

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL
No. 2508 Session of
1988

INTRODUCED BY MOEHLMANN, BLAUM, McVERRY, PICCOLA, MAYERNIK,
HAGARTY, HECKLER, KOSINSKI, GRUITZA, SWEET, BORTNER,
R. C. WRIGHT, CALTAGIRONE, LASHINGER AND WOGAN, MAY 25, 1988

REFERRED TO COMMITTEE ON JUDICIARY, MAY 25, 1988

AN ACT

1 Amending Title 18 (Crimes and Offenses) of the Pennsylvania
2 Consolidated Statutes, providing for interception of certain
3 communications and access to records pertaining thereto;
4 providing for stored wire and communications and
5 transactional records access, mobile tracking devices and pen
6 registers and trap and trace devices; and further providing
7 for certain reports and penalties.

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

10 Section 1. Chapter 57 of Title 18 of the Pennsylvania
11 Consolidated Statutes is amended by adding a subchapter heading
12 to read:

SUBCHAPTER A

GENERAL PROVISIONS

15 Section 2. Section 5702 of Title 18 is amended to read:

16 § 5702. Definitions.

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

20 "Aggrieved person." A person who was a party to any

1 intercepted wire, electronic or oral communication or a person
2 against whom the interception was directed.

3 "Aural transfer." A transfer containing the human voice at
4 any point between and including the point of origin and the
5 point of reception.

6 "Communication common carrier." Any person engaged as a
7 common carrier for hire, in intrastate, interstate or foreign
8 communication by wire or radio or in intrastate, interstate or
9 foreign radio transmission of energy; however, a person engaged
10 in radio broadcasting shall not, while so engaged, be deemed a
11 common carrier.

12 "Contents." As used with respect to any wire, electronic or
13 oral communication, is any information concerning the identity
14 of the parties to such communication or the existence,
15 substance, purport, or meaning of that communication.

16 "Court." The Superior Court.

17 "Electronic communication." Any transfer of signs, signals,
18 writing, images, sounds, data or intelligence of any nature
19 transmitted in whole or in part by a wire, radio,
20 electromagnetic, photoelectronic or photo-optical system,
21 except:

22 (1) The radio portion of a cordless telephone
23 communication that is transmitted between the cordless
24 telephone handset and the base unit.

25 (2) Any wire or oral communication.

26 (3) Any communication made through a tone-only paging
27 device.

28 (4) Any communication from a tracking device (as defined
29 in this section).

30 "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.

"Electronic, mechanical or other device." Any device or apparatus, including an induction coil, that can be used to intercept a wire, electronic or oral communication other than:

(1) Any telephone or telegraph instrument, equipment or facility, or any component thereof, furnished to the subscriber or user by a provider of wire or electronic communication service in the ordinary course of its business, or furnished by such subscriber or user for connection to the facilities of such service and used in the ordinary course of its business, or being used by a communication common carrier in the ordinary course of its business, or by an investigative or law enforcement officer in the ordinary course of his duties.

(2) A hearing aid or similar device being used to correct subnormal hearing to not better than normal.

"Electronic storage."

(1) Any temporary, intermediate storage of a wire or electronic communication incidental to the electronic transmission thereof.

(2) Any storage of such a communication by an electronic communication service for purpose of backup protection of the communication.

"In-progress trace." The determination of the origin of a

1 telephonic communication to a known telephone during an
2 interception.

3 "Intercept." Aural or other acquisition of the contents of
4 any wire, electronic or oral communication through the use of
5 any electronic, mechanical or other device.

6 ["Intercepting device." Any device or apparatus, including
7 an induction coil, that can be used to intercept a wire or oral
8 communication other than:

9 (1) any telephone or telegraph instrument, equipment or
10 facility, or any component thereof, furnished to the
11 subscriber or user by a communication common carrier in the
12 ordinary course of its business, or purchased by any person,
13 and being used by the subscriber, user, or person in the
14 ordinary course of its business; or being used by a
15 communication common carrier in the ordinary course of its
16 business, or by an investigative or law enforcement officer
17 in the ordinary course of his duties; or

18 (2) a hearing aid or similar device being used to
19 correct subnormal hearing to not better than normal.]

20 "Investigative or law enforcement officer." Any officer of
21 the United States [or of the Commonwealth or political
22 subdivision thereof,] or any state or political subdivision
23 thereof who is empowered by law to conduct investigations of or
24 to make arrests for offenses enumerated in this chapter, and any
25 attorney authorized by law to prosecute or participate in the
26 prosecution of such offense. The term shall include, but not be
27 limited to, employees of the Pennsylvania Crime Commission,
28 authorized to investigate crimes enumerated in section 5708
29 (relating to order authorizing interception of wire, electric or
30 oral communications).

1 "Judge." [As] When referring to a judge authorized to
2 receive applications for, and to enter, orders authorizing
3 interceptions of wire [and], electronic or oral communications
4 pursuant to this chapter, any judge of the Superior Court.

5 "One call system." A communication system established by
6 users to provide a single telephone number for contractors or
7 designers or any other person to call notifying users of the
8 caller's intent to engage in demolition or excavation work.

9 "Oral communication." Any oral [communications]
10 communication uttered by a person possessing an expectation that
11 such communication is not subject to interception under
12 circumstances justifying such expectation. The term does not
13 include any electronic communication.

14 "Organized crime."

15 (1) The unlawful activity of an association trafficking
16 in illegal goods or services, including but not limited to,
17 gambling, prostitution, loan sharking, controlled substances,
18 labor racketeering, or other unlawful activities; or

19 (2) any continuing criminal conspiracy or other unlawful
20 practice which has as its objective:

21 (i) large economic gain through fraudulent or
22 coercive practices; or

23 (ii) improper governmental influence.

24 "Pen register." [A mechanical or electronic device which
25 attaches to a particular telephone line, and which records
26 outgoing numbers dialed by a particular telephone, but does not:

27 (1) monitor the contents of any communication; or

28 (2) record the origin of any incoming communications.]

29 A device which records or decodes electronic or other impulses
30 which identify the numbers dialed or otherwise transmitted, with

respect to wire communications, on the telephone line to which the device is attached. The term does not include a device used by a provider or customer of a wire or electronic communication service for billing, or recording as an incident to billing, for communication service provided by the provider, or any device used by a provider, or customer of a wire communication service for cost accounting or other like purposes in the ordinary course of business.

"Person." Any employee, or agent of the United States or any state or political subdivision thereof, and any individual, partnership, association, joint stock company, trust or corporation.

"Readily accessible to the general public." As used with respect to a radio communication, that such communication is not:

(1) scrambled or encrypted;

(2) transmitted using modulation techniques of which the essential parameters have been withheld from the public with the intention of preserving the privacy of the communication;

(3) carried on a subscriber or other signal subsidiary to a radio transmission;

(4) transmitted over a communication system provided by a common carrier, unless the communication is a tone-only paging system communication; or

(5) transmitted on frequencies allocated under 47 CFR Parts 25, 74D, E, F or 94, unless, in the case of a communication transmitted on a frequency allocated under Part 74 which is not exclusively allocated to broadcast auxiliary services, the communication is a two-way voice communication by radio.

1 "Remote computing service." The provision to the public of
2 computer storage or processing services by means of an
3 electronic communications system.

4 "Tracking device." An electronic or mechanical device which
5 permits only the tracking of the movement of a person or object.

6 "Trap and trace device." A device which captures the
7 incoming electronic or other impulses which identify the
8 originating number of an instrument or device from which a wire
9 or electronic communication was transmitted.

10 "User." Any person or entity who:

11 (1) uses an electronic communication service; and

12 (2) is duly authorized by the provider of the service to
13 engage in the use.

14 "Wire [communications] communication." Any [communication]
15 aural transfer made in whole or in part through the use of
16 facilities for the transmission of [communications]
17 communication by wire, cable or other like connection between
18 the point of origin and the point of reception, including the
19 use of such a connection in a switching station, furnished or
20 operated by a telephone, telegraph or radio company for hire as
21 a communication common carrier. The term does not include the
22 radio portion of a cordless telephone communication transmitted
23 between the cordless telephone handset and the base unit.

24 Section 3. Chapter 57 of Title 18 is amended by adding a
25 subchapter heading to read:

26 SUBCHAPTER B

27 WIRE, ELECTRONIC OR ORAL COMMUNICATION

28 Section 4. Sections 5703, 5704, 5705, 5706, 5707, 5708,
29 5709, 5710, 5712, 5713, 5714, 5715, 5717, 5718, 5719, 5720,
30 5721, 5722, 5723, 5724 and 5725 of Title 18 are amended to read:

1 § 5703. Interception, disclosure or use of wire, electronic or
2 oral communications.

3 Except as otherwise provided in this chapter, a person is
4 guilty of a felony of the third degree if he:

5 (1) [willfully] intentionally intercepts, endeavors to
6 intercept, or procures any other person to intercept or
7 endeavor to intercept any wire, electronic or oral
8 communication;

9 (2) [willfully] intentionally discloses or endeavors to
10 disclose to any other person the contents of any wire,
11 electronic or oral communication, or evidence derived
12 therefrom, knowing or having reason to know that the
13 information was obtained through the interception of a wire,
14 electronic or oral communication; or

15 (3) [willfully] intentionally uses or endeavors to use
16 the contents of any wire, electronic or oral [communications]
17 communication, or evidence derived therefrom, knowing or
18 having reason to know, that the information was obtained
19 through the interception of a wire, electronic or oral
20 communication.

21 § 5704. Exceptions to prohibition [on] of interception and
22 disclosure of communications.

