

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2362 Session of 1996

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

AS REPORTED FROM COMMITTEE ON JUDICIARY, HOUSE OF REPRESENTATIVES, AS AMENDED, APRIL 9, 1996

AN ACT

1 Amending ~~Title 18 (Crimes and Offenses)~~ TITLES 18 (CRIMES AND <—
2 OFFENSES) AND 75 (VEHICLES) of the Pennsylvania Consolidated
3 Statutes, further providing for wiretapping and electronic
4 surveillance AND FOR WINDSHIELD OBSTRUCTIONS. <—

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

7 Section 1. The definitions of "electronic communication,"
8 "ELECTRONIC, MECHANICAL OR OTHER DEVICE," "intercept," <—
9 "investigative or law enforcement officer," "judge," "pen
10 register" and "wire communication" in section 5702 of Title 18
11 of the Pennsylvania Consolidated Statutes are amended and the
12 section is amended by adding definitions to read:

13 § 5702. Definitions.

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

17 * * *

1 "Electronic communication." Any transfer of signs, signals,
2 writing, images, sounds, data or intelligence of any nature
3 transmitted in whole or in part by a wire, radio,
4 electromagnetic, photoelectronic or photo-optical system,
5 except:

6 [(1) The radio portion of a cordless telephone
7 communication that is transmitted between the cordless
8 telephone handset and the base unit.]

9 (2) Any wire or oral communication.

10 (3) Any communication made through a tone-only paging
11 device.

12 (4) Any communication from a tracking device (as defined
13 in this section).

14 * * *

15 "ELECTRONIC, MECHANICAL OR OTHER DEVICE." ANY DEVICE OR ←
16 APPARATUS, INCLUDING AN INDUCTION COIL, THAT CAN BE USED TO
17 INTERCEPT A WIRE, ELECTRONIC OR ORAL COMMUNICATION OTHER THAN:

18 (1) ANY TELEPHONE OR TELEGRAPH INSTRUMENT, EQUIPMENT OR
19 FACILITY, OR ANY COMPONENT THEREOF, FURNISHED TO THE
20 SUBSCRIBER OR USER BY A PROVIDER OF WIRE OR ELECTRONIC
21 COMMUNICATION SERVICE IN THE ORDINARY COURSE OF ITS BUSINESS,
22 OR FURNISHED BY SUCH SUBSCRIBER OR USER FOR CONNECTION TO THE
23 FACILITIES OF SUCH SERVICE AND USED IN THE ORDINARY COURSE OF
24 ITS BUSINESS, OR BEING USED BY A COMMUNICATION COMMON CARRIER
25 IN THE ORDINARY COURSE OF ITS BUSINESS, OR BY AN
26 INVESTIGATIVE OR LAW ENFORCEMENT OFFICER IN THE ORDINARY
27 COURSE OF HIS DUTIES.

28 (2) A HEARING AID OR SIMILAR DEVICE BEING USED TO
29 CORRECT SUBNORMAL HEARING TO NOT BETTER THAN NORMAL.

30 (3) EQUIPMENT OR DEVICES USED TO CONDUCT INTERCEPTIONS

1 UNDER SECTION 5704(14) (RELATING TO EXCEPTIONS TO PROHIBITION OF
2 INTERCEPTION AND DISCLOSURE OF COMMUNICATIONS).

3 * * *

4 "Home." The primary residence of a nonconsenting party to an
5 interception, provided that access to the residence is not
6 generally permitted to members of the public and the party has a
7 reasonable expectation of privacy in the residence under the
8 circumstances.

9 * * *

10 "Intercept." Aural or other acquisition of the contents of
11 any wire, electronic or oral communication through the use of
12 any electronic, mechanical or other device. The term shall
13 include the point at which the contents of the communication are
14 monitored by investigative or law enforcement officers.

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

26 "Judge." When referring to a judge authorized to receive
27 applications for, and to enter, orders authorizing interceptions
28 of wire, electronic or oral communications pursuant to [this
29 chapter] Subchapter B (relating to wire, electronic or oral
30 communication), any judge of the Superior Court.

1 * * *

2 "Pen register." A device which [records or decodes] is used
3 to record or decode electronic or other impulses which identify
4 the numbers dialed or otherwise transmitted, with respect to
5 wire communications, on the telephone line to which the device
6 is attached. The term includes a device which is used to record
7 or decode electronic or other impulses which identify the
8 existence of incoming and outgoing wire communications on the
9 telephone line to which the device is attached. The term does
10 not include a device used by a provider or customer of a wire or
11 electronic communication service for billing, or recording as an
12 incident to billing, for communication service provided by the
13 provider, or any device used by a provider, or customer of a
14 wire communication service for cost accounting or other like
15 purposes in the ordinary course of business.

16 * * *

17 "State." Any state of the United States, the District of
18 Columbia, the Commonwealth of Puerto Rico and any territory or
19 possession of the United States.

20 * * *

21 "Wire communication." Any aural transfer made in whole or in
22 part through the use of facilities for the transmission of
23 communication by wire, cable or other like connection between
24 the point of origin and the point of reception, including the
25 use of such a connection in a switching station, furnished or
26 operated by a telephone, telegraph or radio company for hire as
27 a communication common carrier. The term [does not include the
28 radio portion of a cordless telephone communication transmitted
29 between the cordless telephone handset and the base unit]
30 includes any electronic storage of such communication.

