13 (2) THE DIVISION OR BUREAU OR SECTION OF THE
14 PENNSYLVANIA STATE POLICE RESPONSIBLE FOR CONDUCTING THE
15 TRAINING IN THE TECHNICAL ASPECTS OF WIRETAPPING AND
16 ELECTRONIC SURVEILLANCE AS REQUIRED BY SECTION 5724 (RELATING
17 TO TRAINING) MAY BUY AND POSSESS ANY ELECTRONIC, MECHANICAL
18 OR OTHER DEVICE WHICH IS TO BE USED BY INVESTIGATIVE OR LAW
19 ENFORCEMENT OFFICERS FOR PURPOSES OF INTERCEPTION AS
20 AUTHORIZED UNDER SECTION 5704(2) AND (12), 5712, 5713 OR
21 5713.1 FOR THE PURPOSE OF TRAINING, PROVIDED, HOWEVER, THAT
22 ANY ELECTRONIC, MECHANICAL OR OTHER DEVICE BOUGHT OR
23 POSSESSED UNDER THIS PROVISION MAY BE LOANED TO OR USED BY
24 INVESTIGATIVE OR LAW ENFORCEMENT OFFICERS FOR PURPOSES OF
25 INTERCEPTION AS AUTHORIZED UNDER SECTION 5704(2) AND (12),
26 5712, 5713 OR 5713.1 ONLY UPON WRITTEN APPROVAL BY THE
27 ATTORNEY GENERAL OR A DEPUTY ATTORNEY GENERAL DESIGNATED IN
28 WRITING BY THE ATTORNEY GENERAL, OR THE DISTRICT ATTORNEY OR
29 AN ASSISTANT DISTRICT ATTORNEY DESIGNATED IN WRITING BY THE
30 DISTRICT ATTORNEY OF THE COUNTY WHEREIN THE INTERCEPTION IS

1 TO BE MADE.

2 (3) WITH THE PERMISSION OF THE ATTORNEY GENERAL OR A
3 DISTRICT ATTORNEY WHO HAS DESIGNATED ANY SUPERVISING LAW
4 ENFORCEMENT OFFICER FOR PURPOSES OF INTERCEPTIONS AS
5 AUTHORIZED UNDER SECTION 5713.1, THE LAW ENFORCEMENT AGENCY
6 WHICH EMPLOYS THE SUPERVISING LAW ENFORCEMENT OFFICER MAY
7 BUY, POSSESS, LOAN OR BORROW ANY ELECTRONIC, MECHANICAL OR
8 OTHER DEVICE WHICH IS TO BE USED BY INVESTIGATIVE OR LAW
9 ENFORCEMENT OFFICERS AT THE DIRECTION OF THE SUPERVISING LAW
10 ENFORCEMENT OFFICER SOLELY FOR THE PURPOSE OF INTERCEPTION AS
11 AUTHORIZED UNDER SECTIONS 5704(12) AND 5713.1.

12 § 5707. SEIZURE AND FORFEITURE OF ELECTRONIC, MECHANICAL OR
13 OTHER DEVICES.

14 ANY ELECTRONIC, MECHANICAL OR OTHER DEVICE POSSESSED, USED,
15 SENT, DISTRIBUTED, MANUFACTURED, OR ASSEMBLED IN VIOLATION OF
16 THIS [CHAPTER] SUBCHAPTER IS HEREBY DECLARED TO BE CONTRABAND
17 AND MAY BE SEIZED AND FORFEITED TO THE COMMONWEALTH.

18 § 5708. ORDER AUTHORIZING INTERCEPTION OF WIRE, ELECTRONIC OR
19 ORAL COMMUNICATIONS.

20 [(A) AUTHORIZATION.--EXCEPT IN CASES REFERRED TO IN
21 SUBSECTION (B), THE] THE ATTORNEY GENERAL, OR, DURING THE
22 ABSENCE OR INCAPACITY OF THE ATTORNEY GENERAL, A DEPUTY ATTORNEY
23 GENERAL DESIGNATED IN WRITING BY THE ATTORNEY GENERAL, OR THE
24 DISTRICT ATTORNEY OR, DURING THE ABSENCE OR INCAPACITY OF THE
25 DISTRICT ATTORNEY, AN ASSISTANT DISTRICT ATTORNEY DESIGNATED IN
26 WRITING BY THE DISTRICT ATTORNEY OF THE COUNTY WHEREIN THE
27 INTERCEPTION IS TO BE MADE, MAY MAKE WRITTEN APPLICATION TO ANY
28 SUPERIOR COURT JUDGE FOR AN ORDER AUTHORIZING THE INTERCEPTION
29 OF A WIRE, ELECTRONIC OR ORAL COMMUNICATION BY THE INVESTIGATIVE
30 OR LAW ENFORCEMENT OFFICERS OR AGENCY HAVING RESPONSIBILITY FOR

1 AN INVESTIGATION INVOLVING SUSPECTED CRIMINAL ACTIVITIES WHEN
2 SUCH INTERCEPTION MAY PROVIDE EVIDENCE OF THE COMMISSION OF ANY
3 OF THE FOLLOWING OFFENSES, OR MAY PROVIDE EVIDENCE AIDING IN THE
4 APPREHENSION OF THE PERPETRATOR OR PERPETRATORS OF ANY OF THE
5 FOLLOWING OFFENSES:

6 (1) UNDER THIS TITLE:

7 SECTION 911 (RELATING TO CORRUPT ORGANIZATIONS)

8 SECTION 2501 (RELATING TO CRIMINAL HOMICIDE)

9 SECTION 2502 (RELATING TO MURDER)

10 SECTION 2503 (RELATING TO VOLUNTARY MANSLAUGHTER)

11 SECTION 2702 (RELATING TO AGGRAVATED ASSAULT)

12 SECTION 2706 (RELATING TO TERRORISTIC THREATS)

13 SECTION 2901 (RELATING TO KIDNAPPING)

14 SECTION 3121 (RELATING TO RAPE)

15 SECTION 3123 (RELATING TO INVOLUNTARY DEVIATE SEXUAL
16 INTERCOURSE)

17 SECTION 3301 (RELATING TO ARSON AND RELATED OFFENSES)

18 SECTION 3302 (RELATING TO CAUSING OR RISKING
19 CATASTROPHE)

20 SECTION 3502 (RELATING TO BURGLARY)

21 SECTION 3701 (RELATING TO ROBBERY)

22 SECTION 3921 (RELATING TO THEFT BY UNLAWFUL TAKING OR
23 DISPOSITION)

24 SECTION 3922 (RELATING TO THEFT BY DECEPTION)

25 SECTION 3923 (RELATING TO THEFT BY EXTORTION)

26 SECTION 4701 (RELATING TO BRIBERY IN OFFICIAL AND
27 POLITICAL MATTERS)

28 SECTION 4702 (RELATING TO THREATS AND OTHER IMPROPER
29 INFLUENCE IN OFFICIAL AND POLITICAL MATTERS)

30 SECTION 5512 (RELATING TO LOTTERIES, ETC.)

SECTION 5513 (RELATING TO GAMBLING DEVICES, GAMBLING,
ETC.)

SECTION 5514 (RELATING TO POOL SELLING AND
BOOKMAKING)

SECTION 6106 (RELATING TO FIREARMS NOT TO BE CARRIED
WITHOUT A LICENSE)

(2) UNDER THIS TITLE, WHERE SUCH OFFENSE IS DANGEROUS TO
LIFE, LIMB OR PROPERTY AND PUNISHABLE BY IMPRISONMENT FOR
MORE THAN ONE YEAR:

SECTION 910 (RELATING TO MANUFACTURE, DISTRIBUTION OR
POSSESSION OF DEVICES FOR THEFT OF TELECOMMUNICATION
SERVICES)

SECTION 3925 (RELATING TO RECEIVING STOLEN PROPERTY)

SECTION 3926 (RELATING TO THEFT OF SERVICES)

SECTION 3927 (RELATING TO THEFT BY FAILURE TO MAKE
REQUIRED DISPOSITION OF FUNDS RECEIVED)

SECTION 3933 (RELATING TO UNLAWFUL USE OF COMPUTER)

SECTION 4108 (RELATING TO COMMERCIAL BRIBERY AND
BREACH OF DUTY TO ACT DISINTERESTEDLY)

SECTION 4109 (RELATING TO RIGGING PUBLICLY EXHIBITED
CONTEST)

SECTION 4117 (RELATING TO INSURANCE FRAUD)

SECTION 4305 (RELATING TO DEALING IN INFANT CHILDREN)

SECTION 4902 (RELATING TO PERJURY)

SECTION 4909 (RELATING TO WITNESS OR INFORMANT TAKING
BRIBE)

SECTION 4911 (RELATING TO TAMPERING WITH PUBLIC
RECORDS OR INFORMATION)

SECTION 4952 (RELATING TO INTIMIDATION OF WITNESSES
OR VICTIMS)

SECTION 4953 (RELATING TO RETALIATION AGAINST WITNESS
OR VICTIM)

SECTION 5101 (RELATING TO OBSTRUCTING ADMINISTRATION
OF LAW OR OTHER GOVERNMENTAL FUNCTION)

SECTION 5111 (RELATING TO DEALING IN PROCEEDS OF
UNLAWFUL ACTIVITIES)

SECTION 5504 (RELATING TO HARASSMENT BY COMMUNICATION
OR ADDRESS)

SECTION 5902 (RELATING TO PROSTITUTION AND RELATED
OFFENSES)

SECTION 7313 (RELATING TO BUYING OR EXCHANGING
FEDERAL FOOD ORDER COUPONS, STAMPS, AUTHORIZATION CARDS
OR ACCESS DEVICES)

(3) UNDER THE ACT OF MARCH 4, 1971 (P.L.6, NO.2), KNOWN
AS THE TAX REFORM CODE OF 1971, WHERE SUCH OFFENSE IS
DANGEROUS TO LIFE, LIMB OR PROPERTY AND PUNISHABLE BY
IMPRISONMENT FOR MORE THAN ONE YEAR:

SECTION 1272 (RELATING TO SALES OF UNSTAMPED
CIGARETTES)

SECTION 1273 (RELATING TO POSSESSION OF UNSTAMPED
CIGARETTES)

SECTION 1274 (RELATING TO COUNTERFEITING)

(4) ANY OFFENSE SET FORTH UNDER SECTION 13(A) OF THE ACT
OF APRIL 14, 1972 (P.L.233, NO.64), KNOWN AS THE CONTROLLED
SUBSTANCE, DRUG, DEVICE AND COSMETIC ACT, NOT INCLUDING THE
OFFENSE DESCRIBED IN CLAUSE (31) OF SECTION 13(A).