23 It shall not be unlawful under this chapter for:

24 (1) An operator of a switchboard, or an officer, agent
25 or employee of a [communication common carrier] provider of
26 wire or electronic communication service, whose facilities
27 are used in the transmission of a wire communication, to
28 intercept, disclose or use that communication in the normal
29 course of his employment while engaged in any activity which
30 is a necessary incident to the rendition of his service or to

1 the protection of the rights or property of the [carrier of
2 such communication] provider of wire or electronic
3 communication service. However, no [communication common
4 carrier] provider of wire or electronic communication service
5 shall utilize service observing or random monitoring except
6 for mechanical or service quality control checks.

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

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

14 (ii) one of the parties to the communication has
15 given prior consent to such interception. However, no
16 interception under this paragraph shall be made unless
17 the Attorney General or a deputy attorney general
18 designated in writing by the Attorney General, or the
19 district attorney, or an assistant district attorney
20 designated in writing by the district attorney, of the
21 county wherein the interception is to be made, has
22 reviewed the facts and is satisfied that the consent is
23 voluntary and has given prior approval for the
24 interception; however such interception shall be subject
25 to the recording and record keeping requirements of
26 section 5714(a) (relating to recording of intercepted
27 communications) and that the Attorney General, deputy
28 attorney general, district attorney or assistant district
29 attorney authorizing the interception shall be the
30 custodian of recorded evidence obtained therefrom.

1 (3) Police and emergency communications systems to
2 record telephone communications coming into and going out of
3 the communications system of the Pennsylvania Emergency
4 Management Agency or a police department, fire department or
5 county emergency center, if:

6 (i) the telephones thereof are limited to the
7 exclusive use of the communication system for
8 administrative purposes and provided the communication
9 system employs a periodic warning which indicates to the
10 parties to the conversation that the call is being
11 recorded;

12 (ii) all recordings made pursuant to this clause,
13 all notes made therefrom, and all transcriptions thereof
14 may be destroyed at any time, unless required with regard
15 to a pending matter; and

16 (iii) at least one nonrecorded telephone line is
17 made available for public use at the Pennsylvania
18 Emergency Management Agency and at each police
19 department, fire department or county emergency center.

20 (4) A person, to intercept a wire, electronic or oral
21 communication, where all parties to the communication have
22 given prior consent to such interception.

23 (5) Any investigative or law enforcement officer, or
24 [communications] communication common carrier acting at the
25 direction of an investigative or law enforcement officer or
26 in the normal course of its business, to use a pen register
27 as provided in this chapter.

28 (6) Personnel of any public utility to record telephone
29 conversations with utility customers or the general public
30 relating to receiving and dispatching of emergency and

1 service calls provided there is, during such recording, a
2 periodic warning which indicates to the parties to the
3 conversation that the call is being recorded.

4 (7) A user, or any officer, employee or agent of such
5 user, to record telephone communications between himself and
6 a contractor or designer, or any officer, employee or agent
7 of such contractor or designer, pertaining to excavation or
8 demolition work or other related matters, if the user or its
9 agent indicates to the parties to the conversation that the
10 call will be or is being recorded. [The] As used in this
11 paragraph, the terms "user," "contractor," "demolition work,"
12 "designer" and "excavation work" shall have the meanings
13 given to them in the act of December 10, 1974 (P.L.852,
14 No.287), referred to as the Underground Utility Line
15 Protection Law; and a one call system shall be considered for
16 this purpose to be an agent of any user which is a member
17 thereof.

18 (8) A provider of electronic communication service to
19 record the fact that a wire or electronic communication was
20 initiated or completed in order to protect the provider,
21 another provider furnishing service toward the completion of
22 the wire or electronic communication, or a user of that
23 service, from fraudulent, unlawful or abusive use of the
24 service.

25 (9) A person or entity providing electronic
26 communication service to the public to divulge the contents
27 of any such communication:

28 (i) as otherwise authorized in this section or
29 section 5717 (relating to disclosure or use of contents
30 of wire or oral communications or derivative evidence);

1 (ii) with the lawful consent of the originator or
2 any addressee or intended recipient of the communication;

3 (iii) to a person employed or authorized, or whose
4 facilities are used, to forward the communication to its
5 destination; or

6 (iv) which were inadvertently obtained by the
7 service provider and which appear to pertain to the
8 commission of a crime, if such divulgence is made to a
9 law enforcement agency;

10 A person or entity providing electronic communication service
11 to the public shall not intentionally divulge the contents of
12 any communication (other than one directed to the person or
13 entity, or an agent thereof) while in transmission of that
14 service to any person or entity other than an addressee or
15 intended recipient of the communication or an agent of the
16 addressee or intended recipient.

17 (10) Any person:

18 (i) to use a device which captures the incoming
19 electronic or other impulses which identify the numbers
20 of an instrument from which a wire communication was
21 transmitted;

22 (ii) to intercept or access an electronic
23 communication made through an electronic communication
24 system configured so that the electronic communication is
25 readily accessible to the general public;

26 (iii) to intercept any radio communication which is
27 transmitted:

28 (A) by a station for the use of the general
29 public, or which relates to ships, aircraft,
30 vehicles, or persons in distress;

1 (B) by any governmental, law enforcement, civil
2 defense, private land mobile or public safety
3 communication system, including police and fire
4 systems, readily accessible to the general public;

5 (C) by a station operating on an authorized
6 frequency within the bands allocated to the amateur,
7 citizens band or general mobile radio services; or

8 (D) by any marine or aeronautical communication
9 system;

10 (iv) to engage in any conduct which:

11 (A) is prohibited by section 633 of the
12 Communications Act of 1934 (48 Stat. 1105, 47 U.S.C.
13 § 553); or

14 (B) is excepted from the application of section
15 705(a) or the Communications Act of 1934 (47 U.S.C. §
16 605(a)), by section 705(b) of that act (47 U.S.C. §
17 605(b)); or

18 (v) to intercept any wire or electronic
19 communication the transmission of which is causing
20 harmful interference to any lawfully operating station,
21 to the extent necessary to identify the source of the
22 interference.

23 (11) Other users of the same frequency to intercept any
24 radio communication made through a system which utilizes
25 frequencies monitored by individuals engaged in the
26 provisions or use of the system, if the communication is not
27 scrambled or encrypted.

28 § 5705. Possession, sale, distribution, manufacture or
29 advertisement of [intercepting] electronic,
30 mechanical or other devices.

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

6 (1) [Willfully] Intentionally possesses an
7 [intercepting] electronic, mechanical or other device,
8 knowing or having reason to know that the design of such
9 device renders it primarily useful for the purpose of the
10 surreptitious interception of a wire, electronic or oral
11 communication.

12 (2) [Willfully] Intentionally sells, transfers or
13 distributes an [intercepting] electronic, mechanical or other
14 device, knowing or having reason to know that the design of
15 such device renders it primarily useful for the purpose of
16 the surreptitious interception of a wire, electronic or oral
17 communication.

18 (3) [Willfully] Intentionally manufactures or assembles
19 an [intercepting] electronic, mechanical or other device,
20 knowing or having reason to know that the design of such
21 device renders it primarily useful for the purpose of the
22 surreptitious interception of a wire, electronic or oral
23 communication.

24 (4) [Willfully] Intentionally places in any newspaper,
25 magazine, handbill, or other publication any advertisement of
26 [any intercepting] an electronic, mechanical or other device,
27 knowing or having reason to know that the design of such
28 device renders it primarily useful for the purpose of the
29 surreptitious interception of a wire, electronic or oral
30 communication or of [any intercepting] an electronic,

1 mechanical or other device where such advertisement promotes
2 the use of such device for the purpose of the surreptitious
3 interception of a wire, electronic or oral communication.

4 § 5706. Exceptions to prohibitions in possession, sale,
5 distribution, manufacture or advertisement of
6 [intercepting] electronic, mechanical or other
7 devices.

8 (a) Unlawful activities.--It shall not be unlawful under
9 this chapter for:

10 (1) a [communication common carrier] provider of wire or
11 electronic communication service or an officer, agent or
12 employee of, or a person under contract with [a communication
13 common carrier], such a provider, in the [usual] normal
14 course of the [communication common carrier's business]
15 business of providing the wire or electronic communication
16 service; or

17 (2) a person under contract with the United States, the
18 Commonwealth or a political subdivision thereof, a state or a
19 political subdivision thereof, or an officer, agent or
20 employee of the United States, the Commonwealth or a
21 political subdivision thereof, or a state or a political
22 subdivision thereof[,];

23 to possess, sell, distribute, manufacture, assemble or advertise
24 [any intercepting] an electronic, mechanical or other device,
25 while acting in furtherance of the appropriate activities of the
26 United States, the Commonwealth or a political subdivision
27 thereof, or a state or a political subdivision thereof or a
28 [communication common carrier] provider of wire or electronic
29 communication service.

30 (b) Responsibility.--The Attorney General and the district

1 attorney or their designees so designated in writing shall have
2 the sole responsibility to buy, possess and loan any
3 [intercepting] electronic, mechanical or other device which is
4 to be used by investigative or law enforcement officers for
5 purposes of interception as authorized under section 5704(2)
6 (relating to exceptions to prohibition [on] of interception and
7 disclosure of communications), 5712 (relating to issuance of
8 order and effect) or 5713 (relating to emergency situations).
9 § 5707. Seizure and forfeiture of [intercepting] electronic,
10 mechanical or other devices.

11 Any [intercepting] electronic, mechanical or other device
12 possessed, used, sent, distributed, manufactured[,] or assembled
13 in violation of this chapter is hereby declared to be contraband
14 and may be seized and forfeited to the Commonwealth.

15 § 5708. Order authorizing interception of wire, electronic or
16 oral communications.