1 Section 2. Section 5703 of Title 18 is amended to read:

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

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

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

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

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

20 Section 3. Section 5704(2) and (5) of Title 18 are amended
21 and the section is amended by adding a ~~paragraph~~ PARAGRAPHS to ←
22 read:

23 § 5704. Exceptions to prohibition of interception and
24 disclosure of communications.

25 It shall not be unlawful under this [chapter] subchapter for:

26 * * *

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

1 including, but not limited to, the crimes enumerated in
2 section 5708 (relating to order authorizing interception of
3 wire, electronic or oral communications) where:

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

6 (ii) one of the parties to the communication has
7 given prior consent to such interception.

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

23 ~~(iii)~~ If an oral interception otherwise authorized <—
24 under this paragraph will take place in the home of a
25 nonconsenting party, then, in addition to the
26 requirements of subparagraphs (i) and (ii), the
27 interception shall not be conducted until an order is
28 first obtained from THE PRESIDENT JUDGE, OR HIS DESIGNEE, <—
29 OF a court of common pleas, authorizing such in-home
30 interception, based upon an affidavit by an investigative

1 or law enforcement officer that establishes probable
2 cause for the issuance of such an order. No such order or
3 affidavit shall be required where probable cause and
4 exigent circumstances exist or in other circumstances
5 where warrants are not required by the Constitution of
6 the United States or the Constitution of Pennsylvania.
7 For the purposes of this paragraph, an oral interception
8 shall be deemed to take place in the home of a
9 nonconsenting party only if both the consenting and
10 nonconsenting parties are physically present in the home
11 at the time of the interception.

12 * * *

13 (5) Any investigative or law enforcement officer, or
14 communication common carrier acting at the direction of an
15 investigative or law enforcement officer or in the normal
16 course of its business, to use a pen register or trap and
17 trace device as provided in [this chapter] Subchapter E
18 (relating to pen registers and trap and trace devices).

19 * * *

20 (14) A law enforcement officer who stops a vehicle to
21 intercept oral communications occurring during the vehicle
22 stop.

23 (15) (I) A POLICE OFFICER WHO HAS THE AUTHORITY TO ←
24 ENFORCE TITLE 75 (RELATING TO VEHICLES) AND WHO STOPS A
25 VEHICLE FOR A SUSPECTED VIOLATION OF TITLE 75 WHILE ON
26 DUTY AND UTILIZING AN AUDIO INTERCEPTING DEVICE TO
27 INTERCEPT THE ORAL COMMUNICATIONS OCCURRING BETWEEN THAT
28 POLICE OFFICER AND ANY OTHER PERSON PRESENT AT THE
29 LOCATION OF AND DURING THE VEHICLE STOP. A POLICE
30 DEPARTMENT, AGENCY OR OFFICE SHALL NOT BY ORDER,

1 REGULATION OR OTHERWISE REQUIRE AN OFFICER TO ACTIVATE AN
2 AUDIO DEVICE MOUNTED OR CARRIED IN THE OFFICER'S VEHICLE
3 EXCEPT IN THE FOLLOWING SITUATIONS:

4 (A) WHEN THE POLICE OFFICER MAKES USE OF THE
5 AUDIBLE WARNING SYSTEM AUTHORIZED BY 75 PA.C.S. §
6 4571 (RELATING TO VISUAL AND AUDIBLE SIGNALS ON
7 EMERGENCY VEHICLES);

8 (B) WHEN THE POLICE OFFICER IS MAKING USE OF THE
9 VISUAL SIGNALS AUTHORIZED BY 75 PA.C.S. § 4571; OR

10 (C) WHEN THE POLICE OFFICER IS MAKING USE OF THE
11 AUDIBLE WARNING SYSTEM AND VISUAL SIGNALS.

12 (II) FOR PURPOSES OF THIS PARAGRAPH, THE TERM
13 "POLICE OFFICER" SHALL MEAN AN INDIVIDUAL WHO HAS THE
14 AUTHORITY TO ENFORCE TITLE 75.

15 Section 4. Sections 5706, 5707, 5708, 5709(3), 5710(a)(4)
16 and 5711 of Title 18 are amended to read:

17 § 5706. Exceptions to prohibitions in possession, sale,
18 distribution, manufacture or advertisement of
19 electronic, mechanical or other devices.

20 (a) Unlawful activities.--It shall not be unlawful under
21 this [chapter] subchapter for:

22 (1) a provider of wire or electronic communication
23 service or an officer, agent or employee of, or a person
24 under contract with, such a provider, in the normal course of
25 the business of providing the wire or electronic
26 communication service; or

27 (2) a person under contract with the United States, the
28 Commonwealth or a political subdivision thereof, a state or a
29 political subdivision thereof, or an officer, agent or
30 employee of the United States, the Commonwealth or a

1 political subdivision thereof, or a state or a political
2 subdivision thereof,
3 to possess, sell, distribute, manufacture, assemble or advertise
4 an electronic, mechanical or other device, while acting in
5 furtherance of the appropriate activities of the United States,
6 the Commonwealth or a political subdivision thereof, a state or
7 a political subdivision thereof or a provider of wire or
8 electronic communication service.

9 (b) Responsibility.--

10 (1) The Attorney General and the district attorney or
11 their designees so designated in writing shall have the sole
12 responsibility to buy, possess and loan any electronic,
13 mechanical or other device which is to be used by
14 investigative or law enforcement officers for purposes of
15 interception as authorized under section 5704(2) and (12)
16 (relating to exceptions to prohibition of interception and
17 disclosure of communications), 5712 (relating to issuance of
18 order and effect), 5713 (relating to emergency situations) or
19 5713.1 (relating to emergency hostage and barricade
20 situations).

