

No. 1978-164

AN ACT

SB 191

Amending Title 18 (Crimes and Offenses) of the Pennsylvania Consolidated Statutes, making certain repeals and adding new provisions relating to wiretapping and electronic surveillance.

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

Section 1. Chapter 57 of Title 18, act of November 25, 1970 (P.L.707, No.230), known as the Pennsylvania Consolidated Statutes, is repealed.

Section 2. Title 18 is amended by adding a chapter to read:

CHAPTER 57
WIRETAPPING AND ELECTRONIC SURVEILLANCE

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§ 5701. Short title of chapter.

This chapter shall be known and may be cited as the "Wiretapping and Electronic Surveillance Control Act."

§ 5702. Definitions.

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

"Aggrieved person." A person who was a party to any intercepted wire or oral communication or a person against whom the interception was directed.

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

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

"Court." The Superior Court.

"In-progress trace." The determination of the origin of a telephonic communication to a known telephone during an interception.

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

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

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

(2) a hearing aid or similar device being used to correct sub-normal hearing to not better than normal.

“Investigative or law enforcement officer.” Any officer of the United States or of the Commonwealth or political subdivision thereof, who is empowered by law to conduct investigations of or to make arrests for offenses enumerated in this chapter, and any attorney authorized by law to prosecute or participate in the prosecution of such offense. The term shall include, but not be limited to, employees of the Pennsylvania Crime Commission, authorized to investigate crimes enumerated in section 5708 (relating to order authorizing interception of wire or oral communications).

“Judge.” As referring to a judge authorized to receive applications for, and to enter, orders authorizing interceptions of wire and oral communications pursuant to this chapter, any judge of the Superior Court.

“Oral communication.” Any oral communications uttered by a person possessing an expectation that such communication is not subject to interception under circumstances justifying such expectation.

“Organized crime.”

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

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

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

(ii) improper governmental influence.

“Pen register.” A mechanical or electronic device which attaches to a particular telephone line, and which records outgoing numbers dialed by a particular telephone, but does not:

(1) monitor the contents of any communication; or

(2) record the origin of any incoming communications.

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

“Wire communications.” Any communication made in whole or in part through the use of facilities for the transmission of communications by wire, cable or other like connection between the point of origin and the point of reception furnished or operated by a telephone, telegraph or radio company for hire as a communication common carrier.

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

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

(1) willfully intercepts, endeavors to intercept, or procures any other person to intercept or endeavor to intercept any wire or oral communication;

(2) willfully discloses or endeavors to disclose to any other person the contents of any wire or oral communication, or evidence derived therefrom, knowing or having reason to know that the information was obtained through the interception of a wire or oral communication; or

(3) willfully uses or endeavors to use the contents of any wire or oral communications, or evidence derived therefrom, knowing or having reason to know, that the information was obtained through the interception of a wire or oral communication.

§ 5704. Exceptions to prohibition on interception and disclosure of communications.

It shall not be unlawful under this chapter for:

(1) An operator of a switchboard, or an officer, agent or employee of a communication common carrier, whose facilities are used in the transmission of a wire communication, to intercept, disclose or use that communication in the normal course of his employment while engaged in any activity which is a necessary incident to the rendition of his service or to the protection of the rights or property of the carrier of such communication. However, no communication common carrier shall utilize service observing or random monitoring except for mechanical or service quality control checks.

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

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

(ii) one of the parties to the communication has given prior consent to such interception. However, no interception under this paragraph shall be made unless the Attorney General or a deputy Attorney General designated in writing by the Attorney General, or the district attorney, or an assistant district attorney designated in writing by the district attorney, of the county wherein the interception is to be made, has reviewed the facts and is satisfied that the consent is voluntary and has given prior approval for the interception; however such interception shall be subject to the recording and record keeping requirements of section 5714(a) (relating to recording of intercepted communications) and that the Attorney General, Deputy Attorney General, district attorney or assistant district attorney authorizing the interception shall be the custodian of recorded evidence obtained therefrom.

(3) Police and emergency communications systems to record telephone communications coming into and going out of the communications system of a police department, fire department, or county emergency center, if:

(i) the telephones thereof are limited to the exclusive use of the communication system for administrative purposes and provided the

communication system employs a periodic warning which indicates to the parties to the conversation that the call is being recorded;

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

(iii) at least one nonrecorded telephone line is made available for public use at each police department, fire department or county emergency center.

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

(5) Any investigative or law enforcement officer, or communications common carrier acting at the direction of an investigative or law enforcement officer or in the normal course of its business, to use a pen register.

§ 5705. Possession, sale, distribution, manufacture or advertisement of intercepting devices.

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

(1) Willfully possesses an intercepting device, knowing or having reason to know that the design of such device renders it primarily useful for the purpose of the surreptitious interception of a wire or oral communication.

(2) Willfully sells, transfers or distributes an intercepting device, knowing or having reason to know that the design of such device renders it primarily useful for the purpose of the surreptitious interception of a wire or oral communication.

(3) Willfully manufactures or assembles an intercepting device, knowing or having reason to know that the design of such device renders it primarily useful for the purpose of the surreptitious interception of a wire or oral communication.