17 (a) Authorization.--Except in cases referred to in
18 subsection (b), the Attorney General, or, during the absence or
19 incapacity of the Attorney General, a deputy attorney general
20 designated in writing by the Attorney General, or the district
21 attorney or, during the absence or incapacity of the district
22 attorney, an assistant district attorney designated in writing
23 by the district attorney of the county wherein the interception
24 is to be made, may make written application to any [Superior
25 Court] judge for an order authorizing the interception of a
26 wire, electronic or oral communication by the investigative or
27 law enforcement officers or agency having responsibility for an
28 investigation involving suspected criminal activities when such
29 interception may provide evidence of the commission of any of
30 the following offenses, or may provide evidence aiding in the

1 apprehension of the perpetrator or perpetrators of any of the
2 following offenses:

3 (1) Under this title:

4 Section 911 (relating to corrupt organizations)

5 Section 2501 (relating to criminal homicide)

6 Section 2502 (relating to murder)

7 Section 2503 (relating to voluntary manslaughter)

8 Section 2706 (relating to terroristic threats)

9 Section 2901 (relating to kidnapping)

10 Section 3121 (relating to rape)

11 Section 3123 (relating to involuntary deviate sexual
12 intercourse)

13 Section 3301 (relating to arson and related offenses)

14 Section 3302 (relating to causing or risking
15 catastrophe)

16 Section 3502 (relating to burglary)

17 Section 3701 (relating to robbery)

18 Section 3921 (relating to theft by unlawful taking or
19 disposition)

20 Section 3922 (relating to theft by deception)

21 Section 3923 (relating to theft by extortion)

22 Section 4701 (relating to bribery in official and
23 political matters)

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

26 Section 4952 (relating to intimidation of witnesses
27 or victims)

28 Section 4953 (relating to retaliation against witness
29 or victim)

30 Section 5512 (relating to lotteries, etc.)

1 Section 5513 (relating to gambling devices, gambling,
2 etc.)

3 Section 5514 (relating to pool selling and
4 bookmaking)

5 (2) Under this title, where such offense is dangerous to
6 life, limb or property and punishable by imprisonment for
7 more than one year:

8 Section 3925 (relating to receiving stolen property)

9 Section 3926 (relating to theft of services)

10 Section 3927 (relating to theft by failure to make
11 required disposition of funds received)

12 Section 4108 (relating to commercial bribery and
13 breach of duty to act disinterestedly)

14 Section 4109 (relating to rigging publicly exhibited
15 contest)

16 Section 4902 (relating to perjury)

17 [Section 4907 (relating to tampering with witnesses
18 and informants)]

19 Section 4909 (relating to witness or informant taking
20 bribe)

21 Section 4911 (relating to tampering with public
22 records or information)

23 Section 5101 (relating to obstructing administration
24 of law or other governmental function)

25 Section 5504 (relating to harassment by communication
26 or address)

27 Section 5902 (relating to prostitution and related
28 offenses)

29 (3) Under the act of [July 22, 1970 (P.L.513, No.178),
30 known as the "Pennsylvania Cigarette Tax Act,"] March 4, 1971

1 (P.L.6, No.2), known as the Tax Reform Code of 1971, where
2 such offense is dangerous to life, limb or property and
3 punishable by imprisonment for more than one year:

4 [Section 902. Sales of unstamped cigarettes.

5 Section 903. Possession of unstamped cigarettes.

6 Section 904. Counterfeiting.]

7 Section 1272 (relating to sales of unstamped
8 cigarettes)

9 Section 1273 (relating to possession of unstamped
10 cigarettes)

11 Section 1274 (relating to counterfeiting).

12 (4) Any offense set forth under section 13(a) of the act
13 of April 14, 1972 (P.L.233, No.64), known as ["The
14 Controlled Substance, Drug, Device and Cosmetic Act,[" not
15 including the offense described in clause (31) of section
16 13(a).

17 (5) Any offense set forth under the act of November 15,
18 1972 (P.L.1227, No.272).

19 (6) Any conspiracy to commit any of the offenses set
20 forth in this section.

21 (b) Exception.--Whenever the interception of wire,
22 electronic or oral communication is to be made by an
23 investigative officer employed by the Pennsylvania Crime
24 Commission, the application for the authorizing order shall be
25 made by the Attorney General or, during the absence or
26 incapacity of the Attorney General, a deputy attorney general
27 designated in writing by the Attorney General.

28 § 5709. Application for order.

29 (a) Contents.--Each application for an order of
30 authorization to intercept a wire, electronic or oral

1 communication shall be made in writing upon the personal oath or
2 affirmation of the Attorney General or a district attorney of
3 the county wherein the interception is to be made and shall
4 contain all of the following:

5 (1) A statement of the authority of the applicant to
6 make such application.

7 (2) A statement of the identity and qualifications of
8 the investigative or law enforcement officers or agency for
9 whom the authority to intercept a wire, electronic or oral
10 communication is sought.

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

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

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

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

21 (iv) [A] Except as provided in subsection (b), a
22 showing that there is probable cause to believe that such
23 communication will be communicated on the wire
24 communication facility involved or at the particular
25 place where the oral communication is to be intercepted.

26 (v) [The] Except as provided in subsection (b), a
27 description of the character and location of the
28 particular wire communication [facilities] facility
29 involved or the particular place where the oral
30 communication is to be intercepted.

1 (vi) A statement of the period of time for which the
2 interception is required to be maintained, and, if the
3 character of the investigation is such that the
4 authorization for interception should not automatically
5 terminate when the described type of communication has
6 been first obtained, a particular statement of facts
7 establishing probable cause to believe that additional
8 communications of the same type will occur thereafter.

9 (vii) A particular statement of facts showing that
10 other normal investigative procedures with respect to the
11 offense have been tried and have failed, or reasonably
12 appear to be unlikely to succeed if tried or are too
13 dangerous to employ.

14 (4) Where the application is for the renewal or
15 extension of an order, a particular statement of facts
16 showing the results thus far obtained from the interception,
17 or a reasonable explanation of the failure to obtain such
18 results.

19 (5) A complete statement of the facts concerning all
20 previous applications, known to the applicant made to any
21 court for authorization to intercept a wire, electronic or
22 oral communication involving any of the same facilities or
23 places specified in the application or involving any person
24 whose communication is to be intercepted, and the action
25 taken by the court on each such application.

26 (6) A proposed order of authorization for consideration
27 by the judge.

28 (7) Such additional testimony or documentary evidence in
29 support of the application as the judge may require.

30 (b) Exceptions to requirements of officer's statements.--

1 (1) The requirements of subsection (a)(3)(iv) and (v) do
2 not apply if:

3 (i) in the case of an application with respect to
4 the interception of oral communication:

5 (A) the application contains a full and complete
6 statement as to why the specification is not
7 practical and identifies the person who commits the
8 offense and whose communications are to be
9 intercepted; and

10 (B) the judge finds that the specification is
11 not practical; or

12 (ii) in the case of an application with respect to a
13 wire or electronic communication:

14 (A) the application identifies the person
15 believed to be committing the offense and whose
16 communications are to be intercepted and the
17 applicant makes a showing of a purpose, on the part
18 of that person, to thwart interception by changing
19 facilities; and

20 (B) the judge finds that the purpose has been
21 adequately shown.

22 (2) An interception of a communication under an order
23 with respect to which the requirements of subsection
24 (a)(3)(iv) and (v) do not apply by reason of paragraph (1)
25 shall not begin until the facility from which, or the place
26 where, the communication is to be intercepted is ascertained
27 by the person implementing the interception order. A provider
28 of wire or electronic communication service which has
29 received an order as provided for in this subsection may move
30 the court to modify or quash the order on the ground that its

assistance with respect to the interception cannot be performed in a timely or reasonable fashion. The court, upon notice to the applicant, shall decide such a motion expeditiously.

§ 5710. Grounds for entry of order.

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

(1) the person whose [communication is] communications are to be intercepted is committing, has or had committed or is about to commit an offense as provided in section 5708 (relating to order authorizing interception of wire, electronic or oral communications);

(2) particular communications concerning such offense may be obtained through such interception;

(3) normal investigative procedures with respect to such offense have been tried and have failed or reasonably appear to be unlikely to succeed if tried or to be too dangerous to employ;

(4) except as provided in subsection (c), the [facilities] facility from which, or the place where, the wire, electronic or oral communications are to be intercepted, [are, have] is, has been, or [are] is about to be used, in connection with the commission of such offense, or [are] is leased to, listed in the name of, or commonly used by, such [individual] person;

1 (5) the investigative or law enforcement officers or
2 agency to be authorized to intercept the wire, electronic or
3 oral [communication are] communications is qualified by
4 training and experience to execute the interception sought,
5 and [are] is certified under section 5724 (relating to
6 training); and

7 (6) in the case of an application, other than a renewal
8 or extension, for an order to intercept a communication of a
9 person or on a facility which was the subject of a previous
10 order authorizing interception, the application is based upon
11 new evidence or information different from and in addition to
12 the evidence or information offered to support the prior
13 order, regardless of whether such evidence was derived from
14 prior interceptions or from other sources.

15 (b) Corroborative evidence.--As part of the consideration of
16 an application in which there is no corroborative evidence
17 offered, the judge may inquire in camera as to the identity of
18 any informants or any other additional information concerning
19 the basis upon which the investigative or law enforcement
20 officer or agency has applied for the order of authorization
21 which the judge finds relevant in order to determine if there is
22 probable cause pursuant to this section.