21 (2) The division or bureau or section of the
22 Pennsylvania State Police responsible for conducting the
23 training in the technical aspects of wiretapping and
24 electronic surveillance as required by section 5724 (relating
25 to training) may buy and possess any electronic, mechanical
26 or other device which is to be used by investigative or law
27 enforcement officers for purposes of interception as
28 authorized under section 5704(2) and (12), 5712, 5713 or
29 5713.1 for the purpose of training, provided, however, that
30 any electronic, mechanical or other device bought or

1 possessed under this provision may be loaned to or used by
2 investigative or law enforcement officers for purposes of
3 interception as authorized under section 5704(2) and (12),
4 5712, 5713 or 5713.1 only upon written approval by the
5 Attorney General or a deputy attorney general designated in
6 writing by the Attorney General, or the district attorney or
7 an assistant district attorney designated in writing by the
8 district attorney of the county wherein the interception is
9 to be made.

10 (3) With the permission of the Attorney General or a
11 district attorney who has designated any supervising law
12 enforcement officer for purposes of interceptions as
13 authorized under section 5713.1, the law enforcement agency
14 which employs the supervising law enforcement officer may
15 buy, possess, loan or borrow any electronic, mechanical or
16 other device which is to be used by investigative or law
17 enforcement officers at the direction of the supervising law
18 enforcement officer solely for the purpose of interception as
19 authorized under sections 5704(12) and 5713.1.

20 § 5707. Seizure and forfeiture of electronic, mechanical or
21 other devices.

22 Any electronic, mechanical or other device possessed, used,
23 sent, distributed, manufactured, or assembled in violation of
24 this [chapter] subchapter is hereby declared to be contraband
25 and may be seized and forfeited to the Commonwealth.

26 § 5708. Order authorizing interception of wire, electronic or
27 oral communications.

28 [(a) Authorization.--Except in cases referred to in
29 subsection (b), the] The Attorney General, or, during the
30 absence or incapacity of the Attorney General, a deputy attorney

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

14 (1) Under this title:

15 Section 911 (relating to corrupt organizations)

16 Section 2501 (relating to criminal homicide)

17 Section 2502 (relating to murder)

18 Section 2503 (relating to voluntary manslaughter)

19 Section 2702 (relating to aggravated assault)

20 Section 2706 (relating to terroristic threats)

21 Section 2901 (relating to kidnapping)

22 Section 3121 (relating to rape)

23 Section 3123 (relating to involuntary deviate sexual
24 intercourse)

25 Section 3301 (relating to arson and related offenses)

26 Section 3302 (relating to causing or risking
27 catastrophe)

28 Section 3502 (relating to burglary)

29 Section 3701 (relating to robbery)

30 Section 3921 (relating to theft by unlawful taking or

1 disposition)

2 Section 3922 (relating to theft by deception)

3 Section 3923 (relating to theft by extortion)

4 Section 4701 (relating to bribery in official and
5 political matters)

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

8 Section 5512 (relating to lotteries, etc.)

9 Section 5513 (relating to gambling devices, gambling,
10 etc.)

11 Section 5514 (relating to pool selling and
12 bookmaking)

13 Section 6106 (relating to firearms not to be carried
14 without a license)

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

18 Section 910 (relating to manufacture, distribution or
19 possession of devices for theft of telecommunication
20 services)

21 Section 3925 (relating to receiving stolen property)

22 Section 3926 (relating to theft of services)

23 Section 3927 (relating to theft by failure to make
24 required disposition of funds received)

25 Section 3933 (relating to unlawful use of computer)

26 Section 4108 (relating to commercial bribery and
27 breach of duty to act disinterestedly)

28 Section 4109 (relating to rigging publicly exhibited
29 contest)

30 Section 4117 (relating to insurance fraud)

1 Section 4305 (relating to dealing in infant children)

2 Section 4902 (relating to perjury)

3 Section 4909 (relating to witness or informant taking
4 bribe)

5 Section 4911 (relating to tampering with public
6 records or information)

7 Section 4952 (relating to intimidation of witnesses
8 or victims)

9 Section 4953 (relating to retaliation against witness
10 or victim)

11 Section 5101 (relating to obstructing administration
12 of law or other governmental function)

13 Section 5111 (relating to dealing in proceeds of
14 unlawful activities)

15 Section 5504 (relating to harassment by communication
16 or address)

17 Section 5902 (relating to prostitution and related
18 offenses)

19 Section 7313 (relating to buying or exchanging
20 Federal food order coupons, stamps, authorization cards
21 or access devices)

22 (3) Under the act of March 4, 1971 (P.L.6, No.2), known
23 as the Tax Reform Code of 1971, where such offense is
24 dangerous to life, limb or property and punishable by
25 imprisonment for more than one year:

26 Section 1272 (relating to sales of unstamped
27 cigarettes)

28 Section 1273 (relating to possession of unstamped
29 cigarettes)

30 Section 1274 (relating to counterfeiting)

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

5 (5) Any offense set forth under the act of November 15,
6 1972 (P.L.1227, No.272).