(5) ANY OFFENSE SET FORTH UNDER THE ACT OF NOVEMBER 15,
1972 (P.L.1227, NO.272).

(6) ANY CONSPIRACY TO COMMIT ANY OF THE OFFENSES SET
FORTH IN THIS SECTION.

1 [(B) EXCEPTION.--WHENEVER THE INTERCEPTION OF WIRE,
2 ELECTRONIC OR ORAL COMMUNICATION IS TO BE MADE BY AN
3 INVESTIGATIVE OFFICER EMPLOYED BY THE PENNSYLVANIA CRIME
4 COMMISSION, THE APPLICATION FOR THE AUTHORIZING ORDER SHALL BE
5 MADE BY THE ATTORNEY GENERAL OR, DURING THE ABSENCE OR
6 INCAPACITY OF THE ATTORNEY GENERAL, A DEPUTY ATTORNEY GENERAL
7 DESIGNATED IN WRITING BY THE ATTORNEY GENERAL.]

8 § 5709. APPLICATION FOR ORDER.

9 EACH APPLICATION FOR AN ORDER OF AUTHORIZATION TO INTERCEPT A
10 WIRE, ELECTRONIC OR ORAL COMMUNICATION SHALL BE MADE IN WRITING
11 UPON THE PERSONAL OATH OR AFFIRMATION OF THE ATTORNEY GENERAL OR
12 A DISTRICT ATTORNEY OF THE COUNTY WHEREIN THE INTERCEPTION IS TO
13 BE MADE AND SHALL CONTAIN ALL OF THE FOLLOWING:

14 * * *

15 (3) A SWORN STATEMENT BY THE INVESTIGATIVE OR LAW
16 ENFORCEMENT OFFICER WHO HAS KNOWLEDGE OF RELEVANT INFORMATION
17 JUSTIFYING THE APPLICATION, WHICH SHALL INCLUDE:

18 (I) THE IDENTITY OF THE PARTICULAR PERSON, IF KNOWN,
19 COMMITTING THE OFFENSE AND WHOSE COMMUNICATIONS ARE TO BE
20 INTERCEPTED.

21 (II) THE DETAILS AS TO THE PARTICULAR OFFENSE THAT
22 HAS BEEN, IS BEING, OR IS ABOUT TO BE COMMITTED.

23 (III) THE PARTICULAR TYPE OF COMMUNICATION TO BE
24 INTERCEPTED.

25 (IV) [A] EXCEPT AS PROVIDED IN SECTION 5712(H)
26 (RELATING TO ISSUANCE OF ORDER AND EFFECT), A SHOWING
27 THAT THERE IS PROBABLE CAUSE TO BELIEVE THAT SUCH
28 COMMUNICATION WILL BE COMMUNICATED ON THE WIRE
29 COMMUNICATION FACILITY INVOLVED OR AT THE PARTICULAR
30 PLACE WHERE THE ORAL COMMUNICATION IS TO BE INTERCEPTED.

1 (V) [THE] EXCEPT AS PROVIDED IN SECTION 5712(H), THE
2 CHARACTER AND LOCATION OF THE PARTICULAR WIRE
3 COMMUNICATION FACILITY INVOLVED OR THE PARTICULAR PLACE
4 WHERE THE ORAL COMMUNICATION IS TO BE INTERCEPTED.

5 (VI) A STATEMENT OF THE PERIOD OF TIME FOR WHICH THE
6 INTERCEPTION IS REQUIRED TO BE MAINTAINED, AND, IF THE
7 CHARACTER OF THE INVESTIGATION IS SUCH THAT THE
8 AUTHORIZATION FOR INTERCEPTION SHOULD NOT AUTOMATICALLY
9 TERMINATE WHEN THE DESCRIBED TYPE OF COMMUNICATION HAS
10 BEEN FIRST OBTAINED, A PARTICULAR STATEMENT OF FACTS
11 ESTABLISHING PROBABLE CAUSE TO BELIEVE THAT ADDITIONAL
12 COMMUNICATIONS OF THE SAME TYPE WILL OCCUR THEREAFTER.

13 (VII) A PARTICULAR STATEMENT OF FACTS SHOWING THAT
14 OTHER NORMAL INVESTIGATIVE PROCEDURES WITH RESPECT TO THE
15 OFFENSE HAVE BEEN TRIED AND HAVE FAILED, OR REASONABLY
16 APPEAR TO BE UNLIKELY TO SUCCEED IF TRIED OR ARE TOO
17 DANGEROUS TO EMPLOY.

18 * * *

19 § 5710. GROUNDS FOR ENTRY OF ORDER.

20 (A) APPLICATION.--UPON CONSIDERATION OF AN APPLICATION, THE
21 JUDGE MAY ENTER AN EX PARTE ORDER, AS REQUESTED OR AS MODIFIED,
22 AUTHORIZING THE INTERCEPTION OF WIRE, ELECTRONIC OR ORAL
23 COMMUNICATIONS ANYWHERE WITHIN THE COMMONWEALTH, IF THE JUDGE
24 DETERMINES ON THE BASIS OF THE FACTS SUBMITTED BY THE APPLICANT
25 THAT THERE IS PROBABLE CAUSE FOR BELIEF THAT ALL THE FOLLOWING
26 CONDITIONS EXIST:

27 * * *

28 (4) EXCEPT AS PROVIDED IN SECTION 5712(H) (RELATING TO
29 ISSUANCE OF ORDER AND EFFECT), THE FACILITY FROM WHICH, OR
30 THE PLACE WHERE, THE WIRE, ELECTRONIC OR ORAL COMMUNICATIONS

1 ARE TO BE INTERCEPTED, IS, HAS BEEN, OR IS ABOUT TO BE USED,
2 IN CONNECTION WITH THE COMMISSION OF SUCH OFFENSE, OR IS
3 LEASED TO, LISTED IN THE NAME OF, OR COMMONLY USED BY, SUCH
4 PERSON;

5 * * *

6 § 5711. PRIVILEGED COMMUNICATIONS.

7 NO OTHERWISE PRIVILEGED COMMUNICATION INTERCEPTED IN
8 ACCORDANCE WITH, OR IN VIOLATION OF, THE PROVISIONS OF THIS
9 [CHAPTER] SUBCHAPTER SHALL LOSE ITS PRIVILEGED CHARACTER.

10 SECTION 5. SECTION 5712(E), (F) AND (G) OF TITLE 18 ARE
11 AMENDED AND THE SECTION IS AMENDED BY ADDING A SUBSECTION TO
12 READ:

13 § 5712. ISSUANCE OF ORDER AND EFFECT.

14 * * *

15 (E) FINAL REPORT.--WHENEVER AN INTERCEPTION IS AUTHORIZED
16 PURSUANT TO THIS SECTION, A COMPLETE WRITTEN LIST OF NAMES OF
17 PARTICIPANTS AND EVIDENCE OF OFFENSES DISCOVERED, INCLUDING
18 THOSE NOT STATED IN THE APPLICATION FOR ORDER, SHALL BE FILED
19 WITH THE COURT [AT THE TIME] AS SOON AS PRACTICABLE AFTER THE
20 AUTHORIZED INTERCEPTION IS TERMINATED.

21 (F) ASSISTANCE.--AN ORDER AUTHORIZING THE INTERCEPTION OF A
22 WIRE, ELECTRONIC OR ORAL COMMUNICATION SHALL, UPON REQUEST OF
23 THE APPLICANT, DIRECT THAT A PROVIDER OF ELECTRONIC
24 COMMUNICATION SERVICE SHALL FURNISH THE APPLICANT FORTHWITH ALL
25 INFORMATION, FACILITIES AND TECHNICAL ASSISTANCE NECESSARY TO
26 ACCOMPLISH THE INTERCEPTION UNOBTRUSIVELY AND WITH A MINIMUM OF
27 INTERFERENCE WITH THE SERVICES THAT SUCH SERVICE PROVIDER IS
28 AFFORDING THE PERSON WHOSE COMMUNICATIONS ARE TO BE INTERCEPTED.
29 THE OBLIGATION OF A PROVIDER OF ELECTRONIC COMMUNICATION SERVICE
30 UNDER SUCH AN ORDER MAY INCLUDE, BUT IS NOT LIMITED TO,

1 INSTALLATION OF A PEN REGISTER AND TRAP AND TRACE DEVICE,
2 INCLUDING CONDUCTING AN IN-PROGRESS TRACE DURING AN
3 INTERCEPTION. ANY PROVIDER OF ELECTRONIC COMMUNICATION SERVICE
4 FURNISHING SUCH FACILITIES OR TECHNICAL ASSISTANCE SHALL BE
5 COMPENSATED THEREFOR BY THE APPLICANT FOR REASONABLE EXPENSES
6 INCURRED IN PROVIDING THE FACILITIES OR ASSISTANCE. THE SERVICE
7 PROVIDER SHALL BE IMMUNE FROM CIVIL AND CRIMINAL LIABILITY FOR
8 ANY ASSISTANCE RENDERED TO THE APPLICANT PURSUANT TO THIS
9 SECTION.

10 (G) ENTRY BY LAW ENFORCEMENT OFFICERS.--AN ORDER AUTHORIZING
11 THE INTERCEPTION OF A WIRE, ELECTRONIC OR ORAL COMMUNICATION
12 SHALL, IF REQUESTED, AUTHORIZE THE ENTRY OF PREMISES OR
13 FACILITIES SPECIFIED IN SUBSECTION (A)(3), OR PREMISES NECESSARY
14 TO OBTAIN ACCESS TO THE PREMISES OR FACILITIES SPECIFIED IN
15 SUBSECTION (A)(3), BY THE LAW ENFORCEMENT OFFICERS SPECIFIED IN
16 SUBSECTION (A)(1), AS OFTEN AS NECESSARY SOLELY FOR THE PURPOSES
17 OF INSTALLING, MAINTAINING OR REMOVING AN ELECTRONIC, MECHANICAL
18 OR OTHER DEVICE OR DEVICES PROVIDED THAT SUCH ENTRY IS
19 REASONABLY NECESSARY TO ACCOMPLISH THE PURPOSES OF THIS
20 [CHAPTER] SUBCHAPTER AND PROVIDED THAT THE JUDGE WHO ISSUES THE
21 ORDER SHALL BE NOTIFIED OF THE TIME AND METHOD OF EACH SUCH
22 ENTRY PRIOR TO ENTRY IF PRACTICAL AND, IN ANY CASE, WITHIN 48
23 HOURS OF ENTRY.