23 (c) Exceptions.--The requirements of subsection (a)(4) do
24 not apply if:

25 (1) in the case of an application with respect to oral
26 communications:

27 (i) the application contains a full and complete
28 statement as to why the specification is not practical
29 and identifies the person who commits the offense and
30 whose communications are to be intercepted; and

1 (ii) the judge finds that the specification is not
2 practical; or

3 (2) in the case of an application with respect to wire
4 or electronic communications:

5 (i) the application identifies the person who is
6 believed to be committing the offense and whose
7 communications are to be intercepted and the applicant
8 makes a showing of a purpose, on the part of that person,
9 to thwart interception by changing facilities; and

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

12 (d) Time period.--The time period for an interception of a
13 communication under an order authorized pursuant to subsection
14 (c) begins upon commencement of the interception of the
15 communication, but in no event later than ten days from the date
16 of the order.

17 § 5712. Issuance of order and effect.

18 (a) Authorizing orders.--Each order authorizing the
19 interception of any wire, electronic or oral communication shall
20 state the following:

21 (1) The identity of the investigative or law enforcement
22 officers or agency to whom the authority to intercept [a]
23 wire, electronic or oral [communication] communications is
24 given and the name and official identity of the person who
25 made the application.

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

28 (3) The character and location of the particular
29 communication facilities as to which, or the particular place
30 of the communication as to which, authority to intercept is

1 granted.

2 (4) A particular description of the type of the
3 communication to be intercepted and a statement of the
4 particular offense to which it relates.

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

9 (b) Time limits.--No order entered under this section shall
10 authorize the interception of any wire, electronic or oral
11 communication for a period of time in excess of that necessary
12 under the circumstances. Every order entered under this section
13 shall require that such interception begin and terminate as soon
14 as practicable and be conducted in such a manner as to minimize
15 or eliminate the interception of such communications not
16 otherwise subject to interception under this chapter by making
17 reasonable efforts, whenever possible, to reduce the hours of
18 interception authorized by said order. [Except as provided in
19 subsection (c), no] In the event the intercepted communication
20 is in a code or foreign language and an expert in that code or
21 foreign language is not reasonably available during the
22 interception period, minimization may be accomplished as soon as
23 practicable after such interception. No order entered under this
24 section shall authorize the interception of wire, electronic or
25 oral communications for any period exceeding [20] 30 days. [An
26 extension] The 30-day period begins on the day on which the
27 investigative or law enforcement officers or agency first begins
28 to conduct an interception under the order, or ten days after
29 the order is entered, whichever is earlier. Extensions or
30 [renewal] renewals of such an order may be granted for [one]

1 additional [period] periods of not more than [20 days] 30 days
2 each. No extension or renewal shall be granted unless an
3 application for it is made in accordance with this section, and
4 the judge makes the findings required by section 5710 (relating
5 to grounds for entry of order).

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

9 (d) Progress reports.--Whenever an order authorizing an
10 interception is entered, the order may require reports to be
11 made to the judge who issued the order showing what progress has
12 been made toward achievement of the authorized objective and the
13 need for continued interception. The reports shall be made at
14 such intervals as the judge may require.

15 (e) Final report.--Whenever [a surveillance] an interception
16 is authorized pursuant to this section, a complete written list
17 of names of participants and evidence of offenses discovered,
18 including those not stated in the application for order, shall
19 be filed with the court at the time the authorized
20 [surveillance] 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 [communication common carrier]
24 provider of electronic communication service shall furnish the
25 applicant forthwith all information, facilities and technical
26 assistance necessary to accomplish the interception
27 unobtrusively and with a minimum of interference with the
28 services that such [carrier] service provider is affording the
29 person whose communications are to be intercepted. The
30 obligation of a [communication common carrier] provider of

1 electronic communication service under such an order may include
2 but is not limited to conducting an in-progress trace during an
3 interception. Any [communication common carrier] provider of
4 electronic communication service furnishing such facilities or
5 technical assistance shall be compensated [therefore] therefor
6 by the applicant [at the prevailing rates. Said carrier] for
7 reasonable expenses incurred in providing the facilities or
8 assistance. The service provider shall be immune from civil and
9 criminal liability for any assistance rendered to the applicant
10 pursuant to this section.

11 (g) Entry by law enforcement officers.--An order authorizing
12 the interception of a wire, electronic or oral communication
13 shall, if requested, authorize the entry of premises or
14 facilities specified in subsection (a)(3), or premises necessary
15 to obtain access to the premises or facilities specified in
16 subsection (a)(3), by the law enforcement officers specified in
17 subsection (a)(1), as often as necessary solely for the purposes
18 of installing, maintaining or removing an [intercepting]
19 electronic, mechanical or other device or devices provided that
20 such entry is reasonably necessary to accomplish the purposes of
21 this chapter and provided that the judge who issues the order
22 shall be notified of the time and method of each such entry
23 prior to entry if practical and, in any case, within 48 hours of
24 entry.

25 § 5713. Emergency situations.

26 (a) Application.--Whenever, upon informal application by the
27 Attorney General or a designated deputy attorney general
28 authorized in writing by the Attorney General or a district
29 attorney or an assistant district attorney authorized in writing
30 by the district attorney of a county wherein the interception is

1 to be made, a judge determines there are grounds upon which an
2 order could be issued pursuant to this chapter, and that an
3 emergency situation exists with respect to the investigation of
4 an offense designated in section 5708 (relating to order
5 authorizing interception of wire, electronic or oral
6 communications), and involving conspiratorial activities
7 characteristic of organized crime [and] or a substantial danger
8 to life or limb, dictating authorization for immediate
9 interception of wire, electronic or oral [communication]
10 communications before an application for an order could with due
11 diligence be submitted to him and acted upon, the judge may
12 grant oral approval for such interception without an order,
13 conditioned upon the filing with him, within 48 hours
14 thereafter, of an application for an order which, if granted,
15 shall recite the oral approval and be retroactive to the time of
16 such oral approval. Such interception shall immediately
17 terminate when the communication sought is obtained or when the
18 application for an order is denied, whichever is earlier. In the
19 event no application for an order is made, the content of any
20 wire, electronic or oral communication intercepted shall be
21 treated as having been obtained in violation of this chapter.

22 (b) Further proceedings.--In the event no application is
23 made or an application made pursuant to this section is denied,
24 the court shall cause an inventory to be served as provided in
25 section 5716 (relating to service of inventory and inspection of
26 intercepted communications) and shall require the tape or other
27 recording of the intercepted communication to be delivered to,
28 and sealed by, the court. Such evidence shall be retained by the
29 court in accordance with section 5714 (relating to recording of
30 intercepted communications) and the same shall not be used or

1 disclosed in any legal proceeding except in a civil action
2 brought by an aggrieved person pursuant to section 5725
3 (relating to civil action for unlawful interception, disclosure
4 or use of wire, electronic or oral communication) or as
5 otherwise authorized by court order. In addition to other
6 remedies and penalties provided by this chapter, failure to
7 effect delivery of any such tape or other recording shall be
8 punishable as contempt by the court directing such delivery.
9 Evidence of oral authorization to intercept [an oral or wire
10 communication] wire, electronic or oral communications shall be
11 a defense to any charge against the investigating or law
12 enforcement officer for engaging in unlawful interception.

13 § 5714. Recording of intercepted communication.

14 (a) Recording and monitoring.--Any wire, electronic or oral
15 communication intercepted in accordance with this chapter shall,
16 if practicable, be recorded by tape or other comparable method.
17 The recording shall be done in such a way as will protect it
18 from editing or other alteration. Whenever an interception is
19 being monitored, the monitor shall be an investigative or law
20 enforcement officer certified under section 5724 (relating to
21 training), and where practicable, keep a signed, written record
22 which shall include the following:

23 (1) The date and hours of surveillance.

24 (2) The time and duration of each intercepted
25 communication.

26 (3) The participant, if known, in each intercepted
27 conversation.

28 (4) A summary of the content of each intercepted
29 communication.

30 (b) Sealing of recordings.--Immediately upon the expiration

1 of the order or extensions or renewals thereof, all monitor's
2 records, tapes and other recordings shall be transferred to the
3 judge issuing the order and sealed under his direction. Custody
4 of the tapes, or other recordings shall be maintained wherever
5 the court directs. They shall not be destroyed except upon an
6 order of the court and in any event shall be kept for ten years.
7 Duplicate tapes, or other recordings may be made for disclosure
8 or use pursuant to section 5717 (relating to disclosure or use
9 of contents of wire, electronic or oral communications or
10 derivative evidence). The presence of the seal provided by this
11 section, or a satisfactory explanation for its absence, shall be
12 a prerequisite for the disclosure of the contents of any wire,
13 electronic or oral communication, or evidence derived therefrom,
14 under section 5717(b).

15 § 5715. Sealing of applications, orders and supporting papers.

16 Applications made, final reports, and orders granted pursuant
17 to this chapter and supporting papers and monitor's records
18 shall be sealed by the court and shall be held in custody as the
19 court shall direct and shall not be destroyed except on order of
20 the court and in any event shall be kept for ten years. They may
21 be disclosed only upon a showing of good cause before a court of
22 competent jurisdiction except that any investigative or law
23 enforcement officer may disclose such applications, orders and
24 supporting papers and monitor's records to investigative or law
25 enforcement officers of this or another state, any of its
26 political subdivisions, or of the United States to the extent
27 that such disclosure is appropriate to the proper performance of
28 the official duties of the officer making or receiving the
29 disclosure. In addition to any remedies and penalties provided
30 by this chapter, any violation of the provisions of this section

1 may be punished as contempt of the court.

2 § 5717. Disclosure or use of contents of wire, electronic or
3 oral communications or derivative evidence.

4 (a) Investigative activities.--Any investigative or law
5 enforcement officer who, by any means authorized by this
6 chapter, 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 another investigative
9 or law enforcement officer or make use of such contents or
10 evidence to the extent that such disclosure or use is
11 appropriate to the proper performance of the official duties of
12 the officer making or receiving the disclosure.