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

9 [(b) Exception.--Whenever the interception of wire,
10 electronic or oral communication is to be made by an
11 investigative officer employed by the Pennsylvania Crime
12 Commission, the application for the authorizing order shall be
13 made by the Attorney General or, during the absence or
14 incapacity of the Attorney General, a deputy attorney general
15 designated in writing by the Attorney General.]

16 § 5709. Application for order.

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

22 * * *

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

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

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

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

3 (iv) [A] Except as provided in section 5712(h)
4 (relating to issuance of order and effect), a showing
5 that there is probable cause to believe that such
6 communication will be communicated on the wire
7 communication facility involved or at the particular
8 place where the oral communication is to be intercepted.

9 (v) [The] Except as provided in section 5712(h), the
10 character and location of the particular wire
11 communication facility involved or the particular place
12 where the oral communication is to be intercepted.

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

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

26 * * *

27 § 5710. Grounds for entry of order.

28 (a) Application.--Upon consideration of an application, the
29 judge may enter an ex parte order, as requested or as modified,
30 authorizing the interception of wire, electronic or oral

1 communications anywhere within the Commonwealth, if the judge
2 determines on the basis of the facts submitted by the applicant
3 that there is probable cause for belief that all the following
4 conditions exist:

5 * * *

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

13 * * *

14 § 5711. Privileged communications.

15 No otherwise privileged communication intercepted in
16 accordance with, or in violation of, the provisions of this
17 [chapter] subchapter shall lose its privileged character.

18 Section 5. Section 5712(e), (f) and (g) of Title 18 are
19 amended and the section is amended by adding a subsection to
20 read:

21 § 5712. Issuance of order and effect.

22 * * *

23 (e) Final report.--Whenever an interception is authorized
24 pursuant to this section, a complete written list of names of
25 participants and evidence of offenses discovered, including
26 those not stated in the application for order, shall be filed
27 with the court [at the time] as soon as practicable after the
28 authorized interception is terminated.

29 (f) Assistance.--An order authorizing the interception of a
30 wire, electronic or oral communication shall, upon request of

1 the applicant, direct that a provider of electronic
2 communication service shall furnish the applicant forthwith all
3 information, facilities and technical assistance necessary to
4 accomplish the interception unobtrusively and with a minimum of
5 interference with the services that such service provider is
6 affording the person whose communications are to be intercepted.
7 The obligation of a provider of electronic communication service
8 under such an order may include, but is not limited to,
9 installation of a pen register and trap and trace device,
10 including conducting an in-progress trace during an
11 interception. Any provider of electronic communication service
12 furnishing such facilities or technical assistance shall be
13 compensated therefor by the applicant for reasonable expenses
14 incurred in providing the facilities or assistance. The service
15 provider shall be immune from civil and criminal liability for
16 any assistance rendered to the applicant pursuant to this
17 section.

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

1 hours of entry.

2 (h) Roving wiretaps.--The requirements of subsection (a)(3)
3 relating to the specification of the facilities from which, or
4 the place where, the communication is to be intercepted do not
5 apply if:

6 (1) In the case of an application with respect to the
7 interception of an oral communication:

8 (i) the application contains a full and complete
9 statement as to why such specification is not practical
10 and identifies the person committing the offense and
11 whose communications are to be intercepted; and

12 (ii) the judge finds that such specification is not
13 practical.

14 (2) In the case of an application with respect to a wire
15 or electronic communication:

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

21 (ii) the judge finds that such purpose has been
22 adequately shown.

23 Section 6. Sections 5713(a), 5713.1(b) and (c), 5714(a),
24 5715, 5717, 5718, 5719 and 5720 of Title 18 are amended to read:
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 or a substantial danger to
8 life or limb, dictating authorization for immediate interception
9 of wire, electronic or oral communications before an application
10 for an order could with due diligence be submitted to him and
11 acted upon, the judge may grant oral approval for such
12 interception without an order, conditioned upon the filing with
13 him, within 48 hours thereafter, of an application for an order
14 which, if granted, shall recite the oral approval and be
15 retroactive to the time of such oral approval. Such interception
16 shall immediately terminate when the communication sought is
17 obtained or when the application for an order is denied,
18 whichever is earlier. In the event no application for an order
19 is made, the content of any wire, electronic or oral
20 communication intercepted shall be treated as having been
21 obtained in violation of this [chapter] subchapter.

22 * * *

23 § 5713.1. Emergency hostage and barricade situations.

24 * * *

25 (b) Procedure.--A supervising law enforcement officer who
26 reasonably determines that an emergency situation exists that
27 requires a wire or oral communication to be intercepted before
28 an order authorizing such interception can, with due diligence,
29 be obtained, and who determines that there are grounds upon
30 which an order could be entered under this chapter to authorize

1 such interception, may intercept such wire or oral
2 communication. An application for an order approving the
3 interception must be made by the supervising law enforcement
4 officer in accordance with section 5709 (relating to application
5 for order) within 48 hours after the interception has occurred
6 or begins to occur. Interceptions pursuant to this section shall
7 be conducted in accordance with the procedures of this [chapter]
8 subchapter. Upon request of the supervising law enforcement
9 officer who determines to authorize interceptions of wire
10 communications under this section, a provider of electronic
11 communication service shall provide assistance and be
12 compensated therefor as provided in section 5712(f) (relating to
13 issuance of order and effect). In the absence of an order, such
14 interception shall immediately terminate when the situation
15 giving rise to the hostage or barricade situation ends or when
16 the application for the order is denied, whichever is earlier.
17 In the event such application for approval is denied or in any
18 other case where the interception is terminated without an order
19 having been issued, the contents of any wire or oral
20 communication intercepted shall be treated as having been
21 obtained in violation of this [chapter] subchapter, and an
22 inventory shall be served as provided in section 5716 (relating
23 to service of inventory and inspection of intercepted
24 communications). Thereafter, the supervising law enforcement
25 officer shall follow the procedures set forth in section 5713(b)
26 (relating to emergency situations).