24 (H) ROVING WIRETAPS.--THE REQUIREMENTS OF SUBSECTION (A)(3)
25 RELATING TO THE SPECIFICATION OF THE FACILITIES FROM WHICH, OR
26 THE PLACE WHERE, THE COMMUNICATION IS TO BE INTERCEPTED DO NOT
27 APPLY IF:

28 (1) IN THE CASE OF AN APPLICATION WITH RESPECT TO THE
29 INTERCEPTION OF AN ORAL COMMUNICATION:

30 (I) THE APPLICATION CONTAINS A FULL AND COMPLETE

1 STATEMENT AS TO WHY SUCH SPECIFICATION IS NOT PRACTICAL
2 AND IDENTIFIES THE PERSON COMMITTING THE OFFENSE AND
3 WHOSE COMMUNICATIONS ARE TO BE INTERCEPTED; AND

4 (II) THE JUDGE FINDS THAT SUCH SPECIFICATION IS NOT
5 PRACTICAL.

6 (2) IN THE CASE OF AN APPLICATION WITH RESPECT TO A WIRE
7 OR ELECTRONIC COMMUNICATION:

8 (I) THE APPLICATION IDENTIFIES THE PERSON BELIEVED
9 TO BE COMMITTING THE OFFENSE AND WHOSE COMMUNICATIONS ARE
10 TO BE INTERCEPTED AND THE APPLICANT MAKES A SHOWING OF A
11 PURPOSE, ON THE PART OF THAT PERSON, TO THWART
12 INTERCEPTION BY CHANGING FACILITIES; AND

13 (II) THE JUDGE FINDS THAT SUCH PURPOSE HAS BEEN
14 ADEQUATELY SHOWN.

15 SECTION 6. SECTIONS 5713(A), 5713.1(B) AND (C), 5714(A),
16 5715, 5717, 5718, 5719 AND 5720 OF TITLE 18 ARE AMENDED TO READ:
17 § 5713. EMERGENCY SITUATIONS.

18 (A) APPLICATION.--WHENEVER, UPON INFORMAL APPLICATION BY THE
19 ATTORNEY GENERAL OR A DESIGNATED DEPUTY ATTORNEY GENERAL
20 AUTHORIZED IN WRITING BY THE ATTORNEY GENERAL OR A DISTRICT
21 ATTORNEY OR AN ASSISTANT DISTRICT ATTORNEY AUTHORIZED IN WRITING
22 BY THE DISTRICT ATTORNEY OF A COUNTY WHEREIN THE INTERCEPTION IS
23 TO BE MADE, A JUDGE DETERMINES THERE ARE GROUNDS UPON WHICH AN
24 ORDER COULD BE ISSUED PURSUANT TO THIS CHAPTER, AND THAT AN
25 EMERGENCY SITUATION EXISTS WITH RESPECT TO THE INVESTIGATION OF
26 AN OFFENSE DESIGNATED IN SECTION 5708 (RELATING TO ORDER
27 AUTHORIZING INTERCEPTION OF WIRE, ELECTRONIC OR ORAL
28 COMMUNICATIONS), AND INVOLVING CONSPIRATORIAL ACTIVITIES
29 CHARACTERISTIC OF ORGANIZED CRIME OR A SUBSTANTIAL DANGER TO
30 LIFE OR LIMB, DICTATING AUTHORIZATION FOR IMMEDIATE INTERCEPTION

1 OF WIRE, ELECTRONIC OR ORAL COMMUNICATIONS BEFORE AN APPLICATION
2 FOR AN ORDER COULD WITH DUE DILIGENCE BE SUBMITTED TO HIM AND
3 ACTED UPON, THE JUDGE MAY GRANT ORAL APPROVAL FOR SUCH
4 INTERCEPTION WITHOUT AN ORDER, CONDITIONED UPON THE FILING WITH
5 HIM, WITHIN 48 HOURS THEREAFTER, OF AN APPLICATION FOR AN ORDER
6 WHICH, IF GRANTED, SHALL RECITE THE ORAL APPROVAL AND BE
7 RETROACTIVE TO THE TIME OF SUCH ORAL APPROVAL. SUCH INTERCEPTION
8 SHALL IMMEDIATELY TERMINATE WHEN THE COMMUNICATION SOUGHT IS
9 OBTAINED OR WHEN THE APPLICATION FOR AN ORDER IS DENIED,
10 WHICHEVER IS EARLIER. IN THE EVENT NO APPLICATION FOR AN ORDER
11 IS MADE, THE CONTENT OF ANY WIRE, ELECTRONIC OR ORAL
12 COMMUNICATION INTERCEPTED SHALL BE TREATED AS HAVING BEEN
13 OBTAINED IN VIOLATION OF THIS [CHAPTER] SUBCHAPTER.

14 * * *

15 § 5713.1. EMERGENCY HOSTAGE AND BARRICADE SITUATIONS.

16 * * *

17 (B) PROCEDURE.--A SUPERVISING LAW ENFORCEMENT OFFICER WHO
18 REASONABLY DETERMINES THAT AN EMERGENCY SITUATION EXISTS THAT
19 REQUIRES A WIRE OR ORAL COMMUNICATION TO BE INTERCEPTED BEFORE
20 AN ORDER AUTHORIZING SUCH INTERCEPTION CAN, WITH DUE DILIGENCE,
21 BE OBTAINED, AND WHO DETERMINES THAT THERE ARE GROUNDS UPON
22 WHICH AN ORDER COULD BE ENTERED UNDER THIS CHAPTER TO AUTHORIZE
23 SUCH INTERCEPTION, MAY INTERCEPT SUCH WIRE OR ORAL
24 COMMUNICATION. AN APPLICATION FOR AN ORDER APPROVING THE
25 INTERCEPTION MUST BE MADE BY THE SUPERVISING LAW ENFORCEMENT
26 OFFICER IN ACCORDANCE WITH SECTION 5709 (RELATING TO APPLICATION
27 FOR ORDER) WITHIN 48 HOURS AFTER THE INTERCEPTION HAS OCCURRED
28 OR BEGINS TO OCCUR. INTERCEPTIONS PURSUANT TO THIS SECTION SHALL
29 BE CONDUCTED IN ACCORDANCE WITH THE PROCEDURES OF THIS [CHAPTER]
30 SUBCHAPTER. UPON REQUEST OF THE SUPERVISING LAW ENFORCEMENT

1 OFFICER WHO DETERMINES TO AUTHORIZE INTERCEPTIONS OF WIRE
2 COMMUNICATIONS UNDER THIS SECTION, A PROVIDER OF ELECTRONIC
3 COMMUNICATION SERVICE SHALL PROVIDE ASSISTANCE AND BE
4 COMPENSATED THEREFOR AS PROVIDED IN SECTION 5712(F) (RELATING TO
5 ISSUANCE OF ORDER AND EFFECT). IN THE ABSENCE OF AN ORDER, SUCH
6 INTERCEPTION SHALL IMMEDIATELY TERMINATE WHEN THE SITUATION
7 GIVING RISE TO THE HOSTAGE OR BARRICADE SITUATION ENDS OR WHEN
8 THE APPLICATION FOR THE ORDER IS DENIED, WHICHEVER IS EARLIER.
9 IN THE EVENT SUCH APPLICATION FOR APPROVAL IS DENIED OR IN ANY
10 OTHER CASE WHERE THE INTERCEPTION IS TERMINATED WITHOUT AN ORDER
11 HAVING BEEN ISSUED, THE CONTENTS OF ANY WIRE OR ORAL
12 COMMUNICATION INTERCEPTED SHALL BE TREATED AS HAVING BEEN
13 OBTAINED IN VIOLATION OF THIS [CHAPTER] SUBCHAPTER, AND AN
14 INVENTORY SHALL BE SERVED AS PROVIDED IN SECTION 5716 (RELATING
15 TO SERVICE OF INVENTORY AND INSPECTION OF INTERCEPTED
16 COMMUNICATIONS). THEREAFTER, THE SUPERVISING LAW ENFORCEMENT
17 OFFICER SHALL FOLLOW THE PROCEDURES SET FORTH IN SECTION 5713(B)
18 (RELATING TO EMERGENCY SITUATIONS).

19 (C) DEFENSE.--A GOOD FAITH RELIANCE ON THE PROVISIONS OF
20 THIS SECTION SHALL BE A COMPLETE DEFENSE TO ANY CIVIL OR
21 CRIMINAL ACTION BROUGHT UNDER THIS [CHAPTER] SUBCHAPTER OR ANY
22 OTHER STATUTE AGAINST ANY LAW ENFORCEMENT OFFICER OR AGENCY
23 CONDUCTING ANY INTERCEPTIONS PURSUANT TO THIS SECTION AS WELL AS
24 A PROVIDER OF ELECTRONIC COMMUNICATION SERVICE WHO IS REQUIRED
25 TO PROVIDE ASSISTANCE IN CONDUCTING SUCH INTERCEPTIONS UPON
26 REQUEST OF A SUPERVISING LAW ENFORCEMENT OFFICER.

27 * * *

28 § 5714. RECORDING OF INTERCEPTED COMMUNICATIONS.

29 (A) RECORDING AND MONITORING.--ANY WIRE, ELECTRONIC OR ORAL
30 COMMUNICATION INTERCEPTED IN ACCORDANCE WITH THIS [CHAPTER]

1 SUBCHAPTER SHALL, IF PRACTICABLE, BE RECORDED BY TAPE OR OTHER
2 COMPARABLE METHOD. THE RECORDING SHALL BE DONE IN SUCH A WAY AS
3 WILL PROTECT IT FROM EDITING OR OTHER ALTERATION. WHENEVER AN
4 INTERCEPTION IS BEING MONITORED, THE MONITOR SHALL BE AN
5 INVESTIGATIVE OR LAW ENFORCEMENT OFFICER CERTIFIED UNDER SECTION
6 5724 (RELATING TO TRAINING), AND WHERE PRACTICABLE, KEEP A
7 SIGNED, WRITTEN RECORD WHICH SHALL INCLUDE THE FOLLOWING:

8 (1) THE DATE AND HOURS OF SURVEILLANCE.

