

HB 2400

AN ACT

Amending Title 18 (Crimes and Offenses) of the Pennsylvania Consolidated Statutes, further providing for definitions, for exceptions to prohibition of interception and disclosure of communications, for possession, sale, distribution, manufacture or advertisement of electronic, mechanical or other devices, for issuance of order and effect; providing for target-specific orders; and further providing for emergency hostage and barricade situations, for investigative disclosure or use of contents of wire, electronic or oral communications or derivative evidence, for requirements for governmental access, for cost reimbursement, for mobile tracking devices, for application for an order for use of certain devices and for issuance of an order for use of certain devices.

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

Section 1. The definitions of "electronic communication service," "electronic communication system," "intercept," "trap and trace device" 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:
§ 5702. Definitions.

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

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

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

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"Crime of violence." Any of the following:

- (1) Any of the following crimes:
 - (i) Murder in any degree as defined in section 2502(a), (b) or (c) (relating to murder).
 - (ii) Voluntary manslaughter as defined in section 2503 (relating to voluntary manslaughter), drug delivery resulting in death as defined in section 2506(a) (relating to drug delivery resulting in death), aggravated assault as defined in section 2702(a)(1) or (2) (relating to aggravated assault), kidnapping as defined in section 2901(a) or (a.1) (relating to kidnapping), rape as defined in section 3121(a), (c) or (d) (relating to rape), involuntary deviate sexual intercourse as defined in section 3123(a), (b) or (c) (relating to involuntary deviate sexual intercourse), sexual assault as defined in section 3124.1 (relating

to sexual assault), aggravated indecent assault as defined in section 3125(a) or (b) (relating to aggravated indecent assault), incest as defined in section 4302(a) or (b) (relating to incest), arson as defined in section 3301(a) (relating to arson and related offenses), burglary as defined in section 3502(a)(1) (relating to burglary), robbery as defined in section 3701(a)(1)(i), (ii) or (iii) (relating to robbery) or robbery of a motor vehicle as defined in section 3702(a) (relating to robbery of a motor vehicle).

(iii) Intimidation of witness or victim as defined in section 4952(a) and (b) (relating to intimidation of witnesses or victims).

(iv) Retaliation against witness, victim or party as defined in section 4953(a) and (b) (relating to retaliation against witness, victim or party).

(v) Criminal attempt as defined in section 901(a) (relating to criminal attempt), criminal solicitation as defined in section 902(a) (relating to criminal solicitation) or criminal conspiracy as defined in section 903(a) (relating to criminal conspiracy) to commit any of the offenses specified in this definition.

(2) Any offense equivalent to an offense under paragraph (1) under the laws of this Commonwealth in effect at the time of the commission of that offense or under the laws of another jurisdiction.

* * *

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

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

* * *

"Intercept." Aural or other acquisition of the contents of any wire, electronic or oral communication through the use of any electronic, mechanical or other device. The term shall include the point at which the contents of the communication are monitored by investigative or law enforcement officers. The term shall not include the acquisition of the contents of a communication made through any electronic, mechanical or other device or telephone instrument to an investigative or law enforcement officer, or between a person and an investigative or law enforcement officer, where the investigative or law enforcement officer poses as an actual person who is the intended recipient of the communication, provided that the Attorney General, a deputy attorney general designated in writing by the Attorney General, a district attorney or an assistant district attorney designated in writing by a district attorney of the county wherein the investigative or law enforcement officer is to receive or make the communication has reviewed the facts and is satisfied that the communication involves suspected criminal activities and has given prior approval for the communication.

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"Mobile communications tracking information." Information generated by a communication common carrier or a communication service which indicates the location of an electronic device

supported by the communication common carrier or communication service.

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

* * *

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

* * *

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

Section 2. Section 5704(2)(ii), (12)(ii), (13)(i)(B) and (14)(i)(B) of Title 18 are 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 and no prior court approval shall be required 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, including, but not limited to, the crimes enumerated in section 5708 (relating to order authorizing interception of wire, electronic or oral communications), where:

(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] **initiated**, 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;

* * *

(12) 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 or oral communication involving suspected criminal activities where the officer or the person is a party to the communication and there is reasonable cause to believe that:

* * *

(ii) that party:

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

or

(B) is threatening suicide or harm to **himself or** others.

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

(i) The Department of Corrections shall adhere to the following procedures and restrictions when intercepting, recording, monitoring or divulging any telephone calls from or to an inmate in a State correctional facility as provided for by this paragraph:

* * *

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

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

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

* * *

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

* * *

(17) Any victim, witness or private detective licensed under the act of August 21, 1953 (P.L.1273, No.361), known as The Private Detective Act of 1953, to intercept the contents of any wire, electronic or oral communication, if that person is under a reasonable suspicion that the intercepted party is committing, about to commit or has committed a crime of violence and there is reason to believe that evidence of the crime of violence may be obtained from the interception.

Section 3. Section 5705 heading of Title 18 is amended and the section is amended by adding a paragraph to read:

§ 5705. Possession, sale, distribution, manufacture or advertisement of electronic, mechanical or other devices **and telecommunication identification interception devices.**

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

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(5) Intentionally possesses a telecommunication identification interception device.