27 (c) Defense.--A good faith reliance on the provisions of
28 this section shall be a complete defense to any civil or
29 criminal action brought under this [chapter] subchapter or any
30 other statute against any law enforcement officer or agency

1 conducting any interceptions pursuant to this section as well as
2 a provider of electronic communication service who is required
3 to provide assistance in conducting such interceptions upon
4 request of a supervising law enforcement officer.

5 * * *

6 § 5714. Recording of intercepted communications.

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

16 (1) The date and hours of surveillance.

17 (2) The time and duration of each intercepted
18 communication.

19 (3) The participant, if known, in each intercepted
20 conversation.

21 (4) A summary of the content of each intercepted
22 communication.

23 * * *

24 § 5715. Sealing of applications, orders and supporting papers.

25 Applications made, final reports, and orders granted pursuant
26 to this [chapter] subchapter and supporting papers and monitor's
27 records shall be sealed by the court and shall be held in
28 custody as the court shall direct and shall not be destroyed
29 except on order of the court and in any event shall be kept for
30 ten years. They may be disclosed only upon a showing of good

1 cause before a court of competent jurisdiction except that any
2 investigative or law enforcement officer may disclose such
3 applications, orders and supporting papers and monitor's records
4 to investigative or law enforcement officers of this or another
5 state, any of its political subdivisions, or of the United
6 States to the extent that such disclosure is appropriate to the
7 proper performance of the official duties of the officer making
8 or receiving the disclosure. In addition to any remedies and
9 penalties provided by this [chapter] subchapter, any violation
10 of the provisions of this section may be punished as contempt of
11 the court.

12 § 5717. [Disclosure] Investigative disclosure or use of
13 contents of wire, electronic or oral communications
14 or derivative evidence.

15 (a) [Investigative activities.--]Law enforcement
16 personnel.--Any investigative or law enforcement officer who,
17 [by any means authorized by this chapter,] under subsection (b) <—
18 or (c) (A.1), (A.2) OR (B), has obtained knowledge of the <—
19 contents of any wire, electronic or oral communication, or
20 evidence derived therefrom, or who has otherwise obtained such
21 knowledge in good faith reliance on the provisions of this
22 chapter, may disclose such contents or evidence to another
23 investigative or law enforcement officer[, including another
24 investigative or law enforcement officer of another state or
25 political subdivision thereof, or make use of such contents or
26 evidence] to the extent that such disclosure [or use] is
27 appropriate to the proper performance of the official duties of
28 the officer making or receiving the disclosure.

29 (a.1) Use of information.--Any investigative or law
30 enforcement officer who, by any means authorized by this

1 subchapter, has obtained knowledge of the contents of any wire,
2 electronic or oral communication or evidence derived therefrom
3 may use such contents or evidence to the extent such use is
4 appropriate to the proper performance of his official duties.

5 (a.2) Civilians.--Any person other than an investigative or
6 law enforcement officer who as a party to the communication has
7 obtained knowledge of the contents of any wire, electronic or
8 oral communication, or evidence derived therefrom, may disclose
9 such contents or evidence to an investigative or law enforcement
10 officer.

11 (b) [Evidence.--] Otherwise authorized personnel.--Any
12 person who [by any means authorized by this chapter,] in good
13 faith reliance on the laws of another state or the Federal
14 Government, has obtained knowledge of the contents of any wire,
15 electronic or oral communication, or evidence derived therefrom,
16 may disclose such contents or evidence to an investigative or
17 law enforcement officer [and may disclose such contents or ←
18 evidence while giving testimony under oath or affirmation in any
19 criminal {proceeding}, ~~quasi criminal, professional disciplinary~~ ←
20 ~~or forfeiture proceeding, including a proceeding to recover the~~
21 ~~civil penalty provided under section 5111(c) (relating to~~
22 ~~dealing in proceeds of unlawful activities),~~ in any court of
23 this Commonwealth or of another state or of the United States or
24 before any state or Federal grand jury or investigating grand
25 jury]. ←

26 [(c) Otherwise authorized personnel.--Any person who, by any
27 means authorized by the laws of another state or the Federal
28 Government, has obtained knowledge of the contents of any wire,
29 electronic or oral communication, or evidence derived therefrom,
30 may disclose such contents or evidence to an investigative or

1 law enforcement officer and may disclose such contents or
2 evidence where otherwise admissible while giving testimony under
3 oath or affirmation in any proceeding in any court of this
4 Commonwealth.]

5 (D) LIMITATION ON CERTAIN INTERCEPTIONS.--ANY AUDIO ←
6 COMMUNICATIONS RECORDED UNDER SECTION 5704(14) (RELATING TO
7 EXCEPTIONS TO PROHIBITION OF INTERCEPTION AND DISCLOSURE OF
8 COMMUNICATIONS) AND ANY EVIDENCE DERIVED THEREFROM SHALL BE
9 ADMISSIBLE ONLY WHEN GIVING TESTIMONY UNDER OATH OR AFFIRMATION
10 IN ANY PROCEEDING IN ANY COURT OF THIS COMMONWEALTH ON MATTERS
11 RELATING TO ALLEGED MISCONDUCT BY ANY INDIVIDUAL RECORDED ON THE
12 AUDIO RECORDING.