9 (2) THE TIME AND DURATION OF EACH INTERCEPTED
10 COMMUNICATION.

11 (3) THE PARTICIPANT, IF KNOWN, IN EACH INTERCEPTED
12 CONVERSATION.

13 (4) A SUMMARY OF THE CONTENT OF EACH INTERCEPTED
14 COMMUNICATION.

15 * * *

16 § 5715. SEALING OF APPLICATIONS, ORDERS AND SUPPORTING PAPERS.

17 APPLICATIONS MADE, FINAL REPORTS, AND ORDERS GRANTED PURSUANT
18 TO THIS [CHAPTER] SUBCHAPTER AND SUPPORTING PAPERS AND MONITOR'S
19 RECORDS SHALL BE SEALED BY THE COURT AND SHALL BE HELD IN
20 CUSTODY AS THE COURT SHALL DIRECT AND SHALL NOT BE DESTROYED
21 EXCEPT ON ORDER OF THE COURT AND IN ANY EVENT SHALL BE KEPT FOR
22 TEN YEARS. THEY MAY BE DISCLOSED ONLY UPON A SHOWING OF GOOD
23 CAUSE BEFORE A COURT OF COMPETENT JURISDICTION EXCEPT THAT ANY
24 INVESTIGATIVE OR LAW ENFORCEMENT OFFICER MAY DISCLOSE SUCH
25 APPLICATIONS, ORDERS AND SUPPORTING PAPERS AND MONITOR'S RECORDS
26 TO INVESTIGATIVE OR LAW ENFORCEMENT OFFICERS OF THIS OR ANOTHER
27 STATE, ANY OF ITS POLITICAL SUBDIVISIONS, OR OF THE UNITED
28 STATES TO THE EXTENT THAT SUCH DISCLOSURE IS APPROPRIATE TO THE
29 PROPER PERFORMANCE OF THE OFFICIAL DUTIES OF THE OFFICER MAKING
30 OR RECEIVING THE DISCLOSURE. IN ADDITION TO ANY REMEDIES AND

1 PENALTIES PROVIDED BY THIS [CHAPTER] SUBCHAPTER, ANY VIOLATION
2 OF THE PROVISIONS OF THIS SECTION MAY BE PUNISHED AS CONTEMPT OF
3 THE COURT.

4 § 5717. [DISCLOSURE] INVESTIGATIVE DISCLOSURE OR USE OF
5 CONTENTS OF WIRE, ELECTRONIC OR ORAL COMMUNICATIONS
6 OR DERIVATIVE EVIDENCE.

7 (A) [INVESTIGATIVE ACTIVITIES.--]LAW ENFORCEMENT
8 PERSONNEL.--ANY INVESTIGATIVE OR LAW ENFORCEMENT OFFICER WHO,
9 [BY ANY MEANS AUTHORIZED BY THIS CHAPTER,] UNDER SUBSECTION (B)
10 OR (C), HAS OBTAINED KNOWLEDGE OF THE CONTENTS OF ANY WIRE,
11 ELECTRONIC OR ORAL COMMUNICATION, OR EVIDENCE DERIVED THEREFROM,
12 OR WHO HAS OTHERWISE OBTAINED SUCH KNOWLEDGE IN GOOD FAITH
13 RELIANCE ON THE PROVISIONS OF THIS CHAPTER, MAY DISCLOSE SUCH
14 CONTENTS OR EVIDENCE TO ANOTHER INVESTIGATIVE OR LAW ENFORCEMENT
15 OFFICER[, INCLUDING ANOTHER INVESTIGATIVE OR LAW ENFORCEMENT
16 OFFICER OF ANOTHER STATE OR POLITICAL SUBDIVISION THEREOF, OR
17 MAKE USE OF SUCH CONTENTS OR EVIDENCE] TO THE EXTENT THAT SUCH
18 DISCLOSURE [OR USE] IS APPROPRIATE TO THE PROPER PERFORMANCE OF
19 THE OFFICIAL DUTIES OF THE OFFICER MAKING OR RECEIVING THE
20 DISCLOSURE.

21 (A.1) USE OF INFORMATION.--ANY INVESTIGATIVE OR LAW
22 ENFORCEMENT OFFICER WHO, BY ANY MEANS AUTHORIZED BY THIS
23 SUBCHAPTER, HAS OBTAINED KNOWLEDGE OF THE CONTENTS OF ANY WIRE,
24 ELECTRONIC OR ORAL COMMUNICATION OR EVIDENCE DERIVED THEREFROM
25 MAY USE SUCH CONTENTS OR EVIDENCE TO THE EXTENT SUCH USE IS
26 APPROPRIATE TO THE PROPER PERFORMANCE OF HIS OFFICIAL DUTIES.

27 (A.2) CIVILIANS.--ANY PERSON OTHER THAN AN INVESTIGATIVE OR
28 LAW ENFORCEMENT OFFICER WHO AS A PARTY TO THE COMMUNICATION HAS
29 OBTAINED KNOWLEDGE OF THE CONTENTS OF ANY WIRE, ELECTRONIC OR
30 ORAL COMMUNICATION, OR EVIDENCE DERIVED THEREFROM, MAY DISCLOSE

1 SUCH CONTENTS OR EVIDENCE TO AN INVESTIGATIVE OR LAW ENFORCEMENT
2 OFFICER.

3 (B) [EVIDENCE.--] OTHERWISE AUTHORIZED PERSONNEL.--ANY
4 PERSON WHO [BY ANY MEANS AUTHORIZED BY THIS CHAPTER,] IN GOOD
5 FAITH RELIANCE ON THE LAWS OF ANOTHER STATE OR THE FEDERAL
6 GOVERNMENT, HAS OBTAINED KNOWLEDGE OF THE CONTENTS OF ANY WIRE,
7 ELECTRONIC OR ORAL COMMUNICATION, OR EVIDENCE DERIVED THEREFROM,
8 MAY DISCLOSE SUCH CONTENTS OR EVIDENCE TO AN INVESTIGATIVE OR
9 LAW ENFORCEMENT OFFICER AND MAY DISCLOSE SUCH CONTENTS OR
10 EVIDENCE WHILE GIVING TESTIMONY UNDER OATH OR AFFIRMATION IN ANY
11 CRIMINAL [PROCEEDING], QUASI-CRIMINAL, PROFESSIONAL DISCIPLINARY
12 OR FORFEITURE PROCEEDING, INCLUDING A PROCEEDING TO RECOVER THE
13 CIVIL PENALTY PROVIDED UNDER SECTION 5111(C) (RELATING TO
14 DEALING IN PROCEEDS OF UNLAWFUL ACTIVITIES), IN ANY COURT OF
15 THIS COMMONWEALTH OR OF ANOTHER STATE OR OF THE UNITED STATES OR
16 BEFORE ANY STATE OR FEDERAL GRAND JURY OR INVESTIGATING GRAND
17 JURY.

18 [(C) OTHERWISE AUTHORIZED PERSONNEL.--ANY PERSON WHO, BY ANY
19 MEANS AUTHORIZED BY THE LAWS OF ANOTHER STATE OR THE FEDERAL
20 GOVERNMENT, HAS OBTAINED KNOWLEDGE OF THE CONTENTS OF ANY WIRE,
21 ELECTRONIC OR ORAL COMMUNICATION, OR EVIDENCE DERIVED THEREFROM,
22 MAY DISCLOSE SUCH CONTENTS OR EVIDENCE TO AN INVESTIGATIVE OR
23 LAW ENFORCEMENT OFFICER AND MAY DISCLOSE SUCH CONTENTS OR
24 EVIDENCE WHERE OTHERWISE ADMISSIBLE WHILE GIVING TESTIMONY UNDER
25 OATH OR AFFIRMATION IN ANY PROCEEDING IN ANY COURT OF THIS
26 COMMONWEALTH.]

27 § 5718. INTERCEPTION OF COMMUNICATIONS RELATING TO OTHER
28 OFFENSES.

29 WHEN AN INVESTIGATIVE OR LAW ENFORCEMENT OFFICER, WHILE
30 ENGAGED IN COURT AUTHORIZED INTERCEPTIONS OF WIRE, ELECTRONIC OR

1 ORAL COMMUNICATIONS IN THE MANNER AUTHORIZED HEREIN, INTERCEPTS
2 WIRE, ELECTRONIC OR ORAL COMMUNICATIONS RELATING TO OFFENSES
3 OTHER THAN THOSE SPECIFIED IN THE ORDER OF AUTHORIZATION, THE
4 CONTENTS THEREOF, AND EVIDENCE DERIVED THEREFROM, MAY BE
5 DISCLOSED OR USED AS PROVIDED IN SECTION 5717(A) (RELATING TO
6 DISCLOSURE OR USE OF CONTENTS OF WIRE, ELECTRONIC OR ORAL
7 COMMUNICATIONS OR DERIVATIVE EVIDENCE). SUCH CONTENTS AND
8 EVIDENCE MAY BE DISCLOSED IN TESTIMONY UNDER OATH OR AFFIRMATION
9 IN ANY CRIMINAL PROCEEDING IN ANY COURT OF THIS COMMONWEALTH OR
10 OF ANOTHER STATE OR OF THE UNITED STATES OR BEFORE ANY STATE OR
11 FEDERAL GRAND JURY WHEN AUTHORIZED BY A JUDGE WHO FINDS ON
12 SUBSEQUENT APPLICATION THAT THE CONTENTS WERE OTHERWISE
13 INTERCEPTED IN ACCORDANCE WITH THE PROVISIONS OF THIS [CHAPTER]
14 SUBCHAPTER. SUCH APPLICATION SHALL BE MADE AS SOON AS
15 PRACTICABLE.

16 § 5719. UNLAWFUL USE OR DISCLOSURE OF EXISTENCE OF ORDER
17 CONCERNING INTERCEPTED COMMUNICATION.

18 EXCEPT AS SPECIFICALLY AUTHORIZED PURSUANT TO THIS [CHAPTER]
19 SUBCHAPTER ANY PERSON WHO WILLFULLY USES OR DISCLOSES THE
20 EXISTENCE OF AN ORDER AUTHORIZING INTERCEPTION OF A WIRE,
21 ELECTRONIC OR ORAL COMMUNICATION IS GUILTY OF A MISDEMEANOR OF
22 THE SECOND DEGREE.

23 § 5720. SERVICE OF COPY OF ORDER AND APPLICATION BEFORE
24 DISCLOSURE OF INTERCEPTED COMMUNICATION IN TRIAL,
25 HEARING OR PROCEEDING.

