

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1982 Session of
2001

INTRODUCED BY GANNON, PERZEL, BARLEY, E. Z. TAYLOR, RAYMOND,
GODSHALL, HERMAN, CLARK, GEIST, ADOLPH, ARMSTRONG, M. BAKER,
BARD, BEBKO-JONES, BELFANTI, CAPPELLI, CORRIGAN, CREIGHTON,
CRUZ, DALEY, J. EVANS, FAIRCHILD, FEESE, FRANKEL, GABIG,
GEORGE, HARHAI, HORSEY, KELLER, KENNEY, LaGROTTA, LAUGHLIN,
MAITLAND, McGEEHAN, MELIO, MICOZZIE, SATHER, SCHRODER,
SCHULER, B. SMITH, SOLOBAY, STABACK, TRICH, C. WILLIAMS,
WILT, WOGAN, YOUNGBLOOD, DALLY, TURZAI, TRELLO, DAILEY,
BROWNE, WASHINGTON, G. WRIGHT AND COLAFELLA, OCTOBER 2, 2001

AS AMENDED ON THIRD CONSIDERATION, HOUSE OF REPRESENTATIVES,
DECEMBER 4, 2001

AN ACT

1 Amending Title 18 (Crimes and Offenses) of the Pennsylvania
2 Consolidated Statutes, further providing for the definitions
3 of "electronic communication system," "trap and trace device"
4 and "wire communication"; providing for offenses relating to
5 telecommunication identification interception devices; and
6 further providing for the disclosure of certain evidence, for
7 requirements for government access, for cost reimbursement,
8 for mobile tracking devices and for issuance of an order for
9 use of certain devices.

10 The General Assembly of the Commonwealth of Pennsylvania
11 hereby enacts as follows:

12 Section 1. The definitions of "electronic communication
13 system," "trap and trace device" and "wire communication" in
14 section 5702 of Title 18 of the Pennsylvania Consolidated
15 Statutes are amended to read:

16 § 5702. Definitions.

17 As used in this chapter, the following words and phrases

1 shall have the meanings given to them in this section unless the
2 context clearly indicates otherwise:

3 * * *

4 "Electronic communication system." Any wire, radio,
5 electromagnetic, photo-optical or photoelectronic facilities for
6 the transmission of wire or electronic communications, and any
7 computer facilities or related electronic equipment for the
8 electronic storage of such communications.

9 * * *

10 "Trap and trace device." A device which captures the
11 incoming electronic or other impulses which identify the
12 originating number of an instrument or device from which a wire
13 or electronic communication was transmitted, including, but not
14 limited to, caller ID, deluxe caller ID or any other features
15 available to ascertain the telephone number, location or
16 subscriber information of a facility contacting the facility
17 whose communications are to be intercepted.

18 * * *

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

27 Section 2. Section 5705 heading of Title 18 is amended and
28 the section is amended by adding a paragraph to read:

29 § 5705. Possession, sale, distribution, manufacture or
30 advertisement of electronic, mechanical or other

1 devices and telecommunication identification
2 interception devices.

3 Except as otherwise specifically provided in section 5706
4 (relating to exceptions to prohibitions in possession, sale,
5 distribution, manufacture or advertisement of electronic,
6 mechanical or other devices), a person is guilty of a felony of
7 the third degree if he does any of the following:

8 * * *

9 (5) Intentionally possesses a telecommunication
10 identification interception device.

11 Section 3. Sections 5712(f), 5717(a) and 5743(a) and (b) of
12 Title 18 are amended and the sections are amended by adding
13 subsections to read:

14 § 5712. Issuance of order and effect.

15 * * *

16 (f) Assistance.--An order authorizing the interception of a
17 wire, electronic or oral communication shall, upon request of
18 the applicant, direct that a provider of electronic
19 communication service shall furnish the applicant forthwith all
20 information, facilities and technical assistance necessary to
21 accomplish the interception unobtrusively and with a minimum of
22 interference with the services that such service provider is
23 affording the person whose communications are to be intercepted.
24 The obligation of a provider of electronic communication service
25 under such an order may include, but is not limited to,
26 installation of a pen register or of a trap and trace device
27 [and], providing caller ID, deluxe caller ID or any other
28 features available to ascertain the telephone number, location
29 or subscriber information of a facility contacting the facility
30 whose communications are to be intercepted, disclosure of a