13 (b) Evidence.--Any person who, by any means authorized by
14 this chapter, has obtained knowledge of the contents of any
15 wire, electronic or oral communication, or evidence derived
16 therefrom, may disclose such contents or evidence to an
17 investigative or law enforcement officer and may disclose such
18 contents or evidence while giving testimony under oath or
19 affirmation in any criminal proceeding in any court of this
20 Commonwealth or of another state or of the United States or
21 before any state or Federal grand jury or investigating grand
22 jury.

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

1 Commonwealth.

2 § 5718. Interception of communications relating to other
3 offenses.

4 When an investigative or law enforcement officer, while
5 engaged in court authorized interceptions of wire, electronic or
6 oral communications in the manner authorized herein, intercepts
7 wire, electronic or oral communications relating to offenses
8 other than those specified in the order of authorization, the
9 contents thereof, and evidence derived therefrom, may be
10 disclosed or used as provided in section 5717(a) (relating to
11 disclosure or use of contents of wire, electronic or oral
12 communications or derivative evidence). Such contents and
13 evidence may be disclosed in testimony under oath or affirmation
14 in any criminal proceeding in any court of this Commonwealth or
15 of another state or of the United States or before any state or
16 Federal grand jury when [in advance of such disclosure and on
17 application to a court, the court finds that the contents were
18 listed in the final report, pursuant to section 5712(e)
19 (relating to issuance of order and effect), and] authorized by a
20 judge who finds on subsequent application that the contents were
21 otherwise intercepted in accordance with the provisions of this
22 chapter. Such application shall be made as soon as practicable.

23 § 5719. Unlawful use or disclosure of existence of order
24 concerning intercepted communication.

25 Except as specifically authorized pursuant to this chapter
26 any person who willfully uses or discloses the existence of an
27 order authorizing interception of a wire, electronic or oral
28 communication is guilty of a misdemeanor of the second degree.

29 § 5720. Service of copy of order and application before
30 disclosure of intercepted communication in trial,

1 hearing or proceeding.

2 The contents of any wire, electronic or oral communication
3 intercepted in accordance with the provisions of this chapter,
4 or evidence derived therefrom, shall not be disclosed in any
5 trial, hearing, or other adversary proceeding before any court
6 of the Commonwealth unless, not less than ten days before [the
7 trial, hearing or proceeding] its use, the parties to the action
8 have been served with a copy of the order, the accompanying
9 application and the final report under which the interception
10 was authorized or, in the case of an interception under section
11 5704 (relating to exceptions to prohibition [on] of interception
12 and disclosure of communications), notice of the fact and nature
13 of the interception. The service of inventory, order,
14 application, and final report required by this section may be
15 waived by the court only where it finds that the service is not
16 feasible and that the parties will not be prejudiced by the
17 failure to make the service.

18 § 5721. Suppression of contents of intercepted communication or
19 derivative evidence.

20 (a) Motion to suppress.--Any aggrieved person in any trial,
21 hearing, or other adversary proceeding in or before any court or
22 other authority of this Commonwealth may move to suppress the
23 contents of any intercepted wire, electronic or oral
24 communication, or evidence derived therefrom, on any of the
25 following grounds:

26 (1) The communication was unlawfully intercepted.

27 (2) The order of authorization if required is
28 insufficient on its face.

29 (3) The interception unless made in accordance with
30 section 5704 (relating to exceptions to prohibition [on] of

1 interception and disclosure of communications) was not made
2 in conformity with the order of authorization or in
3 accordance with the requirements of section 5712 (relating to
4 issuance of order and effect).

5 (b) Procedure.--The motion shall be made at least ten days
6 before the trial, hearing, or other adversary proceeding unless
7 there was no opportunity to make the motion or the moving party
8 was not aware of the grounds for the motion. Motions by co-
9 indictes are to be heard in a single consolidated hearing. The
10 court, upon the filing of such motion by the aggrieved person,
11 shall make available to the aggrieved person or his counsel the
12 intercepted communication and evidence derived therefrom. If the
13 motion is granted, the entire contents of all intercepted wire,
14 electronic or oral communication obtained during or after any
15 interception which is determined to be in violation of this
16 chapter under subsection (a) or evidence derived therefrom,
17 shall not be received in evidence in the trial, hearing or other
18 adversary proceeding.

19 (c) Appeal.--In addition to any other right [to] of appeal,
20 the Commonwealth shall have the right to appeal from an order
21 granting a motion to suppress if the official to whom the order
22 authorizing the intercept was granted shall certify to the court
23 that the appeal is not taken for purposes of delay. The appeal
24 shall be taken in accordance with the provisions of Title 42
25 (judiciary and judicial procedure).

26 (d) Exclusiveness of remedies and sanctions.--The remedies
27 and sanctions described in this subchapter with respect to the
28 interception of wire, electronic or oral communications are the
29 only judicial remedies and sanctions for nonconstitutional
30 violations of this subchapter involving such communications.

1 § 5722. Report by issuing or denying judge.

2 Within 30 days after the expiration of an order or an
3 extension or renewal thereof entered under this chapter or the
4 denial of an order confirming verbal approval of interception,
5 the issuing or denying judge shall make a report to the
6 Administrative Office of Pennsylvania Courts stating the
7 following:

8 (1) That an order, extension or renewal was applied for.

9 (2) The kind of order applied for, including whether the
10 order was an order with respect to which the requirements of
11 sections 5709(a)(3)(iv) and (v) (relating to order) and
12 5710(a)(4) (relating to grounds for entry of order) did not
13 apply by reason of sections 5709(b) and 5710(c).

14 (3) That the order was granted as applied for, was
15 modified, or was denied.

16 (4) The period of the interceptions authorized by the
17 order, and the number and duration of any extensions or
18 renewals of the order.

19 (5) The offense specified in the order, or extension or
20 renewal of an order.

21 (6) The name and official identity of the person making
22 the application and of the investigative or law enforcement
23 officer and agency for whom it was made.

24 (7) The character of the facilities from which or the
25 place where the communications were to be intercepted.

26 § 5723. Annual reports and records of Attorney General and
27 district attorneys.

28 (a) Judges.--In addition to reports required to be made by
29 applicants pursuant to [Title] 18 U.S.C. § 2519, all judges who
30 have issued orders pursuant to this title shall make annual

1 reports on the operation of this chapter to the Administrative
2 Office of Pennsylvania Courts. The reports by the judges shall
3 contain the following information:

- 4 (1) The number of applications made.
- 5 (2) The number of orders issued.
- 6 (3) The effective periods of such orders.
- 7 (4) The number and duration of any renewals thereof.
- 8 (5) The crimes in connection with which the orders were
9 sought.
- 10 (6) The names and official identity of the applicants.
- 11 (7) Such other and further particulars as the
12 Administrative Office of Pennsylvania Courts may require.

13 (b) Attorney General.--In addition to reports required to be
14 made by applicants pursuant to [Title] 18 U.S.C. § 2519, the
15 Attorney General shall make annual reports on the operation of
16 this chapter to the Administrative Office of Pennsylvania Courts
17 and to the Judiciary Committees of the Senate and House of
18 Representatives. The reports by the Attorney General shall
19 contain the following information:

- 20 (1) The number of applications made.
- 21 (2) The number of orders issued.
- 22 (3) The effective periods of such orders.
- 23 (4) The number and duration of any renewals thereof.
- 24 (5) The crimes in connection with which the
25 conversations were sought.
- 26 (6) The names and official identity of the applicants.
- 27 (7) The number of indictments or informations resulting
28 from each application.
- 29 (8) The crime or crimes which each indictment or
30 information charges.

1 (9) The disposition of each indictment.

2 (c) District attorneys.--Each district attorney shall
3 annually provide to the Attorney General all of the foregoing
4 information with respect to all applications authorized by that
5 district attorney on forms prescribed by the Attorney General.

6 (d) Other reports.--The Chief Justice of the Supreme Court
7 and the Attorney General shall annually report to the Governor
8 and the General Assembly on such aspects of the operation of
9 this chapter as they deem appropriate and make any
10 recommendations they feel desirable as to legislative changes or
11 improvements to effectuate the purposes of this chapter and to
12 assure and protect individual rights.

13 § 5724. Training.

14 The Attorney General and the Commissioner of the Pennsylvania
15 State Police shall establish a course of training in the legal
16 and technical aspects of wiretapping and electronic surveillance
17 as allowed or permitted by this chapter, shall establish such
18 regulations as they find necessary and proper for such training
19 program and shall establish minimum standards for certification
20 and periodic recertification of Commonwealth investigative or
21 law enforcement officers as eligible to conduct wiretapping or
22 electronic surveillance under this chapter. The Pennsylvania
23 State Police shall charge each investigative or law enforcement
24 officer who enrolls in this training program a reasonable
25 enrollment fee to offset the costs of such training.

26 § 5725. Civil action for unlawful interception, disclosure or
27 use of wire, electronic or oral communication.

28 (a) Cause of action.--Any person whose wire, electronic or
29 oral [communications] communication is intercepted, disclosed or
30 used in violation of this chapter shall have a civil cause of

1 action against any person who intercepts, discloses or uses or
2 procures any other person to intercept, disclose or use[,] such
3 communication; and shall be entitled to recover from any such
4 person:

5 (1) Actual damages, but not less than liquidated damages
6 computed at the rate of \$100 a day for each day of violation,
7 or \$1,000, whichever is higher.

8 (2) Punitive damages.

9 (3) A reasonable attorney's fee and other litigation
10 costs reasonably incurred.

11 (b) Waiver of sovereign immunity.--To the extent that the
12 Commonwealth and any of its officers, officials or employees
13 would be shielded from liability under this section by the
14 doctrine of sovereign immunity, such immunity is hereby waived
15 for the purposes of this section.