26 THE CONTENTS OF ANY WIRE, ELECTRONIC OR ORAL COMMUNICATION
27 INTERCEPTED IN ACCORDANCE WITH THE PROVISIONS OF THIS [CHAPTER]
28 SUBCHAPTER, OR EVIDENCE DERIVED THEREFROM, SHALL NOT BE
29 DISCLOSED IN ANY TRIAL, HEARING, OR OTHER ADVERSARY PROCEEDING
30 BEFORE ANY COURT OF THE COMMONWEALTH UNLESS, NOT LESS THAN TEN

1 DAYS BEFORE THE TRIAL, HEARING OR PROCEEDING THE PARTIES TO THE
2 ACTION HAVE BEEN SERVED WITH A COPY OF THE ORDER, THE
3 ACCOMPANYING APPLICATION AND THE FINAL REPORT UNDER WHICH THE
4 INTERCEPTION WAS AUTHORIZED OR, IN THE CASE OF AN INTERCEPTION
5 UNDER SECTION 5704 (RELATING TO EXCEPTIONS TO PROHIBITION OF
6 INTERCEPTION AND DISCLOSURE OF COMMUNICATIONS), NOTICE OF THE
7 FACT AND NATURE OF THE INTERCEPTION. THE SERVICE OF INVENTORY,
8 ORDER, APPLICATION, AND FINAL REPORT REQUIRED BY THIS SECTION
9 MAY BE WAIVED BY THE COURT ONLY WHERE IT FINDS THAT THE SERVICE
10 IS NOT FEASIBLE AND THAT THE PARTIES WILL NOT BE PREJUDICED BY
11 THE FAILURE TO MAKE THE SERVICE.

12 SECTION 7. SECTION 5721 OF TITLE 18 IS REPEALED.

13 SECTION 8. TITLE 18 IS AMENDED BY ADDING A SECTION TO READ:

14 § 5721.1. EVIDENTIARY DISCLOSURE OF CONTENTS OF INTERCEPTED
15 COMMUNICATION OR DERIVATIVE EVIDENCE.

16 (A) DISCLOSURE IN EVIDENCE GENERALLY.--

17 (1) EXCEPT AS PROVIDED IN PARAGRAPH (2), NO PERSON SHALL
18 DISCLOSE THE CONTENTS OF ANY WIRE, ELECTRONIC OR ORAL
19 COMMUNICATION, OR EVIDENCE DERIVED THEREFROM, IN ANY
20 PROCEEDING IN ANY COURT, BOARD OR AGENCY OF THIS
21 COMMONWEALTH.

22 (2) ANY INVESTIGATIVE OR LAW ENFORCEMENT OFFICER WHO HAS
23 OBTAINED KNOWLEDGE OF THE CONTENTS OF ANY WIRE, ELECTRONIC OR
24 ORAL COMMUNICATION, OR EVIDENCE DERIVED THEREFROM, WHICH IS
25 PROPERLY SUBJECT TO DISCLOSURE UNDER SECTION 5717(A)
26 (RELATING TO INVESTIGATIVE DISCLOSURE OR USE OF CONTENTS OF
27 WIRE, ELECTRONIC OR ORAL COMMUNICATIONS OR DERIVATIVE
28 EVIDENCE), MAY ALSO DISCLOSE SUCH CONTENTS OR EVIDENCE IN ANY
29 MATTER RELATING TO ANY CRIMINAL, QUASI-CRIMINAL, FORFEITURE,
30 ADMINISTRATIVE ENFORCEMENT OR PROFESSIONAL DISCIPLINARY

1 PROCEEDINGS IN ANY COURT, BOARD OR AGENCY OF THIS
2 COMMONWEALTH OR OF ANOTHER STATE OR OF THE UNITED STATES OR
3 BEFORE ANY STATE OR FEDERAL GRAND JURY OR INVESTIGATING GRAND
4 JURY. ONCE SUCH DISCLOSURE HAS BEEN MADE BY AN INVESTIGATIVE
5 OR LAW ENFORCEMENT OFFICER, THEN ANY PERSON MAY DISCLOSE SUCH
6 CONTENTS OR EVIDENCE IN ANY SUCH PROCEEDING.

7 (3) NOTWITHSTANDING THE PROVISIONS OF PARAGRAPH (2), NO
8 DISCLOSURE IN ANY SUCH PROCEEDING SHALL BE MADE SO LONG AS
9 ANY ORDER EXCLUDING SUCH CONTENTS OR EVIDENCE PURSUANT TO THE
10 PROVISIONS OF SUBSECTION (B) IS IN EFFECT.

11 (B) MOTION TO EXCLUDE.--ANY AGGRIEVED PERSON WHO IS A PARTY
12 TO ANY PROCEEDING IN ANY COURT, BOARD OR AGENCY OF THIS
13 COMMONWEALTH MAY MOVE TO EXCLUDE THE CONTENTS OF ANY WIRE,
14 ELECTRONIC OR ORAL COMMUNICATION, OR EVIDENCE DERIVED THEREFROM,
15 ON ANY OF THE FOLLOWING GROUNDS:

16 (1) UNLESS INTERCEPTED IN GOOD FAITH RELIANCE UPON AN
17 EXCEPTION SET FORTH IN SECTION 5704 (RELATING TO EXCEPTIONS
18 TO PROHIBITION OF INTERCEPTION AND DISCLOSURE OF
19 COMMUNICATIONS), THE INTERCEPTION WAS MADE WITHOUT PRIOR
20 PROCUREMENT OF AN ORDER OF AUTHORIZATION UNDER SECTION 5712
21 (RELATING TO ISSUANCE OF ORDER AND EFFECT) OR AN ORDER OF
22 APPROVAL UNDER SECTION 5713(A) (RELATING TO EMERGENCY
23 SITUATIONS) OR 5713.1(B) (RELATING TO EMERGENCY HOSTAGE AND
24 BARRICADE SITUATIONS).

25 (2) THE ORDER OF AUTHORIZATION ISSUED UNDER SECTION 5712
26 OR THE ORDER OF APPROVAL ISSUED UNDER SECTION 5713(A) OR
27 5713.1(B) WAS NOT SUPPORTED BY PROBABLE CAUSE WITH RESPECT TO
28 THE MATTERS SET FORTH IN SECTION 5710(A)(1) AND (2) (RELATING
29 TO GROUNDS FOR ENTRY OF ORDER).

30 (3) THE ORDER OF AUTHORIZATION ISSUED UNDER SECTION 5712

1 IS MATERIALLY INSUFFICIENT ON ITS FACE AND THE INTERCEPTION
2 WAS NOT MADE IN GOOD FAITH RELIANCE ON THE ORDER.

3 (4) THE INTERCEPTION MATERIALLY DEVIATED FROM THE
4 REQUIREMENTS OF THE ORDER OF AUTHORIZATION AND WAS NOT MADE
5 IN GOOD FAITH.

6 (5) WITH RESPECT TO INTERCEPTIONS PURSUANT TO SECTION
7 5704(2), THE CONSENT TO THE INTERCEPTION WAS COERCED BY THE
8 COMMONWEALTH.

9 (6) WHERE REQUIRED PURSUANT TO SECTION 5704(2)(III), THE
10 INTERCEPTION WAS MADE WITHOUT PRIOR PROCUREMENT OF A COURT
11 ORDER, OR WITHOUT PROBABLE CAUSE.

12 (C) PROCEDURE.--

13 (1) THE MOTION SHALL BE MADE IN ACCORDANCE WITH THE
14 APPLICABLE RULES OF PROCEDURE GOVERNING SUCH PROCEEDINGS. THE
15 COURT, BOARD OR AGENCY, UPON THE FILING OF SUCH MOTION, SHALL
16 MAKE AVAILABLE TO THE MOVANT OR HIS COUNSEL THE INTERCEPTED
17 COMMUNICATION AND EVIDENCE DERIVED THEREFROM.

18 (2) IN CONSIDERING A MOTION TO EXCLUDE UNDER SUBSECTION
19 (B)(2), BOTH THE WRITTEN APPLICATION UNDER SECTION 5710(A)
20 AND ALL MATTERS THAT WERE PRESENTED TO THE JUDGE UNDER
21 SECTION 5710(B) SHALL BE ADMISSIBLE.

22 (3) THE MOVANT SHALL BEAR THE BURDEN OF PROVING BY A
23 PREPONDERANCE OF THE EVIDENCE THE GROUNDS FOR EXCLUSION
24 ASSERTED UNDER SUBSECTION (B)(3) AND (4), PROVIDED, HOWEVER,
25 THAT THE RESPONDENT SHALL HAVE THE BURDEN OF DEMONSTRATING
26 THE COMMONWEALTH'S GOOD FAITH BY A PREPONDERANCE OF THE
27 EVIDENCE.

28 (4) WITH RESPECT TO EXCLUSION CLAIMS UNDER SUBSECTION
29 (B)(1), (2) AND (5), THE RESPONDENT SHALL BEAR THE BURDEN OF
30 PROOF BY A PREPONDERANCE OF THE EVIDENCE.

1 (5) WITH RESPECT TO EXCLUSION CLAIMS UNDER SUBSECTION
2 (B)(6), THE MOVANT SHALL HAVE THE INITIAL BURDEN OF
3 DEMONSTRATING BY A PREPONDERANCE OF THE EVIDENCE THAT THE
4 INTERCEPTION TOOK PLACE IN HIS HOME. ONCE HE MEETS THIS
5 BURDEN, THE BURDEN SHALL SHIFT TO THE RESPONDENT TO
6 DEMONSTRATE BY A PREPONDERANCE OF THE EVIDENCE THAT THE
7 INTERCEPTION WAS IN ACCORDANCE WITH SECTION 5704(2)(III).

8 (6) EVIDENCE SHALL NOT BE DEEMED TO HAVE BEEN DERIVED
9 FROM COMMUNICATIONS EXCLUDABLE UNDER SUBSECTION (B) IF THE
10 RESPONDENT CAN DEMONSTRATE BY A PREPONDERANCE OF THE EVIDENCE
11 THAT THE COMMONWEALTH OR THE RESPONDENT HAD A BASIS
12 INDEPENDENT OF THE EXCLUDED COMMUNICATION FOR DISCOVERING
13 SUCH EVIDENCE, OR THAT SUCH EVIDENCE WOULD HAVE BEEN
14 INEVITABLY DISCOVERED BY THE COMMONWEALTH OR THE RESPONDENT
15 ABSENT THE EXCLUDED COMMUNICATION.