13 (E) LIMITATION ON GOOD FAITH EXCEPTION.--NOTHING IN THIS
14 SECTION SHALL BE CONSTRUED TO PERMIT ANY CONDUCT IN VIOLATION OF
15 THE CONSTITUTION OF THE UNITED STATES OR OF THE CONSTITUTION OF
16 PENNSYLVANIA.

17 § 5718. Interception of communications relating to other
18 offenses.

19 When an investigative or law enforcement officer, while
20 engaged in court authorized interceptions of wire, electronic or
21 oral communications in the manner authorized herein, intercepts
22 wire, electronic or oral communications relating to offenses
23 other than those specified in the order of authorization, the
24 contents thereof, and evidence derived therefrom, may be
25 disclosed or used as provided in section 5717(a) (relating to
26 disclosure or use of contents of wire, electronic or oral
27 communications or derivative evidence). Such contents and
28 evidence may be disclosed in testimony under oath or affirmation
29 in any criminal proceeding in any court of this Commonwealth or
30 of another state or of the United States or before any state or

1 Federal grand jury when authorized by a judge who finds on
2 subsequent application that the contents were otherwise
3 intercepted in accordance with the provisions of this [chapter]
4 subchapter. Such application shall be made as soon as
5 practicable.

6 § 5719. Unlawful use or disclosure of existence of order
7 concerning intercepted communication.

8 Except as specifically authorized pursuant to this [chapter]
9 subchapter any person who willfully uses or discloses the
10 existence of an order authorizing interception of a wire,
11 electronic or oral communication is guilty of a misdemeanor of
12 the second degree.

13 § 5720. Service of copy of order and application before
14 disclosure of intercepted communication in trial,
15 hearing or proceeding.

16 The contents of any wire, electronic or oral communication
17 intercepted in accordance with the provisions of this [chapter]
18 subchapter, or evidence derived therefrom, shall not be
19 disclosed in any trial, hearing, or other adversary proceeding
20 before any court of the Commonwealth unless, not less than ten
21 days before the trial, hearing or proceeding the parties to the
22 action have been served with a copy of the order, the
23 accompanying application and the final report under which the
24 interception was authorized or, in the case of an interception
25 under section 5704 (relating to exceptions to prohibition of
26 interception and disclosure of communications), notice of the
27 fact and nature of the interception. The service of inventory,
28 order, application, and final report required by this section
29 may be waived by the court only where it finds that the service
30 is not feasible and that the parties will not be prejudiced by

1 the failure to make the service.

2 Section 7. Section 5721 of Title 18 is repealed.

3 Section 8. Title 18 is amended by adding a section to read:

4 § 5721.1. Evidentiary disclosure of contents of intercepted
5 communication or derivative evidence.

6 (a) Disclosure in evidence generally.--

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

12 (2) Any ~~investigative or law enforcement officer~~ PERSON <—
13 who has obtained knowledge of the contents of any wire,
14 electronic or oral communication, or evidence derived
15 therefrom, which is properly subject to disclosure under
16 section ~~5717(a)~~ 5717 (relating to investigative disclosure or <—
17 use of contents of wire, electronic or oral communications or
18 derivative evidence), may also disclose such contents or
19 evidence in any matter relating to any criminal, quasi-
20 criminal, forfeiture, administrative enforcement or
21 professional disciplinary proceedings in any court, board or
22 agency of this Commonwealth or of another state or of the
23 United States or before any state or Federal grand jury or
24 investigating grand jury. Once such disclosure has been made
25 by an ~~investigative or law enforcement officer~~, then any <—
26 person may disclose such THE contents or evidence in any such <—
27 proceeding.

28 (3) Notwithstanding the provisions of paragraph (2), no
29 disclosure in any such proceeding shall be made so long as
30 any order excluding such contents or evidence pursuant to the

1 provisions of subsection (b) is in effect.

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

7 (1) Unless intercepted in good faith reliance upon an
8 exception set forth in section 5704 (relating to exceptions
9 to prohibition of interception and disclosure of
10 communications), the interception was made without prior
11 procurement of an order of authorization under section 5712
12 (relating to issuance of order and effect) or an order of
13 approval under section 5713(a) (relating to emergency
14 situations) or 5713.1(b) (relating to emergency hostage and
15 barricade situations).

16 (2) The order of authorization issued under section 5712
17 or the order of approval issued under section 5713(a) or
18 5713.1(b) was not supported by probable cause with respect to
19 the matters set forth in section 5710(a)(1) and (2) (relating
20 to grounds for entry of order).

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

24 (4) The interception materially deviated from the
25 requirements of the order of authorization and was not made
26 in good faith.

27 (5) With respect to interceptions pursuant to section
28 5704(2), the consent to the interception was coerced by the
29 Commonwealth.

30 (6) Where required pursuant to section 5704(2)(iii), the

1 interception was made without prior procurement of a court
2 order, or without probable cause.

3 (c) Procedure.--

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

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

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

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

22 (5) With respect to exclusion claims under subsection
23 (b)(6), the movant shall have the initial burden of
24 demonstrating by a preponderance of the evidence that the
25 interception took place in his home. Once he meets this
26 burden, the burden shall shift to the respondent to
27 demonstrate by a preponderance of the evidence that the
28 interception was in accordance with section 5704(2)(iii).