1 record or other information otherwise available under section
2 5743 (relating to requirements for governmental access),
3 including conducting an in-progress trace during an
4 interception, provided that such obligation of a provider of
5 electronic communications service is technologically feasible.
6 Such order shall apply regardless of whether the electronic
7 service provider is headquartered within this Commonwealth, so
8 long as the interception is otherwise conducted within this
9 Commonwealth, as defined by the act. Such order regarding
10 disclosure of a record or other information otherwise available
11 under section 5743 shall apply to all electronic service
12 providers who service facilities which contact or are contacted
13 by the facility whose communications are to be intercepted,
14 regardless of whether the order specifically names any such
15 electronic service provider. Such order may specify the period
16 of time an electronic service provider has to furnish to the
17 applicant who requests disclosure of a record or other
18 information otherwise available under section 5743.

19 * * *

20 (h) ~~Multipoint~~ TARGET-SPECIFIC wiretaps.--The requirements <—
21 of subsection (a)(3), relating to the specification of the <—
22 facilities from which, or the place where, the communication is
23 to be intercepted, AND SECTION 5709(3)(V) (RELATING TO <—
24 APPLICATION FOR ORDER) do not apply if:

25 ~~(1) the application is by the Attorney General or a~~ <—
26 ~~deputy attorney general designated in writing by the Attorney~~
27 ~~General or the district attorney or an assistant district~~
28 ~~attorney designated in writing by the district attorney of~~
29 ~~the county wherein the application is made;~~

30 ~~(2) the application contains a full and complete~~

~~statement as to why such specification is not practical, and~~

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

(I) THE APPLICATION CONTAINS A FULL AND COMPLETE
STATEMENT AS TO WHY SPECIFICATION IS NOT PRACTICAL, AND
identifies the person committing the offense and whose
communications are to be intercepted; and

~~(3) the judge finds that the specification is not~~

(II) THE JUDGE FINDS THAT SPECIFICATION IS NOT
practical.

~~(i) Expiration. Subsection (h) shall expire on December 31,~~
~~2008.~~

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

(I) THE APPLICATION IDENTIFIES THE PERSON BELIEVED
TO BE COMMITTING THE OFFENSE AND WHOSE COMMUNICATIONS ARE
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 THE PURPOSE HAS BEEN
ADEQUATELY SHOWN.

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

(a) Law enforcement personnel.--Any investigative or law
enforcement officer who, under subsection (a.1), (a.2) or (b),
has obtained knowledge of the contents of any wire, electronic
or oral communication, or evidence derived therefrom, may
disclose such contents or evidence to another investigative or
law enforcement officer to the extent that such disclosure is

appropriate to the proper performance of the official duties of the officer making or receiving the disclosure.

* * *

(a.2) Civilians.--Any person other than an investigative or law enforcement officer who, as party to the communication, 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, where such is evidence of a homicide or a felony of the first degree.

* * *

(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 the 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.

§ 5743. Requirements for governmental access.

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

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

(2) More than 180 days by the means available under

1 subsection (b).

2 (b) Contents of a wire or electronic communications in a
3 remote computing service.--

4 (1) Investigative or law enforcement officers may
5 require a provider of remote computing service to disclose
6 the contents of any wire or electronic communication to which
7 this paragraph is made applicable by paragraph (2):

8 (i) without required notice to the subscriber or
9 customer if the investigative or law enforcement officer
10 obtains a warrant issued under the Pennsylvania Rules of
11 Criminal Procedure; or

12 (ii) with prior notice from the investigative or law
13 enforcement officer to the subscriber or customer if the
14 investigative or law enforcement officer:

15 (A) uses an administrative subpoena authorized
16 by a statute or a grand jury subpoena; or

17 (B) obtains a court order for the disclosure
18 under subsection (d);

19 except that delayed notice may be given pursuant to section
20 5745 (relating to delayed notice).

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

24 (i) On behalf of and received by means of electronic
25 transmission from, or created by means of computer
26 processing of communications received by means of
27 electronic transmission from, a subscriber or customer of
28 the remote computing service.

29 (ii) Solely for the purpose of providing storage or
30 computer processing services to the subscriber or

customer, if the provider is not authorized to access the contents of any such communication for the purpose of providing any services other than storage or computer processing.

* * *

(f) District justice authorization.--For purposes of subsections (c), (d) and (e), the term "court" shall include a district justice.

Section 4. Section 5746 of Title 18 is amended by adding a subsection to read:

§ 5746. Cost reimbursement.