16 (D) APPEAL.--IN ADDITION TO ANY OTHER RIGHT OF APPEAL, THE
17 COMMONWEALTH SHALL HAVE THE RIGHT TO APPEAL FROM AN ORDER
18 GRANTING A MOTION TO EXCLUDE IF THE OFFICIAL TO WHOM THE ORDER
19 AUTHORIZING THE INTERCEPT WAS GRANTED SHALL CERTIFY TO THE COURT
20 THAT THE APPEAL IS NOT TAKEN FOR PURPOSES OF DELAY. THE APPEAL
21 SHALL BE TAKEN IN ACCORDANCE WITH THE PROVISIONS OF TITLE 42
22 (RELATING TO JUDICIARY AND JUDICIAL PROCEDURE).

23 (E) EXCLUSIVENESS OF REMEDIES AND SANCTIONS.--EXCEPT AS
24 PROVIDED IN THIS SECTION, NO EXCLUSION REMEDY SHALL EXIST OR BE
25 CREATED FOR VIOLATIONS OF THIS CHAPTER.

26 SECTION 9. SECTIONS 5722, 5723, 5724, 5725, 5726, 5743(D)
27 AND (E), 5744(B), 5747(D), 5771, 5772(A), 5773(A), 5774, 5775
28 HEADING, AND 5781 OF TITLE 18 ARE AMENDED TO READ:

29 § 5722. REPORT BY ISSUING OR DENYING JUDGE.

30 WITHIN 30 DAYS AFTER THE EXPIRATION OF AN ORDER OR AN

EXTENSION OR RENEWAL THEREOF ENTERED UNDER THIS [CHAPTER]
SUBCHAPTER OR THE DENIAL OF AN ORDER CONFIRMING VERBAL APPROVAL
OF INTERCEPTION, THE ISSUING OR DENYING JUDGE SHALL MAKE A
REPORT TO THE ADMINISTRATIVE OFFICE OF PENNSYLVANIA COURTS
STATING THE FOLLOWING:

(1) THAT AN ORDER, EXTENSION OR RENEWAL WAS APPLIED FOR.

(2) THE KIND OF ORDER APPLIED FOR.

(3) THAT THE ORDER WAS GRANTED AS APPLIED FOR, WAS
MODIFIED, OR WAS DENIED.

(4) THE PERIOD OF THE INTERCEPTIONS AUTHORIZED BY THE
ORDER, AND THE NUMBER AND DURATION OF ANY EXTENSIONS OR
RENEWALS OF THE ORDER.

(5) THE OFFENSE SPECIFIED IN THE ORDER, OR EXTENSION OR
RENEWAL OF AN ORDER.

(6) THE NAME AND OFFICIAL IDENTITY OF THE PERSON MAKING
THE APPLICATION AND OF THE INVESTIGATIVE OR LAW ENFORCEMENT
OFFICER AND AGENCY FOR WHOM IT WAS MADE.

(7) THE CHARACTER OF THE FACILITIES FROM WHICH OR THE
PLACE WHERE THE COMMUNICATIONS WERE TO BE INTERCEPTED.

§ 5723. ANNUAL REPORTS AND RECORDS OF ATTORNEY GENERAL AND
DISTRICT ATTORNEYS.

(A) JUDGES.--IN ADDITION TO REPORTS REQUIRED TO BE MADE BY
APPLICANTS PURSUANT TO TITLE 18 U.S.C. § 2519, ALL JUDGES WHO
HAVE ISSUED ORDERS PURSUANT TO THIS TITLE SHALL MAKE ANNUAL
REPORTS ON THE OPERATION OF THIS [CHAPTER] SUBCHAPTER TO THE
ADMINISTRATIVE OFFICE OF PENNSYLVANIA COURTS. THE REPORTS BY THE
JUDGES SHALL CONTAIN THE FOLLOWING INFORMATION:

(1) THE NUMBER OF APPLICATIONS MADE.

(2) THE NUMBER OF ORDERS ISSUED.

(3) THE EFFECTIVE PERIODS OF SUCH ORDERS.

1 (4) THE NUMBER AND DURATION OF ANY RENEWALS THEREOF.

2 (5) THE CRIMES IN CONNECTION WITH WHICH THE ORDERS WERE
3 SOUGHT.

4 (6) THE NAMES AND OFFICIAL IDENTITY OF THE APPLICANTS.

5 (7) SUCH OTHER AND FURTHER PARTICULARS AS THE
6 ADMINISTRATIVE OFFICE OF PENNSYLVANIA COURTS MAY REQUIRE.

7 (B) ATTORNEY GENERAL.--IN ADDITION TO REPORTS REQUIRED TO BE
8 MADE BY APPLICANTS PURSUANT TO TITLE 18 U.S.C. § 2519, THE
9 ATTORNEY GENERAL SHALL MAKE ANNUAL REPORTS ON THE OPERATION OF
10 THIS [CHAPTER] SUBCHAPTER TO THE ADMINISTRATIVE OFFICE OF
11 PENNSYLVANIA COURTS AND TO THE JUDICIARY COMMITTEES OF THE
12 SENATE AND HOUSE OF REPRESENTATIVES. THE REPORTS BY THE ATTORNEY
13 GENERAL SHALL CONTAIN THE SAME INFORMATION WHICH MUST BE
14 REPORTED PURSUANT TO 18 U.S.C. § 2519(2).

15 (C) DISTRICT ATTORNEYS.--EACH DISTRICT ATTORNEY SHALL
16 ANNUALLY PROVIDE TO THE ATTORNEY GENERAL ALL OF THE FOREGOING
17 INFORMATION WITH RESPECT TO ALL APPLICATIONS AUTHORIZED BY THAT
18 DISTRICT ATTORNEY ON FORMS PRESCRIBED BY THE ATTORNEY GENERAL.

19 (D) OTHER REPORTS.--THE CHIEF JUSTICE OF THE SUPREME COURT
20 AND THE ATTORNEY GENERAL SHALL ANNUALLY REPORT TO THE GOVERNOR
21 AND THE GENERAL ASSEMBLY ON SUCH ASPECTS OF THE OPERATION OF
22 THIS [CHAPTER] SUBCHAPTER AS THEY DEEM APPROPRIATE AND MAKE ANY
23 RECOMMENDATIONS THEY FEEL DESIRABLE AS TO LEGISLATIVE CHANGES OR
24 IMPROVEMENTS TO EFFECTUATE THE PURPOSES OF THIS [CHAPTER]
25 SUBCHAPTER AND TO ASSURE AND PROTECT INDIVIDUAL RIGHTS.

26 § 5724. TRAINING.

27 THE ATTORNEY GENERAL AND THE COMMISSIONER OF THE PENNSYLVANIA
28 STATE POLICE SHALL ESTABLISH A COURSE OF TRAINING IN THE LEGAL
29 AND TECHNICAL ASPECTS OF WIRETAPPING AND ELECTRONIC SURVEILLANCE
30 AS ALLOWED OR PERMITTED BY THIS [CHAPTER] SUBCHAPTER, SHALL

1 ESTABLISH SUCH REGULATIONS AS THEY FIND NECESSARY AND PROPER FOR
2 SUCH TRAINING PROGRAM AND SHALL ESTABLISH MINIMUM STANDARDS FOR
3 CERTIFICATION AND PERIODIC RECERTIFICATION OF COMMONWEALTH
4 INVESTIGATIVE OR LAW ENFORCEMENT OFFICERS AS ELIGIBLE TO CONDUCT
5 WIRETAPPING OR ELECTRONIC SURVEILLANCE UNDER THIS CHAPTER. THE
6 PENNSYLVANIA STATE POLICE SHALL CHARGE EACH INVESTIGATIVE OR LAW
7 ENFORCEMENT OFFICER WHO ENROLLS IN THIS TRAINING PROGRAM A
8 REASONABLE ENROLLMENT FEE TO OFFSET THE COSTS OF SUCH TRAINING.

9 § 5725. CIVIL ACTION FOR UNLAWFUL INTERCEPTION, DISCLOSURE OR
10 USE OF WIRE, ELECTRONIC OR ORAL COMMUNICATION.

11 (A) CAUSE OF ACTION.--ANY PERSON WHOSE WIRE, ELECTRONIC OR
12 ORAL COMMUNICATION IS INTERCEPTED, DISCLOSED OR USED IN
13 VIOLATION OF THIS [CHAPTER] SUBCHAPTER SHALL HAVE A CIVIL CAUSE
14 OF ACTION AGAINST ANY PERSON WHO INTERCEPTS, DISCLOSES OR USES
15 OR PROCURES ANY OTHER PERSON TO INTERCEPT, DISCLOSE OR USE, SUCH
16 COMMUNICATION; AND SHALL BE ENTITLED TO RECOVER FROM ANY SUCH
17 PERSON:

18 (1) ACTUAL DAMAGES, BUT NOT LESS THAN LIQUIDATED DAMAGES
19 COMPUTED AT THE RATE OF \$100 A DAY FOR EACH DAY OF VIOLATION,
20 OR \$1,000, WHICHEVER IS HIGHER.

21 (2) PUNITIVE DAMAGES.

22 (3) A REASONABLE ATTORNEY'S FEE AND OTHER LITIGATION
23 COSTS REASONABLY INCURRED.

24 (B) WAIVER OF SOVEREIGN IMMUNITY.--TO THE EXTENT THAT THE
25 COMMONWEALTH AND ANY OF ITS OFFICERS, OFFICIALS OR EMPLOYEES
26 WOULD BE SHIELDED FROM LIABILITY UNDER THIS SECTION BY THE
27 DOCTRINE OF SOVEREIGN IMMUNITY, SUCH IMMUNITY IS HEREBY WAIVED
28 FOR THE PURPOSES OF THIS SECTION.

29 (C) DEFENSE.--IT IS A DEFENSE TO AN ACTION BROUGHT PURSUANT
30 TO SUBSECTION (A) THAT THE ACTOR ACTED IN GOOD FAITH RELIANCE ON

1 A COURT ORDER OR THE PROVISIONS OF THIS [CHAPTER] SUBCHAPTER.

2 § 5726. ACTION FOR REMOVAL FROM OFFICE OR EMPLOYMENT.

