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House of Representatives

Commonwealth of Pennsylvania
Harrisburg

May 9, 2012

SUBJECT: Introduction of Legislation - Wiretap Act

TO: All House Members

FROM: Representative Ron Marsico

I have previously circulated a memorandum outlining my intention to introduce a bill that would bring our current wiretap act up to date, to address changes in technology and unnecessary evidentiary restrictions that have put law enforcement at a serious disadvantage in fighting crime. Since my original memorandum was circulated to members, I have worked closely with prosecutors, police, the school boards and school bus associations, and other constituencies to more specifically address other issues and concerns with our current law. This has resulted in several new suggestions which I intend to incorporate into the bill. Since some of these changes are material, I wanted to circulate a new memorandum to make clear to members what my bill will now encompass. The following are among its key provisions:

- Current law does not prohibit the recording of oral communications if, under the circumstances, there is no justifiable expectation of privacy. Though the courts have provided guidance, there is still confusion. My bill will clarify that there is no justifiable privacy expectation where actual or constructive notice is given that communications may be recorded, where what is spoken can be overheard by others not in the conversation or where video and audio recording equipment is plainly visible.
- The bill will expand the current definition of a "Trap and Trace" device to conform to new technologies used by communication providers to identify the telephone number, location or subscriber information of a call received on a target phone.
- It will permit a law enforcement officer to intercept and respond to communications sent to a device which he has legally obtained. For example, where a drug suspect is arrested, his cell phone is legally seized and he then receives a call or text message, the officer would be able to read the message and respond. Currently, he is prohibited from doing.

- Current law permits officers to intercept a communication in a hostage or barricaded subject situation, where the person will use a deadly weapon and where the suspect is threatening suicide or harm to others. The bill will permit interceptions in a hostage situation where the person may use a deadly weapon or where a barricaded suspect has the ability to resist with a deadly weapon or poses a risk of harm to others or himself.
- Current law does not permit a law enforcement officer to be given access to legally recorded telephone conversations of inmates in a state correctional institution or county correctional facility. The bill will authorize that.
- Currently, it is illegal for a victim or other person to record another, even where it would likely produce evidence that the person has committing, is committing or will commit a serious felony. If recorded nevertheless, the recording cannot be used as evidence. My bill will permit the victim or other person who has reasonable cause to believe it will produce evidence of a first degree felony, a crime of violence or witness intimidation or retaliation to record a conversation and authorize disclosure to law enforcement and use in criminal proceedings.
- The bill will prohibits someone from knowingly possessing a device that can capture electronic serial numbers and other identification data assigned to a cell phone or other device as part of the telecommunication provider's activation of service. This information is often used to "clone" another phone to avoid payment or use it in a crime.
- The bill will permit courts entering a wiretap order to require service providers' cooperation regardless of where their headquarters are located and require a provider of services to a phone or device communicating with the target to provide its records regarding that communication.
- The bill will assists law enforcement to keep up with the proliferation of pre-paid cell phones by permitting a court to enter an order for an interception that is specific to a target individual, rather than a specific phone as is required today. A showing that it is not practical to identify the location of an oral communication or that a wire communication interception would likely be thwarted by changing phones would be required.
- The bill will permit a person who has obtained knowledge of the contents of an intercepted wire or oral communication by means that are authorized by the laws of another state or the federal government to disclose it to law enforcement or while testifying under oath in any court proceeding in the Commonwealth.
- The bill will permit a law enforcement officer to disclose in any court, administrative or grand jury proceeding, his knowledge of the content of an electronic, wire or oral communication that he obtained from a civilian, even if acquired illegally, so long as it was not done at the officer's direction or with his knowledge or consent.

As I observed in my original co-sponsor memorandum, this bill will reflect today's technology, not technology as it existed in 1998 when the law was last changed. This will permit our law enforcement and prosecutors to fight criminals without impacting the rights and privacy of law abiding citizens.

The following members previously agreed to cosponsor this legislation and will be listed as a cosponsor. If you would like to be added or deleted as a co-sponsor of this bill, please contact Anna or Michelle at 783-2014 or via e-mail at mmoore@pahousegop.com. Thank you.

Marsico, Caltagirone, Stephens, Turzai, Aument, Barbin, Barrar, Boback, Boyd, Clymer, Costa, Delozier, Ellis, Everett, Geist, Gingrich, Grell, Grove, Hackett, Harper, Harris, Helm, Hennessey, Hickernell, Keller, Killion, Knowles, Kotik, Major, Millard, Miller, Milne, Moul, Oneill, Payne, Petri, Pickett, Pyle, Quinn, Rock, Scavello, Taylor, Tobash, Toohil, Vereb, Vulakovich