29 (6) Evidence shall not be deemed to have been derived
30 from communications excludable under subsection (b) if the

1 respondent can demonstrate by a preponderance of the evidence
2 that the Commonwealth or the respondent had a basis
3 independent of the excluded communication for discovering
4 such evidence, or that such evidence would have been
5 inevitably discovered by the Commonwealth or the respondent
6 absent the excluded communication.

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

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

17 Section 9. Sections 5722, 5723, 5724, 5725, 5726, 5743(d)
18 and (e), 5744(b), 5747(d), 5771, 5772(a), 5773(a), 5774, 5775
19 heading, and 5781 of Title 18 are amended to read:

20 § 5722. Report by issuing or denying judge.

21 Within 30 days after the expiration of an order or an
22 extension or renewal thereof entered under this [chapter]
23 subchapter or the denial of an order confirming verbal approval
24 of interception, the issuing or denying judge shall make a
25 report to the Administrative Office of Pennsylvania Courts
26 stating the following:

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

28 (2) The kind of order applied for.

29 (3) That the order was granted as applied for, was

30 modified, or was denied.

1 (4) The period of the interceptions authorized by the
2 order, and the number and duration of any extensions or
3 renewals of the order.

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

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

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

11 § 5723. Annual reports and records of Attorney General and
12 district attorneys.

13 (a) Judges.--In addition to reports required to be made by
14 applicants pursuant to Title 18 U.S.C. § 2519, all judges who
15 have issued orders pursuant to this title shall make annual
16 reports on the operation of this [chapter] subchapter to the
17 Administrative Office of Pennsylvania Courts. The reports by the
18 judges shall contain the following information:

19 (1) The number of applications made.

20 (2) The number of orders issued.

21 (3) The effective periods of such orders.

22 (4) The number and duration of any renewals thereof.

23 (5) The crimes in connection with which the orders were
24 sought.

25 (6) The names and official identity of the applicants.

26 (7) Such other and further particulars as the
27 Administrative Office of Pennsylvania Courts may require.

28 (b) Attorney General.--In addition to reports required to be
29 made by applicants pursuant to Title 18 U.S.C. § 2519, the
30 Attorney General shall make annual reports on the operation of

1 this [chapter] subchapter to the Administrative Office of
2 Pennsylvania Courts and to the Judiciary Committees of the
3 Senate and House of Representatives. The reports by the Attorney
4 General shall contain the same information which must be
5 reported pursuant to 18 U.S.C. § 2519(2).

6 (c) District attorneys.--Each district attorney shall
7 annually provide to the Attorney General all of the foregoing
8 information with respect to all applications authorized by that
9 district attorney on forms prescribed by the Attorney General.

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

17 § 5724. Training.

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

30 § 5725. Civil action for unlawful interception, disclosure or

1 use of wire, electronic or oral communication.

2 (a) Cause of action.--Any person whose wire, electronic or
3 oral communication is intercepted, disclosed or used in
4 violation of this [chapter] subchapter shall have a civil cause
5 of action against any person who intercepts, discloses or uses
6 or procures any other person to intercept, disclose or use, such
7 communication; and shall be entitled to recover from any such
8 person:

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

12 (2) Punitive damages.

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

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

20 (c) Defense.--It is a defense to an action brought pursuant
21 to subsection (a) that the actor acted in good faith reliance on
22 a court order or the provisions of this [chapter] subchapter.
23 § 5726. Action for removal from office or employment.

24 (a) Cause of action.--Any aggrieved person shall have the
25 right to bring an action in Commonwealth Court against any
26 investigative or law enforcement officer, public official or
27 public employee seeking the officer's, official's or employee's
28 removal from office or employment on the grounds that the
29 officer, official or employee has intentionally violated the
30 provisions of this [chapter] subchapter. If the court shall

1 conclude that such officer, official or employee has in fact
2 intentionally violated the provisions of this [chapter]
3 subchapter, the court shall order the dismissal or removal from
4 office of said officer, official or employee.

5 (b) Defense.--It is a defense to an action brought pursuant
6 to subsection (a) that the actor acted in good faith reliance on
7 a court order or the provisions of this [chapter] subchapter.

8 § 5743. Requirements for governmental access.

9 * * *

10 (d) Requirements for court order.--A court order for
11 disclosure under subsection (b) or (c) shall be issued only if
12 the investigative or law enforcement officer shows that there
13 [is reason to believe] are specific and articulable facts
14 showing that there are reasonable grounds to believe that the
15 contents of a wire or electronic communication, or the records
16 or other information sought, are relevant and material to [a
17 legitimate investigative or law enforcement inquiry] an ongoing
18 criminal investigation. A court issuing an order pursuant to
19 this section, on a motion made promptly by the service provider,
20 may quash or modify the order if the information or records
21 requested are unusually voluminous in nature or compliance with
22 the order would otherwise cause an undue burden on the provider.

23 (e) No cause of action against a provider disclosing
24 information under this [chapter] subchapter.--No cause of action
25 shall lie against any provider of wire or electronic
26 communication service, its officers, employees, agents or other
27 specified persons for providing information, facilities or
28 assistance in accordance with the terms of a court order,
29 warrant, subpoena or certification under this [chapter]
30 subchapter.

