

## THE GENERAL ASSEMBLY OF PENNSYLVANIA

# HOUSE BILL

## No. 2362 Session of 1996

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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

disposition)

Section 3922 (relating to theft by deception)

Section 3923 (relating to theft by extortion)

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

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

Section 5512 (relating to lotteries, etc.)

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

Section 5514 (relating to pool selling and bookmaking)

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

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

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

Section 3925 (relating to receiving stolen property)

Section 3926 (relating to theft of services)

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

Section 3933 (relating to unlawful use of computer)

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

Section 4109 (relating to rigging publicly exhibited contest)

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.

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

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

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

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

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

\* \* \*

§ 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 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

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

§ 5747. Civil action.

\* \* \*

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

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

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

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

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

\* \* \*

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

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

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