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

§ 5712. Issuance of order and effect.

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

* * *

(f) Assistance.--An order authorizing the interception of a wire, electronic or oral communication shall, upon request of the applicant, direct that a provider of [electronic] communication service shall furnish the applicant forthwith all information, facilities and technical assistance necessary to accomplish the interception unobtrusively and with a minimum of interference with the services that such service provider is affording the person whose communications are to be intercepted. The obligation of a provider of [electronic] communication service under such an order may include, but is not limited to, installation of a pen register or **of a trap and trace device [and], providing caller ID, deluxe caller ID or any other features available to ascertain the telephone number, location or subscriber information of a facility contacting the facility whose communications are to be intercepted,** disclosure of a record or other information otherwise available under section 5743 (relating to requirements for governmental access), including conducting an in-progress trace during an interception, provided that such obligation of a provider of [electronic] communications service is technologically feasible. **The order shall apply regardless of whether the electronic service provider is headquartered within this Commonwealth, if the interception is otherwise conducted within this Commonwealth as provided under this chapter. The order regarding disclosure of a record or other information otherwise available under section 5743 shall apply to all electronic service providers who service facilities which contact or are contacted by the facility whose communications are to be intercepted, regardless of whether the order specifically names any provider of communication service. The order may specify the period of time an electronic service provider has to furnish to the applicant who requests disclosure of a record or other information otherwise available under section 5743.** Any provider of [electronic] communication service furnishing such facilities or technical assistance shall be compensated therefor by the applicant for reasonable expenses incurred in providing the facilities or assistance. The service provider shall be immune from civil and criminal liability for any assistance rendered to the applicant pursuant to this section.

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

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

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

(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.

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

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

(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 that there is probable cause to believe that the person's actions could have the effect of thwarting interception by changing facilities or devices.

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

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

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

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

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

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

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

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

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

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

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

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

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

(g) Final report.--If an interception is authorized under this section, a complete written list of names of participants and evidence of offenses discovered, including those not stated in the application for order, shall be filed with the court as soon as practical after the authorized interception is terminated.

(h) Assistance.--

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

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

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

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

(i) Entry by law enforcement officers.--An order authorizing the interception of a wire, electronic or oral communication shall, if requested, authorize the entry of premises or facilities specified under subsection (c) (3) or premises necessary to obtain access to the premises or facilities specified under subsection (c) (3) by law enforcement officers specified under subsection (c) (1) as often as necessary solely for the purposes of installing, maintaining or removing an electronic, mechanical or other device, if all of the following apply:

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

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

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

* * *

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

"Emergency situation." Any situation where:

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

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

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

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

"Supervising law enforcement officer."

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

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

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

or

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

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

§ 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) [or (b)], **(b), (b.1) or (c)**, 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.

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(b.1) Criminal cases.--Any person who by means authorized by section 5704(17) (relating to exceptions to prohibition of interception and disclosure of communications) has obtained knowledge of the contents of any wire, electronic or oral communication, or evidence derived therefrom, may in addition to disclosures made under subsection (b) disclose such contents or evidence, on the condition that such disclosure is made for the purpose of providing exculpatory evidence in an open or closed criminal case.

(c) Otherwise authorized personnel.--

(1) Except as provided under paragraph (2), 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 from any wire, electronic or oral communication, may disclose the contents or evidence to an investigative or law enforcement officer and may disclose the contents or evidence where otherwise admissible while giving testimony under oath or affirmation in any proceeding in any court of this Commonwealth.

(2) The contents of a nonconsensual interception authorized by the laws of the Federal Government or another state shall not be admissible unless the interception was authorized by a court upon a finding of probable cause that the target of the surveillance is engaged or will engage in

a violation of the criminal laws of the Federal Government or any state.

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

§ 5743. Requirements for governmental access.

(a) Contents of [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 electronic] **a** communication which is in electronic storage in [an electronic] **a** 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 subsection (b).

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

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

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

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

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

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

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

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

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

(ii) Solely for the purpose of providing storage or 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.

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Section 9. 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 10. Sections 5761(b) and (c) (4), 5772(a) and 5773(a) and (c) of Title 18 are amended to read:

§ 5761. Mobile tracking devices.

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(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,] 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.**

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

* * *

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

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§ 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 in writing by the district attorney may make application for an order or an extension of an order under section 5773 (relating to issuance of an order for use of certain devices) authorizing or approving **disclosure of mobile communications tracking information or, if necessary, the production and disclosure of mobile communications tracking information**, the installation and use of a pen register, a trap and trace device or a telecommunication identification interception device under this subchapter, in writing, under oath or equivalent affirmation, to a court of common pleas **having jurisdiction over the offense under investigation** or to any Superior Court judge when an application for an order authorizing interception of [wire or electronic] communications is or has been made for the targeted telephone or another application for interception under this subchapter has been made involving the same investigation.

* * *

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

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

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(c) Time period and extensions.--

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

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

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

APPROVED--The 25th day of October, A.D. 2012.

TOM CORBETT