1 § 5744. Backup preservation.

2 * * *

3 (b) Customer challenges.--

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

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

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

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

1 Pennsylvania Rules of Civil Procedure.

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

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

29 (5) A court order denying a motion or application under
30 this section shall not be deemed a final order, and no

1 interlocutory appeal may be taken therefrom. The Commonwealth
2 or investigative or law enforcement officer shall have the
3 right to appeal from an order granting a motion or
4 application under this section.

5 § 5747. Civil action.

6 * * *

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

8 (1) a court warrant or order, a grand jury subpoena, a
9 legislative authorization or a statutory authorization;

10 (2) a request of an investigative or law enforcement
11 officer under section 5713 (relating to emergency
12 situations); or

13 (3) a good faith determination that section 5704(10)
14 (relating to exceptions to prohibitions of interception and
15 disclosure of communications) permitted the conduct
16 complained of;

17 is a complete defense to any civil or criminal action brought
18 under this [chapter] subchapter or any other law.

19 * * *

20 § 5771. General prohibition of pen register and trap and trace
21 device use; exception.

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

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

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

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

11 (3) with the consent of the user of the service.

12 (b.1) Limitation.--A government agency authorized to install
13 and use a pen register under this chapter shall use technology
14 reasonably available to it that restricts the recording or
15 decoding of electronic or other impulses to the dialing and
16 signaling information utilized in call processing.

17 (c) Penalty.--Whoever intentionally and knowingly violates
18 subsection (a) is guilty of a misdemeanor of the third degree.
19 § 5772. Application for an order for pen registers and trap and
20 trace devices.

21 (a) Application.--The Attorney General or a deputy attorney
22 general designated in writing by the Attorney General or a
23 district attorney or an assistant district attorney designated
24 in writing by the district attorney may make application for an
25 order or an extension of an order under section 5773 (relating
26 to issuance of an order for a pen register or a trap and trace
27 device) authorizing or approving the installation and use of a
28 pen register or a trap and trace device under this [chapter]
29 subchapter, in writing, under oath or equivalent affirmation, to
30 a court of common pleas[.] or to any Superior Court judge when

1 an application for an order authorizing interception of wire or
2 electronic communications is made for the telephone line to
3 which the device is to be attached.

4 * * *

5 § 5773. Issuance of an order for a pen register or a trap and
6 trace device.

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

17 * * *

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

20 (a) Pen registers.--Upon the request of an applicant under
21 this subchapter, a provider of wire or electronic communication
22 service, landlord, custodian or other person shall forthwith
23 provide all information, facilities and technical assistance
24 necessary to accomplish the installation of the pen register
25 unobtrusively and with a minimum of interference with the
26 services that the person so ordered by the court accords the
27 party with respect to whom the installation and use is to take
28 place, if assistance is directed by a court order as provided in
29 section 5773(b)(2) (relating to issuance of an order for a pen
30 register or a trap and trace device).

1 (b) Trap and trace device.--Upon the request of an applicant
2 under this subchapter, a provider of a wire or electronic
3 communication service, landlord, custodian or other person shall
4 install the device forthwith on the appropriate line and shall
5 furnish all additional information, facilities and technical
6 assistance, including installation and operation of the device
7 unobtrusively and with a minimum of interference with the
8 services that the person so ordered by the court accords the
9 party with respect to whom the installation and use is to take
10 place, if installation and assistance are directed by a court
11 order as provided in section 5773. Unless otherwise ordered by
12 the court, the results of the trap and trace device shall be
13 furnished to the applicant designated in the court order at
14 reasonable intervals during regular business hours for the
15 duration of the order.

16 (c) Compensation.--A provider of wire or electronic
17 communication service, landlord, custodian or other person who
18 furnishes facilities or technical assistance pursuant to this
19 section shall be reasonably compensated for reasonable expenses
20 incurred in providing the facilities and assistance.

21 (d) No cause of action against a provider disclosing
22 information under this [chapter] subchapter.--No cause of action
23 shall lie in any court against any provider of a wire or
24 electronic communication service, its officers, employees,
25 agents or other specified persons for providing information,
26 facilities or assistance in accordance with the terms of a court
27 order under this subchapter.

28 (e) Defense.--A good faith reliance on a court order or a
29 statutory authorization is a complete defense against any civil
30 or criminal action brought under this subchapter or any other

1 law.

2 § 5775. Reports concerning pen registers and trap and trace
3 devices.

4 * * *

5 § 5781. Expiration of chapter.

6 This chapter expires December 31, [1994] 2004, unless
7 extended by statute.

8 SECTION 10. SECTION 4524 OF TITLE 75 IS AMENDED BY ADDING A <—
9 SUBSECTION TO READ:

10 § 4524. WINDSHIELD OBSTRUCTIONS AND WIPERS.

11 * * *

12 (F) EXCEPTION FOR VIDEO EQUIPMENT IN POLICE OR SHERIFF
13 VEHICLES.--THIS SECTION DOES NOT PREVENT THE INSTALLATION OR USE
14 OF VIDEO RECORDING OR PROJECTION EQUIPMENT, THAT HAS BEEN
15 APPROVED BY THE DEPARTMENT, UPON THE WINDSHIELD OR ANY WINDOW OF
16 A POLICE OR SHERIFF VEHICLE USED EXCLUSIVELY FOR OFFICIAL
17 PURPOSES.

18 Section ~~10~~ 11. This act shall take effect immediately. <—