3 (A) CAUSE OF ACTION.--ANY AGGRIEVED PERSON SHALL HAVE THE
4 RIGHT TO BRING AN ACTION IN COMMONWEALTH COURT AGAINST ANY
5 INVESTIGATIVE OR LAW ENFORCEMENT OFFICER, PUBLIC OFFICIAL OR
6 PUBLIC EMPLOYEE SEEKING THE OFFICER'S, OFFICIAL'S OR EMPLOYEE'S
7 REMOVAL FROM OFFICE OR EMPLOYMENT ON THE GROUNDS THAT THE
8 OFFICER, OFFICIAL OR EMPLOYEE HAS INTENTIONALLY VIOLATED THE
9 PROVISIONS OF THIS [CHAPTER] SUBCHAPTER. IF THE COURT SHALL
10 CONCLUDE THAT SUCH OFFICER, OFFICIAL OR EMPLOYEE HAS IN FACT
11 INTENTIONALLY VIOLATED THE PROVISIONS OF THIS [CHAPTER]
12 SUBCHAPTER, THE COURT SHALL ORDER THE DISMISSAL OR REMOVAL FROM
13 OFFICE OF SAID OFFICER, OFFICIAL OR EMPLOYEE.

14 (B) DEFENSE.--IT IS A DEFENSE TO AN ACTION BROUGHT PURSUANT
15 TO SUBSECTION (A) THAT THE ACTOR ACTED IN GOOD FAITH RELIANCE ON
16 A COURT ORDER OR THE PROVISIONS OF THIS [CHAPTER] SUBCHAPTER.

17 § 5743. REQUIREMENTS FOR GOVERNMENTAL ACCESS.

18 * * *

19 (D) REQUIREMENTS FOR COURT ORDER.--A COURT ORDER FOR
20 DISCLOSURE UNDER SUBSECTION (B) OR (C) SHALL BE ISSUED ONLY IF
21 THE INVESTIGATIVE OR LAW ENFORCEMENT OFFICER SHOWS THAT THERE
22 [IS REASON TO BELIEVE] ARE SPECIFIC AND ARTICULABLE FACTS
23 SHOWING THAT THERE ARE REASONABLE GROUNDS TO BELIEVE THAT THE
24 CONTENTS OF A WIRE OR ELECTRONIC COMMUNICATION, OR THE RECORDS
25 OR OTHER INFORMATION SOUGHT, ARE RELEVANT AND MATERIAL TO [A
26 LEGITIMATE INVESTIGATIVE OR LAW ENFORCEMENT INQUIRY] AN ONGOING
27 CRIMINAL INVESTIGATION. A COURT ISSUING AN ORDER PURSUANT TO
28 THIS SECTION, ON A MOTION MADE PROMPTLY BY THE SERVICE PROVIDER,
29 MAY QUASH OR MODIFY THE ORDER IF THE INFORMATION OR RECORDS
30 REQUESTED ARE UNUSUALLY VOLUMINOUS IN NATURE OR COMPLIANCE WITH

1 THE ORDER WOULD OTHERWISE CAUSE AN UNDUE BURDEN ON THE PROVIDER.

2 (E) NO CAUSE OF ACTION AGAINST A PROVIDER DISCLOSING
3 INFORMATION UNDER THIS [CHAPTER] SUBCHAPTER.--NO CAUSE OF ACTION
4 SHALL LIE AGAINST ANY PROVIDER OF WIRE OR ELECTRONIC
5 COMMUNICATION SERVICE, ITS OFFICERS, EMPLOYEES, AGENTS OR OTHER
6 SPECIFIED PERSONS FOR PROVIDING INFORMATION, FACILITIES OR
7 ASSISTANCE IN ACCORDANCE WITH THE TERMS OF A COURT ORDER,
8 WARRANT, SUBPOENA OR CERTIFICATION UNDER THIS [CHAPTER]
9 SUBCHAPTER.

10 § 5744. BACKUP PRESERVATION.

11 * * *

12 (B) CUSTOMER CHALLENGES.--

13 (1) WITHIN 14 DAYS AFTER NOTICE BY THE INVESTIGATIVE OR
14 LAW ENFORCEMENT OFFICER TO THE SUBSCRIBER OR CUSTOMER UNDER
15 SUBSECTION (A)(2), THE SUBSCRIBER OR CUSTOMER MAY FILE A
16 MOTION TO QUASH THE SUBPOENA OR VACATE THE COURT ORDER,
17 COPIES TO BE SERVED UPON THE OFFICER AND WRITTEN NOTICE OF
18 THE CHALLENGE TO BE GIVEN TO THE SERVICE PROVIDER. A MOTION
19 TO VACATE A COURT ORDER SHALL BE FILED IN THE COURT WHICH
20 ISSUED THE ORDER. A MOTION TO QUASH A SUBPOENA SHALL BE FILED
21 IN THE COURT WHICH HAS AUTHORITY TO ENFORCE THE SUBPOENA. THE
22 MOTION OR APPLICATION SHALL CONTAIN AN AFFIDAVIT OR SWORN
23 STATEMENT:

24 (I) STATING THAT THE APPLICANT IS A CUSTOMER OF OR
25 SUBSCRIBER TO THE SERVICE FROM WHICH THE CONTENTS OF
26 ELECTRONIC COMMUNICATIONS MAINTAINED FOR THE APPLICANT
27 HAVE BEEN SOUGHT; AND

28 (II) CONTAINING THE APPLICANT'S REASONS FOR
29 BELIEVING THAT THE RECORDS SOUGHT ARE NOT RELEVANT TO A
30 LEGITIMATE INVESTIGATIVE OR LAW ENFORCEMENT INQUIRY OR

1 THAT THERE HAS NOT BEEN SUBSTANTIAL COMPLIANCE WITH THE
2 PROVISIONS OF THIS SUBCHAPTER IN SOME OTHER RESPECT.

3 (2) SERVICE SHALL BE MADE UNDER THIS SECTION UPON THE
4 INVESTIGATIVE OR LAW ENFORCEMENT OFFICER BY DELIVERING OR
5 MAILING BY REGISTERED OR CERTIFIED MAIL A COPY OF THE PAPERS
6 TO THE PERSON, OFFICE OR DEPARTMENT SPECIFIED IN THE NOTICE
7 WHICH THE CUSTOMER HAS RECEIVED PURSUANT TO THIS [CHAPTER]
8 SUBCHAPTER. FOR THE PURPOSES OF THIS SECTION, THE TERM
9 "DELIVERY" HAS THE MEANING GIVEN THAT TERM IN THE
10 PENNSYLVANIA RULES OF CIVIL PROCEDURE.

11 (3) IF THE COURT FINDS THAT THE CUSTOMER HAS COMPLIED
12 WITH PARAGRAPHS (1) AND (2), THE COURT SHALL ORDER THE
13 INVESTIGATIVE OR LAW ENFORCEMENT OFFICER TO FILE A SWORN
14 RESPONSE, WHICH MAY BE FILED IN CAMERA IF THE INVESTIGATIVE
15 OR LAW ENFORCEMENT OFFICER INCLUDES IN ITS RESPONSE THE
16 REASONS WHICH MAKE IN CAMERA REVIEW APPROPRIATE. IF THE COURT
17 IS UNABLE TO DETERMINE THE MOTION OR APPLICATION ON THE BASIS
18 OF THE PARTIES' INITIAL ALLEGATIONS AND RESPONSES, THE COURT
19 MAY CONDUCT SUCH ADDITIONAL PROCEEDINGS AS IT DEEMS
20 APPROPRIATE. ALL SUCH PROCEEDINGS SHALL BE COMPLETED AND THE
21 MOTION OR APPLICATION DECIDED AS SOON AS PRACTICABLE AFTER
22 THE FILING OF THE OFFICER'S RESPONSE.

23 (4) IF THE COURT FINDS THAT THE APPLICANT IS NOT THE
24 SUBSCRIBER OR CUSTOMER FOR WHOM THE COMMUNICATIONS SOUGHT BY
25 THE INVESTIGATIVE OR LAW ENFORCEMENT OFFICER ARE MAINTAINED,
26 OR THAT THERE IS REASON TO BELIEVE THAT THE INVESTIGATIVE OR
27 LAW ENFORCEMENT INQUIRY IS LEGITIMATE AND THAT THE
28 COMMUNICATIONS SOUGHT ARE RELEVANT TO THAT INQUIRY, IT SHALL
29 DENY THE MOTION OR APPLICATION AND ORDER THE PROCESS
30 ENFORCED. IF THE COURT FINDS THAT THE APPLICANT IS THE

1 SUBSCRIBER OR CUSTOMER FOR WHOM THE COMMUNICATIONS SOUGHT BY
2 THE GOVERNMENTAL ENTITY ARE MAINTAINED, AND THAT THERE IS NOT
3 REASON TO BELIEVE THAT THE COMMUNICATIONS SOUGHT ARE RELEVANT
4 TO A LEGITIMATE INVESTIGATIVE OR LAW ENFORCEMENT INQUIRY, OR
5 THAT THERE HAS NOT BEEN SUBSTANTIAL COMPLIANCE WITH THE
6 PROVISIONS OF THIS [CHAPTER] SUBCHAPTER, IT SHALL ORDER THE
7 PROCESS QUASHED.

8 (5) A COURT ORDER DENYING A MOTION OR APPLICATION UNDER
9 THIS SECTION SHALL NOT BE DEEMED A FINAL ORDER, AND NO
10 INTERLOCUTORY APPEAL MAY BE TAKEN THEREFROM. THE COMMONWEALTH
11 OR INVESTIGATIVE OR LAW ENFORCEMENT OFFICER SHALL HAVE THE
12 RIGHT TO APPEAL FROM AN ORDER GRANTING A MOTION OR
13 APPLICATION UNDER THIS SECTION.

14 § 5747. CIVIL ACTION.

15 * * *

16 (D) DEFENSE.--A GOOD FAITH RELIANCE ON:

17 (1) A COURT WARRANT OR ORDER, A GRAND JURY SUBPOENA, A
18 LEGISLATIVE AUTHORIZATION OR A STATUTORY AUTHORIZATION;

19 (2) A REQUEST OF AN INVESTIGATIVE OR LAW ENFORCEMENT
20 OFFICER UNDER SECTION 5713 (RELATING TO EMERGENCY
21 SITUATIONS); OR

22 (3) A GOOD FAITH DETERMINATION THAT SECTION 5704(10)
23 (RELATING TO EXCEPTIONS TO PROHIBITIONS OF INTERCEPTION AND
24 DISCLOSURE OF COMMUNICATIONS) PERMITTED THE CONDUCT
25 COMPLAINED OF;

26 IS A COMPLETE DEFENSE TO ANY CIVIL OR CRIMINAL ACTION BROUGHT
27 UNDER THIS [CHAPTER] SUBCHAPTER OR ANY OTHER LAW.

28 * * *

29 § 5771. GENERAL PROHIBITION OF PEN REGISTER AND TRAP AND TRACE
30 DEVICE USE; EXCEPTION.