16 (c) Defense.--It is a defense to an action brought pursuant
17 to subsection (a) that the actor acted in good faith reliance on
18 a court order or the provisions of this chapter.

19 Section 5. Section 5727 of Title 18 is repealed.

20 Section 6. Title 18 is amended by adding a section to read:

21 § 5728. Injunction against illegal interception.

22 Whenever it shall appear that any person is engaged or is
23 about to engage in any act which constitutes or will constitute
24 a felony violation of this subchapter, the Attorney General may
25 initiate a civil action in the Commonwealth Court to enjoin the
26 violation. The court shall proceed as soon as practicable to the
27 hearing and determination of the action and may, at any time
28 before final determination, enter a restraining order or
29 prohibition, or take such other action, as is warranted to
30 prevent a continuing and substantial injury to the Commonwealth

1 or to any person or class of persons for whose protection the
2 action is brought. A proceeding under this section is governed
3 by the Pennsylvania Rules of Civil Procedure, except that, if a
4 criminal complaint has been filed against the respondent,
5 discovery is governed by the Pennsylvania Rules of Criminal
6 Procedure.

7 Section 7. Title 18 is amended by adding subchapters to
8 read:

9 SUBCHAPTER C

10 STORED WIRE AND ELECTRONIC COMMUNICATIONS

11 AND TRANSACTIONAL RECORDS ACCESS

12 Sec.

13 5741. Unlawful access to stored communications.

14 5742. Disclosure of contents.

15 5743. Requirements for governmental access.

16 5744. Backup preservation.

17 5745. Delayed notice.

18 5746. Cost reimbursement.

19 5747. Civil action.

20 5748. Exclusivity of remedies.

21 § 5741. Unlawful access to stored communications.

22 (a) Offense.--Except as provided in subsection (c), it is an
23 offense to obtain, alter or prevent authorized access to a wire
24 or electronic communication while it is in electronic storage by
25 intentionally:

26 (1) accessing without authorization a facility through
27 which an electronic communication service is provided; or

28 (2) exceeding the scope of one's authorization to access
29 the facility.

30 (b) Penalty.--

1 (1) If the offense is committed for the purpose of
2 commercial advantage, malicious destruction or damage, or
3 private commercial gain, the offender shall be subject to:

4 (i) a fine of not more than \$250,000 or imprisonment
5 for not more than one year, or both, in the case of a
6 first offense; or

7 (ii) a fine of not more than \$250,000 or
8 imprisonment for not more than two years, or both, for
9 any subsequent offense.

10 (2) In any other case, the offender shall be subject to
11 a fine of not more than \$5,000 or imprisonment for not more
12 than six months, or both.

13 (c) Exceptions.--Subsection (a) of this section does not
14 apply with respect to conduct authorized:

15 (1) by the person or entity providing a wire or
16 electronic communication service;

17 (2) by a user of that service with respect to a
18 communication of, or intended for that user; or

19 (3) in section 5743 (relating to requirements for
20 governmental access) or 5744 (relating to backup
21 preservation).

22 § 5742. Disclosure of contents.

23 (a) Prohibitions.--Except as provided in subsection (b):

24 (1) A person or entity providing an electronic
25 communication service to the public shall not knowingly
26 divulge to any person or entity the contents of a
27 communication while in electronic storage by that service:

28 (i) On behalf of, and received by means of
29 electronic transmission from, or created by means of
30 computer processing of communications received by means

1 of electronic transmission from, a subscriber or customer
2 of the service.

3 (ii) Solely for the purpose of providing storage or
4 computer processing services to the subscriber or
5 customer, if the provider is not authorized to access the
6 contents of any such communication for the purpose of
7 providing any services other than storage or computer
8 processing.

9 (2) A person or entity providing remote computing
10 service to the public shall not knowingly divulge to any
11 person or entity the contents of any communication which is
12 carried or maintained on that service:

13 (i) On behalf of, and received by means of
14 electronic transmission from, or created by means of
15 computer processing of communications received by means
16 of electronic transmission from, a subscriber or customer
17 of the service.

18 (ii) Solely for the purpose of providing storage or
19 computer processing services to the subscriber or
20 customer, if the provider is not authorized to access the
21 contents of any such communication for the purpose of
22 providing any services other than storage or computer
23 processing.

24 (b) Exceptions.--A person or entity may divulge the contents
25 of a communication:

26 (1) to an addressee or intended recipient of the
27 communication or an agent of the addressee or intended
28 recipient;

29 (2) as otherwise authorized in section 5704(1) (relating
30 to prohibition of interception and disclosure of

communications), 5708 (relating to order authorizing interception of wire, electronic or oral communications) or 5743 (relating to governmental access);

(3) with the lawful consent of the originator or an addressee or intended recipient of the communication, or the subscriber in the case of remote computing service;

(4) to a person employed or authorized or whose facilities are used to forward the communication to its destination;

(5) as may be necessarily incident to the rendition of the service or to the protection of the rights or property of the provider of the service; or

(6) to a law enforcement agency, if the contents:

(i) Were inadvertently obtained by the service provider.

(ii) Appear to pertain to the commission of a crime.

§ 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 communication which is in electronic storage in an 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 subsection (b).

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

(1) Investigative or law enforcement officers may

1 require a provider of remote computing service to disclose
2 the contents of any electronic communication to which this
3 paragraph is made applicable by paragraph (2):

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

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

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

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

15 (iii) to the full extent as otherwise permitted by
16 Federal law;

17 except that delayed notice may be given pursuant to section
18 5745 (relating to delayed notice) of this chapter.

19 (2) Paragraph (1) is applicable with respect to an
20 electronic communication which is held or maintained on that
21 service:

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

27 (ii) Solely for the purpose of providing storage or
28 computer processing services to the subscriber or
29 customer, if the provider is not authorized to access the
30 contents of any such communication for the purpose of

1 providing any services other than storage or computer
2 processing.

3 (c) Records concerning electronic communication service or
4 remote computing service.--

5 (1) Except as provided in paragraph (2), a provider of
6 electronic communication service or remote computing service
7 may disclose a record or other information pertaining to a
8 subscriber to or customer of the service, not including the
9 contents of communication covered by subsection (a) or (b),
10 to any person other than an investigative or law enforcement
11 officer.

12 (2) A provider of electronic communication service or
13 remote computing service shall disclose a record or other
14 information pertaining to a subscriber to or customer of the
15 service, not including the contents of communications covered
16 by subsection (a) or (b), to an investigative or law
17 enforcement officer only when the investigative or law
18 enforcement officer:

19 (i) uses an administrative subpoena authorized by a
20 statute or a grand jury subpoena;

21 (ii) obtains a warrant issued under the Pennsylvania
22 Rules of Criminal Procedure;

23 (iii) obtains a court order for the disclosure under
24 subsection (d);

25 (iv) has the consent of the subscriber or customer
26 to the disclosure; or

27 (v) is otherwise permitted to receive such a record
28 or other information pursuant to applicable Federal law.

29 (3) An investigative or law enforcement officer
30 receiving records or information under paragraph (2) is not

1 required to provide notice to the customer or subscriber.

2 (d) Requirements for court order.--A court order for
3 disclosure under subsection (b) or (c) shall be issued only if
4 the investigative or law enforcement officer shows that there is
5 reason to believe the contents of a wire or electronic
6 communication, or the records or other information sought, are
7 relevant to a legitimate investigative or law enforcement
8 inquiry. A court issuing an order pursuant to this section, on a
9 motion made promptly by the service provider, may quash or
10 modify the order if the information or records requested are
11 unusually voluminous in nature or compliance with the order
12 would otherwise cause an undue burden on the provider.

13 (e) No cause of action against a provider disclosing
14 information under this chapter.--No cause of action shall lie in
15 any court against any provider of wire or electronic
16 communication service, its officers, employees, agents or other
17 specified persons for providing information, facilities or
18 assistance in accordance with the terms of a court order,
19 warrant, subpoena or certification under this chapter.

20 § 5744. Backup preservation.

21 (a) Backup preservation.--

22 (1) An investigative or law enforcement officer acting
23 under section 5743(b)(2) (relating to requirements for
24 governmental access) may include in its subpoena or court
25 order a requirement that the service provider to whom the
26 request is directed create a backup copy of the contents of
27 the electronic communications sought in order to preserve
28 those communications. Without notifying the subscriber or
29 customer of the subpoena or court order, the service provider
30 shall create the backup copy as soon as practicable,

1 consistent with its regular business practices, and shall
2 confirm to the investigative or law enforcement officer that
3 the backup copy has been made. The backup copy shall be
4 created within two business days after receipt by the service
5 provider of the subpoena or court order.

6 (2) Notice to the subscriber or customer shall be made
7 by the investigative or law enforcement officer within three
8 days after receipt of confirmation that the backup copy has
9 been made, unless the notice is delayed pursuant to section
10 5745(a) (relating to delayed notice).

11 (3) The service provider shall not destroy or permit the
12 destruction of the backup copy until the later of:

13 (i) the delivery of the information; or

14 (ii) the resolution of all proceedings, including
15 appeals of any proceeding, concerning the government's
16 subpoena or court order.

17 (4) The service provider shall release the backup copy
18 to the requesting investigative or law enforcement officer no
19 sooner than 14 days after the officer's notice to the
20 subscriber or customer if the service provider has not:

21 (i) received notice from the subscriber or customer
22 that the subscriber or customer has challenged the
23 officer's request; and

24 (ii) initiated proceedings to challenge the request
25 of the officer.

26 (5) An investigative or law enforcement officer may seek
27 to require the creation of a backup copy under subsection
28 (a)(1) if in his sole discretion the officer determines that
29 there is reason to believe that notification under section
30 2703 (relating to assault by prisoner) of the existence of

1 the subpoena or court order may result in destruction of or
2 tampering with evidence. This determination is not subject to
3 challenge by the subscriber, customer or service provider.