* * *

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

Section 5. ~~Section 5761(b) of Title 18 is~~ SECTIONS 5761(B) AND 5772(A) OF TITLE 18 ARE amended to read:

§ 5761. Mobile tracking devices.

* * *

(b) Jurisdiction.--Orders permitted by this section may authorize the use of mobile tracking devices [within the jurisdiction of the court of common pleas, and outside that jurisdiction but within this Commonwealth,] if the device is installed and monitored within [the jurisdiction of the court of common pleas.] this Commonwealth. THE COURT ISSUING THE ORDER MUST HAVE JURISDICTION OVER THE OFFENSE UNDER INVESTIGATION.

* * *

§ 5772. APPLICATION FOR AN ORDER FOR USE OF CERTAIN DEVICES.

(A) APPLICATION.--THE ATTORNEY GENERAL OR A DEPUTY ATTORNEY GENERAL DESIGNATED IN WRITING BY THE ATTORNEY GENERAL OR A DISTRICT ATTORNEY OR AN ASSISTANT DISTRICT ATTORNEY DESIGNATED

1 IN WRITING BY THE DISTRICT ATTORNEY MAY MAKE APPLICATION FOR AN
2 ORDER OR AN EXTENSION OF AN ORDER UNDER SECTION 5773 (RELATING
3 TO ISSUANCE OF AN ORDER FOR USE OF CERTAIN DEVICES) AUTHORIZING
4 OR APPROVING THE INSTALLATION AND USE OF A PEN REGISTER, A TRAP
5 AND TRACE DEVICE OR A TELECOMMUNICATION IDENTIFICATION
6 INTERCEPTION DEVICE UNDER THIS SUBCHAPTER, IN WRITING, UNDER
7 OATH OR EQUIVALENT AFFIRMATION, TO A COURT OF COMMON PLEAS
8 HAVING JURISDICTION OVER THE OFFENSE UNDER INVESTIGATION OR TO
9 ANY SUPERIOR COURT JUDGE WHEN AN APPLICATION FOR AN ORDER
10 AUTHORIZING INTERCEPTION OF WIRE OR ELECTRONIC COMMUNICATIONS IS
11 OR HAS BEEN MADE FOR THE TARGETED TELEPHONE OR ANOTHER
12 APPLICATION FOR INTERCEPTION UNDER THIS SUBCHAPTER HAS BEEN MADE
13 INVOLVING THE SAME INVESTIGATION.

14 * * *

15 Section 6. Section 5773 (a) and (c) of Title 18 are amended
16 to read:

17 § 5773. Issuance of an order for use of certain devices.

18 (a) In general.--Upon an application made under section 5772
19 (relating to application for an order for use of certain
20 devices), the court shall enter an ex parte order authorizing
21 the installation and use of a pen register, a trap and trace
22 device or a telecommunication identification interception device
23 within [the jurisdiction of the court if the court] this
24 Commonwealth if the court finds that there is probable cause to
25 believe that information relevant to an ongoing criminal
26 investigation will be obtained by such installation and use on
27 the targeted telephone.

28 * * *

29 (c) Time period and extensions.--

30 (1) An order issued under this section shall authorize

1 the installation and use of a pen register, trap and trace
2 device or a telecommunication identification interception
3 device for a period not to exceed [30] 60 days.

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

9 * * *

10 ~~(c) Multipoint pen registers and trap and trace devices.~~ <—

11 ~~The requirements of subparagraph (b)(1)(iv) relating to the~~
12 ~~physical location of the targeted telephone do not apply if:~~

13 ~~(1) the application is by the Attorney General or a~~
14 ~~deputy attorney general designated in writing by the Attorney~~
15 ~~General, or the district attorney, or an assistant district~~
16 ~~attorney designated in writing by the district attorney of~~
17 ~~the county wherein the application is made;~~

18 ~~(2) the application contains a full and complete~~
19 ~~statement as to why such specification is not practical; and~~

20 ~~(3) the judge finds that the specification is not~~
21 ~~practical.~~

22 ~~(f) Expiration. Subsection (c) shall expire on December 31,~~
23 ~~2008.~~

24 SECTION 7. SECTION 5781 OF TITLE 18 IS AMENDED TO READ: <—

25 § 5781. EXPIRATION OF CHAPTER.

26 THIS CHAPTER EXPIRES DECEMBER 31, [2004] 2006, UNLESS
27 EXTENDED BY STATUTE.

28 Section 7 8. This act shall take effect in 60 days. <—