1 (A) GENERAL RULE.--EXCEPT AS PROVIDED IN THIS SECTION, NO
2 PERSON MAY INSTALL OR USE A PEN REGISTER OR A TRAP AND TRACE
3 DEVICE WITHOUT FIRST OBTAINING A COURT ORDER UNDER SECTION 5773
4 (RELATING TO ISSUANCE OF AN ORDER FOR A PEN REGISTER OR A TRAP
5 AND TRACE DEVICE).

6 (B) EXCEPTION.--THE PROHIBITION OF SUBSECTION (A) DOES NOT
7 APPLY WITH RESPECT TO THE USE OF A PEN REGISTER OR A TRAP AND
8 TRACE DEVICE BY A PROVIDER OF ELECTRONIC OR WIRE COMMUNICATION
9 SERVICE:

10 (1) RELATING TO THE OPERATION, MAINTENANCE AND TESTING
11 OF A WIRE OR ELECTRONIC COMMUNICATION SERVICE OR TO THE
12 PROTECTION OF THE RIGHTS OR PROPERTY OF THE PROVIDER, OR TO
13 THE PROTECTION OF USERS OF THE SERVICE FROM ABUSE OF SERVICE
14 OR UNLAWFUL USE OF SERVICE; [OR]

15 (2) TO RECORD THE FACT THAT A WIRE OR ELECTRONIC
16 COMMUNICATION WAS INITIATED OR COMPLETED IN ORDER TO PROTECT
17 THE PROVIDER, ANOTHER PROVIDER FURNISHING SERVICE TOWARD THE
18 COMPLETION OF THE WIRE COMMUNICATION OR A USER OF THE SERVICE
19 FROM FRAUDULENT, UNLAWFUL OR ABUSIVE USE OF SERVICE[, OR]; OR

20 (3) WITH THE CONSENT OF THE USER OF THE SERVICE.

21 (B.1) LIMITATION.--A GOVERNMENT AGENCY AUTHORIZED TO INSTALL
22 AND USE A PEN REGISTER UNDER THIS CHAPTER SHALL USE TECHNOLOGY
23 REASONABLY AVAILABLE TO IT THAT RESTRICTS THE RECORDING OR
24 DECODING OF ELECTRONIC OR OTHER IMPULSES TO THE DIALING AND
25 SIGNALING INFORMATION UTILIZED IN CALL PROCESSING.

26 (C) PENALTY.--WHOEVER INTENTIONALLY AND KNOWINGLY VIOLATES
27 SUBSECTION (A) IS GUILTY OF A MISDEMEANOR OF THE THIRD DEGREE.

28 § 5772. APPLICATION FOR AN ORDER FOR PEN REGISTERS AND TRAP AND
29 TRACE DEVICES.

30 (A) APPLICATION.--THE ATTORNEY GENERAL OR A DEPUTY ATTORNEY

1 GENERAL DESIGNATED IN WRITING BY THE ATTORNEY GENERAL OR A
2 DISTRICT ATTORNEY OR AN ASSISTANT DISTRICT ATTORNEY DESIGNATED
3 IN WRITING BY THE DISTRICT ATTORNEY MAY MAKE APPLICATION FOR AN
4 ORDER OR AN EXTENSION OF AN ORDER UNDER SECTION 5773 (RELATING
5 TO ISSUANCE OF AN ORDER FOR A PEN REGISTER OR A TRAP AND TRACE
6 DEVICE) AUTHORIZING OR APPROVING THE INSTALLATION AND USE OF A
7 PEN REGISTER OR A TRAP AND TRACE DEVICE UNDER THIS [CHAPTER]
8 SUBCHAPTER, IN WRITING, UNDER OATH OR EQUIVALENT AFFIRMATION, TO
9 A COURT OF COMMON PLEAS[.] OR TO ANY SUPERIOR COURT JUDGE WHEN
10 AN APPLICATION FOR AN ORDER AUTHORIZING INTERCEPTION OF WIRE OR
11 ELECTRONIC COMMUNICATIONS IS MADE FOR THE TELEPHONE LINE TO
12 WHICH THE DEVICE IS TO BE ATTACHED.

13 * * *

14 § 5773. ISSUANCE OF AN ORDER FOR A PEN REGISTER OR A TRAP AND
15 TRACE DEVICE.

16 (A) IN GENERAL.--UPON AN APPLICATION MADE UNDER SECTION 5772
17 (RELATING TO APPLICATION FOR AN ORDER FOR PEN REGISTERS AND TRAP
18 AND TRACE DEVICES), THE COURT [OF COMMON PLEAS] SHALL ENTER AN
19 EX PARTE ORDER AUTHORIZING THE INSTALLATION AND USE OF A PEN
20 REGISTER OR A TRAP AND TRACE DEVICE WITHIN THE JURISDICTION OF
21 THE COURT IF THE COURT FINDS THAT THERE IS PROBABLE CAUSE TO
22 BELIEVE THAT INFORMATION RELEVANT TO AN ONGOING CRIMINAL
23 INVESTIGATION WILL BE OBTAINED BY SUCH INSTALLATION AND USE ON
24 THE TELEPHONE LINE TO WHICH THE PEN REGISTER OR THE TRAP AND
25 TRACE DEVICE IS TO BE ATTACHED.

26 * * *

27 § 5774. ASSISTANCE IN INSTALLATION AND USE OF PEN REGISTERS OR
28 TRAP AND TRACE DEVICES.

29 (A) PEN REGISTERS.--UPON THE REQUEST OF AN APPLICANT UNDER
30 THIS SUBCHAPTER, A PROVIDER OF WIRE OR ELECTRONIC COMMUNICATION

1 SERVICE, LANDLORD, CUSTODIAN OR OTHER PERSON SHALL FORTHWITH
2 PROVIDE ALL INFORMATION, FACILITIES AND TECHNICAL ASSISTANCE
3 NECESSARY TO ACCOMPLISH THE INSTALLATION OF THE PEN REGISTER
4 UNOBTRUSIVELY AND WITH A MINIMUM OF INTERFERENCE WITH THE
5 SERVICES THAT THE PERSON SO ORDERED BY THE COURT ACCORDS THE
6 PARTY WITH RESPECT TO WHOM THE INSTALLATION AND USE IS TO TAKE
7 PLACE, IF ASSISTANCE IS DIRECTED BY A COURT ORDER AS PROVIDED IN
8 SECTION 5773(B)(2) (RELATING TO ISSUANCE OF AN ORDER FOR A PEN
9 REGISTER OR A TRAP AND TRACE DEVICE).

10 (B) TRAP AND TRACE DEVICE.--UPON THE REQUEST OF AN APPLICANT
11 UNDER THIS SUBCHAPTER, A PROVIDER OF A WIRE OR ELECTRONIC
12 COMMUNICATION SERVICE, LANDLORD, CUSTODIAN OR OTHER PERSON SHALL
13 INSTALL THE DEVICE FORTHWITH ON THE APPROPRIATE LINE AND SHALL
14 FURNISH ALL ADDITIONAL INFORMATION, FACILITIES AND TECHNICAL
15 ASSISTANCE, INCLUDING INSTALLATION AND OPERATION OF THE DEVICE
16 UNOBTRUSIVELY AND WITH A MINIMUM OF INTERFERENCE WITH THE
17 SERVICES THAT THE PERSON SO ORDERED BY THE COURT ACCORDS THE
18 PARTY WITH RESPECT TO WHOM THE INSTALLATION AND USE IS TO TAKE
19 PLACE, IF INSTALLATION AND ASSISTANCE ARE DIRECTED BY A COURT
20 ORDER AS PROVIDED IN SECTION 5773. UNLESS OTHERWISE ORDERED BY
21 THE COURT, THE RESULTS OF THE TRAP AND TRACE DEVICE SHALL BE
22 FURNISHED TO THE APPLICANT DESIGNATED IN THE COURT ORDER AT
23 REASONABLE INTERVALS DURING REGULAR BUSINESS HOURS FOR THE
24 DURATION OF THE ORDER.

25 (C) COMPENSATION.--A PROVIDER OF WIRE OR ELECTRONIC
26 COMMUNICATION SERVICE, LANDLORD, CUSTODIAN OR OTHER PERSON WHO
27 FURNISHES FACILITIES OR TECHNICAL ASSISTANCE PURSUANT TO THIS
28 SECTION SHALL BE REASONABLY COMPENSATED FOR REASONABLE EXPENSES
29 INCURRED IN PROVIDING THE FACILITIES AND ASSISTANCE.

30 (D) NO CAUSE OF ACTION AGAINST A PROVIDER DISCLOSING

1 INFORMATION UNDER THIS [CHAPTER] SUBCHAPTER.--NO CAUSE OF ACTION
2 SHALL LIE IN ANY COURT AGAINST ANY PROVIDER OF A WIRE OR
3 ELECTRONIC COMMUNICATION SERVICE, ITS OFFICERS, EMPLOYEES,
4 AGENTS OR OTHER SPECIFIED PERSONS FOR PROVIDING INFORMATION,
5 FACILITIES OR ASSISTANCE IN ACCORDANCE WITH THE TERMS OF A COURT
6 ORDER UNDER THIS SUBCHAPTER.

7 (E) DEFENSE.--A GOOD FAITH RELIANCE ON A COURT ORDER OR A
8 STATUTORY AUTHORIZATION IS A COMPLETE DEFENSE AGAINST ANY CIVIL
9 OR CRIMINAL ACTION BROUGHT UNDER THIS SUBCHAPTER OR ANY OTHER
10 LAW.

11 § 5775. REPORTS CONCERNING PEN REGISTERS AND TRAP AND TRACE
12 DEVICES.

13 * * *

14 § 5781. EXPIRATION OF CHAPTER.

15 THIS CHAPTER EXPIRES DECEMBER 31, [1994] 2004, UNLESS
16 EXTENDED BY STATUTE.

17 SECTION 10. THIS ACT SHALL TAKE EFFECT IMMEDIATELY.