4 (b) Customer challenges.--

5 (1) Within 14 days after notice by the investigative or
6 law enforcement officer to the subscriber or customer under
7 subsection (a)(2), the subscriber or customer may file a
8 motion to quash the subpoena or vacate the court order,
9 copies to be served upon the officer and written notice of
10 the challenge to be given to the service provider. A motion
11 to vacate a court order shall be filed in the court which
12 issued the order. A motion to quash a subpoena shall be filed
13 in the court which has authority to enforce the subpoena. The
14 motion or application shall contain an affidavit or sworn
15 statement:

16 (i) stating that the applicant is a customer of or
17 subscriber to the service from which the contents of
18 electronic communications maintained for the applicant
19 have been sought; and

20 (ii) containing the applicant's reasons for
21 believing that the records sought are not relevant to a
22 legitimate investigative or law enforcement inquiry or
23 that there has not been substantial compliance with the
24 provisions of this subchapter in some other respect.

25 (2) Service shall be made under this section upon the
26 investigative or law enforcement officer by delivering or
27 mailing by registered or certified mail a copy of the papers
28 to the person, office or department specified in the notice
29 which the customer has received pursuant to this chapter. For
30 the purposes of this section, the term "delivery" has the

1 meaning given that term in the Pennsylvania Rules of Civil
2 Procedure.

3 (3) If the court finds that the customer has complied
4 with paragraphs (1) and (2), the court shall order the
5 investigative or law enforcement officer to file a sworn
6 response, which may be filed in camera if the investigative
7 or law enforcement officer includes in its response the
8 reasons which make in camera review appropriate. If the court
9 is unable to determine the motion or application on the basis
10 of the parties' initial allegations and responses, the court
11 may conduct such additional proceedings as it deems
12 appropriate. All such proceedings shall be completed and the
13 motion or application decided as soon as practicable after
14 the filing of the officer's response.

15 (4) If the court finds that the applicant is not the
16 subscriber or customer for whom the communications sought by
17 the investigative or law enforcement officer are maintained,
18 or that there is reason to believe that the investigative or
19 law enforcement inquiry is legitimate and that the
20 communications sought are relevant to that inquiry, it shall
21 deny the motion or application and order the process
22 enforced. If the court finds that the applicant is the
23 subscriber or customer for whom the communications sought by
24 the governmental entity are maintained, and that there is not
25 reason to believe that the communications sought are relevant
26 to a legitimate investigative or law enforcement inquiry, or
27 that there has not been substantial compliance with the
28 provisions of this chapter, it shall order the process
29 quashed.

30 (5) A court order denying a motion or application under

1 this section shall not be deemed a final order and no
2 interlocutory appeal may be taken therefrom. The Commonwealth
3 or investigative or law enforcement officer shall have the
4 right to appeal from an order granting a motion or
5 application under this section.

6 § 5745. Delayed notice.

7 (a) Delay of notification.--

8 (1) An investigative or law enforcement officer acting
9 under section 5743(b) (relating to requirements for
10 governmental access) may:

11 (i) where a court order is sought, include in the
12 application a request for an order delaying the
13 notification required under section 5743(b) for a period
14 not to exceed 90 days, which request the court shall
15 grant if it determines that there is reason to believe
16 that notification of the existence of the court order may
17 have an adverse result described in paragraph (2); or

18 (ii) where an administrative subpoena authorized by
19 a statute or a grand jury subpoena is obtained, delay the
20 notification required under section 5743(b) for a period
21 not to exceed 90 days upon the execution of a written
22 certification of a supervisory official that there is
23 reason to believe that notification of the existence of
24 the subpoena may have an adverse result described in
25 paragraph (2).

26 (2) An adverse result for the purposes of paragraph (1)
27 includes:

28 (i) endangering the life or physical safety of an
29 individual;

30 (ii) flight from prosecution;

(iii) destruction of or tampering with evidence;
(iv) intimidation of potential witnesses; or
(v) otherwise seriously jeopardizing an investigation or unduly delaying a trial.

(3) The investigative or law enforcement officer shall maintain a true copy of a certification under paragraph (1)(ii).

(4) Extensions of the delay of notification provided for in section 5743 of up to 90 days each may be granted by the court upon application, or by certification by a supervisory official in the case of an administrative or grand jury subpoena.

(5) Upon expiration of the period of delay of notification under paragraph (1) or (4), the investigative or law enforcement officer shall serve upon, or deliver by registered or first class mail to, the customer or subscriber a copy of the process or request together with notice which:

(i) states with reasonable specificity the nature of the investigative or law enforcement inquiry; and

(ii) informs the customer or subscriber:

(A) that information maintained for the customer or subscriber by the service provider named in the process or request was supplied to or requested by the investigative or law enforcement officer and the date on which the supplying or request took place;

(B) that notification of the customer or subscriber was delayed;

(C) the identity of the investigative or law enforcement officer or the court which made the certification or determination pursuant to which that

1 delay was made; and

2 (D) which provision of this subchapter
3 authorizes the delay.

4 (6) As used in this subsection, the term "supervisory
5 official" means the investigative agent or assistant
6 investigative agent in charge, or an equivalent, of an
7 investigative or law enforcement agency's headquarters or
8 regional office, or the chief prosecuting attorney or the
9 first assistant prosecuting attorney, or an equivalent, of a
10 prosecuting attorney's headquarters or regional office.

11 (b) Preclusion of notice to subject of governmental
12 access.--An investigative or law enforcement officer acting
13 under section 5743, when he is not required to notify the
14 subscriber or customer under section 5743(b)(1), or to the
15 extent that it may delay such notice pursuant to subsection (a),
16 may apply to a court for an order commanding a provider of
17 electronic communication service or remote computing service to
18 whom a warrant, subpoena or court order is directed, not to
19 notify any other person of the existence of the warrant,
20 subpoena or court order for such period as the court deems
21 appropriate. The court shall enter such an order if it
22 determines that there is reason to believe that notification of
23 the existence of the warrant, subpoena or court order will
24 result in:

25 (1) endangering the life or physical safety of an
26 individual;

27 (2) flight from prosecution;

28 (3) destruction of or tampering with evidence;

29 (4) intimidation of a potential witness; or

30 (5) otherwise seriously jeopardizing an investigation or

1 unduly delaying a trial.

2 § 5746. Cost reimbursement.

3 (a) Payment.--Except as otherwise provided in subsection
4 (c), an investigative or law enforcement officer obtaining the
5 contents of communications, records or other information under
6 section 5742 (relating to disclosure of contents), 5743
7 (relating to requirements for governmental access) or 5744
8 (relating to backup preservation) shall reimburse the person or
9 entity assembling or providing the information for such costs as
10 are reasonably necessary and which have been directly incurred
11 in searching for, assembling, reproducing and otherwise
12 providing the information. Reimbursable costs shall include any
13 costs due to necessary disruption of normal operations of any
14 electronic communication service or remote computing service in
15 which the information may be stored.

16 (b) Amount.--The amount of the reimbursement provided for in
17 subsection (a) shall be as mutually agreed upon by the
18 investigative or law enforcement officer and the person or
19 entity providing the information or, in the absence of
20 agreement, shall be as determined by the court which issued the
21 order for production of the information or the court before
22 which a criminal prosecution relating to the information would
23 be brought, if no court order was issued for production of the
24 information.

25 (c) Applicability.--The requirement of subsection (a) does
26 not apply with respect to records or other information
27 maintained by a communication common carrier which relates to
28 telephone toll records and telephone listings obtained under
29 section 5743. The court may, however, order reimbursement as
30 described in subsection (a) if the court determines the

1 information required is unusually voluminous or otherwise caused
2 an undue burden on the provider.

3 § 5747. Civil action.

4 (a) Cause of action.--Except as provided in subsection
5 5743(e) (relating to requirements for governmental access), any
6 provider of electronic communication service, subscriber or
7 customer aggrieved by any violation of this subchapter in which
8 the conduct constituting the violation is engaged in with a
9 knowing or intentional state of mind may, in a civil action,
10 recover from the person or entity which engaged in the violation
11 such relief as may be appropriate.

12 (b) Relief.--In a civil action under this section,
13 appropriate relief includes:

- 14 (1) such preliminary and other equitable or declaratory
15 relief as may be appropriate;
16 (2) damages under subsection (c); and
17 (3) reasonable attorney fees and other litigation costs
18 reasonably incurred.

19 (c) Damages.--The court may assess as damages in a civil
20 action under this section the sum of the actual damages suffered
21 by the plaintiff and any profits made by the violator as a
22 result of the violation, but in no case shall a person entitled
23 to recover receive less than the sum of \$1,000.

24 (d) Defense.--A good faith reliance on:

- 25 (1) a court warrant or order, a grand jury subpoena, a
26 legislative authorization or a statutory authorization;
27 (2) a request of an investigative or law enforcement
28 officer under section 5713 (relating to emergency
29 situations); or
30 (3) a good faith determination that section 5704(10)

1 (relating to exceptions to prohibitions of interception and
2 disclosure of communications) permitted the conduct
3 complained of;

4 is a complete defense to any civil or criminal action brought
5 under this chapter or any other law.

6 (e) Limitation.--A civil action under this section may not
7 be commenced later than two years after the date upon which the
8 claimant first discovered or had a reasonable opportunity to
9 discover the violation.

10 § 5748. Exclusivity of remedies.

11 The remedies and sanctions described in this subchapter are
12 the only judicial remedies and sanctions for nonconstitutional
13 violations of this subchapter.

14 SUBCHAPTER D

15 MOBILE TRACKING DEVICES

16 Sec.

17 5761. Mobile tracking devices.

18 §5761. Mobile tracking devices.

19 (a) Authority to issue.--Orders for the installation and use
20 of mobile tracking devices may be issued by any issuing
21 authority within the judicial district.

22 (b) Jurisdiction.--Orders permitted by this section may
23 authorize the use of mobile tracking devices within the
24 jurisdiction of the issuing authority, and outside that
25 jurisdiction but within the Commonwealth, if the device is
26 installed within the jurisdiction of the issuing authority.

27 (c) Standard for issuance of order.--An order authorizing
28 the use of one or more mobile tracking devices may be issued to
29 an investigative or law enforcement officer by an issuing
30 authority upon written application. Each application shall be by

1 written affidavit, signed and sworn to or affirmed before an
2 issuing authority. The affidavit shall:

3 (1) state the name and department, agency or address of
4 the affiant;

5 (2) identify the vehicles, containers or items to which,
6 in which or on which the mobile tracking device shall be
7 attached or be placed, and the names of the owners or
8 possessors of the vehicles, containers or items;

9 (3) state the jurisdictional area in which the vehicles,
10 containers or items are expected to be found; and

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

17 (d) Notice.--The issuing authority shall be notified in
18 writing within 72 hours of the time the mobile tracking device
19 has been activated in place on or within the vehicles,
20 containers or items.

21 (e) Term of authorization.--Authorization by the issuing
22 authority for the use of the mobile tracking device may continue
23 for a period of 90 days from the placement of the device. An
24 extension for an additional 90 days may be granted upon good
25 cause shown.

26 (f) Removal of device.--Wherever practicable, the mobile
27 tracking device shall be removed after the authorization period
28 expires. If removal is not practicable, monitoring of the mobile
29 tracking device shall cease at the expiration of the
30 authorization order.

1 (g) Movement of device.--Movement of the tracking device
2 within an area protected by a reasonable expectation of privacy
3 shall not be monitored absent exigent circumstances or an order
4 supported by probable cause that criminal activity has been, is
5 or will be in progress in the protected area and that the use of
6 a mobile tracking device in the protected area will yield
7 information relevant to the investigation of the criminal
8 activity.

9 SUBCHAPTER E

10 PEN REGISTERS AND TRAP AND TRACE DEVICES

11 Sec.

12 5771. General prohibition of pen register and trap and trace
13 device use; exception.

14 5772. Application for an order for pen registers and trap and
15 trace devices.

16 5773. Issuance of an order for a pen register or a trap and
17 trace device.

18 5774. Assistance in installation and use of pen registers or
19 trap and trace devices.

20 5775. Reports concerning pen registers.

21 § 5771. General prohibition of pen register and trap and trace
22 device use; exception.

23 (a) General rule.--Except as provided in this section, no
24 person may install or use a pen register or a trap and trace
25 device without first obtaining a court order under section 5773
26 (relating to issuance of an order for a pen register or a trap
27 and trace device).

28 (b) Exception.--The prohibition of subsection (a) does not
29 apply with respect to the use of a pen register or a trap and
30 trace device by a provider of electronic or wire communication

1 service:

2 (1) relating to the operation, maintenance and testing
3 of a wire or electronic communication service or to the
4 protection of the rights or property of the provider, or to
5 the protection of users of the service from abuse of service
6 or unlawful use of service; or

7 (2) to record the fact that a wire or electronic
8 communication was initiated or completed in order to protect
9 the provider, another provider furnishing service toward the
10 completion of the wire communication or a user of the service
11 from fraudulent, unlawful or abusive use of service, or with
12 the consent of the user of the service.

13 (c) Penalty.--Whoever intentionally and knowingly violates
14 subsection (a) is guilty of a misdemeanor of the third degree.

15 § 5772. Application for an order for pen registers and trap and
16 trace devices.

17 (a) Application.--The Attorney General or a deputy attorney
18 general designated in writing by the Attorney General or a
19 district attorney or an assistant district attorney designated
20 in writing by the district attorney may make application for an
21 order or an extension of an order under section 5773 (relating
22 to issuance of an order for a pen register or a trap and trace
23 device) authorizing or approving the installation and use of a
24 pen register or a trap and trace device under this chapter, in
25 writing, under oath or equivalent affirmation, to a court of
26 common pleas.

27 (b) Contents of application.--An application under
28 subsection (a) shall include:

29 (1) The identity and authority of the attorney making
30 the application and the identity of the investigative or law

1 enforcement agency conducting the investigation.

2 (2) A certification by the applicant that the
3 information likely to be obtained is relevant to an ongoing
4 criminal investigation being conducted by that agency.

5 (3) An affidavit by an investigative or law enforcement
6 officer which establishes probable cause for the issuance of
7 an order or extension of an order under section 5773.

8 § 5773. Issuance of an order for a pen register or a trap and
9 trace device.

10 (a) In general.--Upon an application made under section 5772
11 (relating to application for an order for pen registers and trap
12 and trace devices), the court of common pleas shall enter an ex
13 parte order authorizing the installation and use of a pen
14 register or a trap and trace device within the jurisdiction of
15 the court if the court finds that there is probable cause to
16 believe that information relevant to an ongoing criminal
17 investigation will be obtained on the telephone line to which
18 the pen register is to be attached.

19 (b) Contents of order.--An order issued under this section
20 shall:

21 (1) Specify:

22 (i) That there is probable cause to believe that
23 information relevant to an ongoing criminal investigation
24 will be obtained on the telephone line to which the pen
25 register or trap and trace device is to be attached.

26 (ii) The identity, if known, of the person to whom
27 is leased or in whose name is listed the telephone line
28 to which the pen register is to be attached.

29 (iii) The identity, if known, of the person who is
30 the subject of the criminal investigation.

1 (iv) The number and, if known, the physical location
2 of the telephone line to which the pen register or trap
3 and trace device is to be attached, and, in the case of a
4 trap and trace device, the geographical limits of the
5 trap and trace order.

6 (v) A statement of the offense to which the
7 information likely to be obtained by the pen register or
8 trap and trace device relates.

9 (2) Direct, upon the request of the applicant, the
10 furnishing of information, facilities and technical
11 assistance necessary to accomplish the installation of the
12 pen register under section 5771 (relating to general
13 prohibition of pen register and trap and trace device use;
14 exception).

15 (c) Time period and extensions.--

16 (1) An order issued under this section shall authorize
17 the installation and use of a pen register or trap and trace
18 device for a period not to exceed 30 days.

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

24 (d) Nondisclosure of existence of pen register or trap and
25 trace device.--An order authorizing or approving the
26 installation and use of a pen register or a trap and trace
27 device shall direct that:

28 (1) The order be sealed until otherwise ordered by the
29 court.

30 (2) The person owning or leasing the line to which the

1 pen register or a trap and trace device is attached, or who
2 has been ordered by the court to provide assistance to the
3 applicant, not disclose the existence of the pen register or
4 trap and trace device or the existence of the investigation
5 to the listed subscriber, or to any other person, unless or
6 until otherwise ordered by the court.

7 § 5774. Assistance in installation and use of pen registers or
8 trap and trace devices.

9 (a) Pen registers.--Upon the request of an applicant under
10 this subchapter, a provider of wire or electronic communication
11 service, landlord, custodian or other person shall forthwith
12 provide all information, facilities and technical assistance
13 necessary to accomplish the installation of the pen register
14 unobtrusively and with a minimum of interference with the
15 services that the person so ordered by the court accords the
16 party with respect to whom the installation and use is to take
17 place, if assistance is directed by a court order as provided in
18 section 5773(b)(2) (relating to issuance of an order for a pen
19 register or a trap and trace device).

20 (b) Trap and trace device.--Upon the request of an applicant
21 under this subchapter, a provider of a wire or electronic
22 communication service, landlord, custodian or other person shall
23 install the device forthwith on the appropriate line and shall
24 furnish all additional information, facilities and technical
25 assistance, including installation and operation of the device
26 unobtrusively and with a minimum of interference with the
27 services that the person so ordered by the court accords the
28 party with respect to whom the installation and use is to take
29 place, if installation and assistance are directed by a court
30 order as provided in section 5773. Unless otherwise ordered by

1 the court, the results of the trap and trace device shall be
2 furnished to the applicant designated in the court at reasonable
3 intervals during regular business hours for the duration of the
4 order.

5 (c) Compensation.--A provider of wire communication service,
6 landlord, custodian or other person who furnishes facilities or
7 technical assistance pursuant to this section shall be
8 reasonably compensated for reasonable expenses incurred in
9 providing the facilities and assistance.

10 (d) No cause of action against a provider disclosing
11 information under this chapter.--No cause of action shall lie in
12 any court against any provider of a wire or electronic
13 communication service, its officers, employees, agents or other
14 specified persons for providing information, facilities or
15 assistance in accordance with the terms of a court order under
16 this subchapter.

17 (e) Defense.--A good faith reliance on a court order or a
18 statutory authorization is a complete defense against any civil
19 or criminal action brought under this subchapter or any other
20 law.

21 § 5775. Reports concerning pen registers.

22 (a) Attorney General.--The Attorney General shall annually
23 report to the Administrative Office of Pennsylvania Courts on
24 the number of orders for pen registers and trap and trace
25 devices applied for by investigative or law enforcement agencies
26 of the Commonwealth or its political subdivisions.

27 (b) District attorney.--Each district attorney shall
28 annually provide to the Attorney General information on the
29 number of orders for pen registers and trap and trace devices
30 applied for on forms prescribed by the Attorney General.

1 Section 8. The provisions of this act are severable. If any
2 provision of this act or its application to any person or
3 circumstance is held invalid, the invalidity shall not affect
4 other provisions or applications of this act which can be given
5 effect without the invalid provision or application.

6 Section 9. This act shall take effect in 60 days.