(4) Willfully places in any newspaper, magazine, handbill, or other publication any advertisement of any intercepting device, knowing or having reason to know that the design of such device renders it primarily useful for the purpose of the surreptitious interception of a wire or oral communication or of any intercepting device where such advertisement promotes the use of such device for the purpose of the surreptitious interception of a wire or oral communication.

§ 5706. Exceptions to prohibitions in possession, sale, distribution, manufacture or advertisement of intercepting devices.

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

- (1) a communication common carrier or an officer, agent or employee of, or a person under contract with a communication common carrier, in the usual course of the communication common carrier's business; or
 - (2) a person under contract with the United States, a state or a political subdivision thereof, or an officer, agent or employee of a state or a political subdivision thereof,
- to possess, sell, distribute, manufacture, assemble or advertise any intercepting device, while acting in furtherance of the appropriate activities of the United States, a state or a political subdivision thereof or a communication common carrier.

(b) Responsibility.—The Attorney General and the district attorney or their designees shall have the sole responsibility to buy, possess and loan any intercepting device which is to be used by investigative or law enforcement officers for purposes of interception as authorized under section 5704(2) (relating to exceptions to prohibition on interception and disclosure of communications), 5712 (relating to issuance of order and effect) or 5713 (relating to emergency situations).

§ 5707. Seizure and forfeiture of intercepting devices.

Any intercepting device possessed, used, sent, distributed, manufactured, or assembled in violation of this chapter is hereby declared to be contraband and may be seized and forfeited to the Commonwealth.

§ 5708. Order authorizing interception of wire or oral communications.

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

(1) Under this title:

Section 2501 (relating to criminal homicide)

Section 2502 (relating to murder)

Section 2503 (relating to voluntary manslaughter)

Section 2706 (relating to terroristic threats)

Section 2901 (relating to kidnapping)

Section 3121 (relating to rape)

Section 3123 (relating to involuntary deviate sexual intercourse)

Section 3301 (relating to arson and related offenses)

Section 3302 (relating to causing or risking catastrophe)

Section 3502 (relating to burglary)

Section 3701 (relating to robbery)

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

Section 5514 (relating to pool selling and bookmaking)

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

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

Section 4109 (relating to rigging publicly exhibited contest)

Section 4902 (relating to perjury)

Section 4907 (relating to tampering with witnesses and informants)

Section 4909 (relating to witness or informant taking bribe)

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

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

Section 5504 (relating to harassment by communication or address)

Section 5902 (relating to prostitution and related offenses)

(3) Under the act of July 22, 1970 (P.L.513, No.178), known as the "Pennsylvania Cigarette Tax Act," where such offense is dangerous to life, limb or property and punishable by imprisonment for more than one year:

Section 902. Sales of unstamped cigarettes.

Section 903. Possession of unstamped cigarettes.

Section 904. Counterfeiting.

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

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

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

§ 5709. Application for order.

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

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

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

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

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

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

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

(iv) 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 character and location of the particular wire communication facilities 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.

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

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

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

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

§ 5710. Grounds for entry of order.

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

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

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

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

(4) the facilities from which, or the place where, the wire or oral communications are to be intercepted, are, have been, or are about to be used, in connection with the commission of such offense, or are leased to, listed in the name of, or commonly used by, such individual;

(5) the investigative or law enforcement officers or agency to be authorized to intercept the wire or oral communication are qualified by training and experience to execute the interception sought, and are certified under section 5724 (relating to training); and

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

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

§ 5711. Privileged communications.

No otherwise privileged communication intercepted in accordance with, or in violation of, the provisions of this chapter shall lose its privileged character.

§ 5712. Issuance of order and effect.

(a) Authorizing orders.—Each order authorizing the interception of any wire or oral communication shall state the following:

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

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

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

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

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

(b) Time limits.—No order entered under this section shall authorize the interception of any wire or oral communication for a period of time in excess of that necessary under the circumstances. Every order entered under this section shall require that such interception begin and terminate as soon as practicable and be conducted in such a manner as to minimize or eliminate the interception of such communications not otherwise subject to interception under this chapter by making reasonable efforts, whenever possible, to reduce the hours of interception authorized by said order. Except as provided in subsection (c), no order entered under this section shall authorize the interception of wire or oral communications for any period exceeding 20 days. An extension or renewal of such an order may be granted for one additional period of not more than 20 days. No extension or renewal shall be granted unless an application for it is made in accordance with this section, and the judge makes the findings required by section 5710 (relating to grounds for entry of order).

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

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

(e) Final report.—Whenever a surveillance is authorized pursuant to this section, a complete written list of names of participants and evidence of offenses discovered, including those not stated in the application for order, shall be filed with the court at the time the authorized surveillance is terminated.

(f) Assistance.—An order authorizing the interception of a wire or oral communication shall, upon request of the applicant, direct that a communication common carrier shall furnish the applicant forthwith all information, facilities and technical assistance necessary to accomplish the interception unobtrusively and with a minimum of interference with the services that such carrier is affording the person whose communications are to be intercepted. The obligation of a communication common carrier under such an order may include but is not limited to conducting an in-progress trace during an interception. Any communication common carrier furnishing such facilities or technical assistance shall be compensated therefore by the applicant at the prevailing rates. Said carrier shall be immune from civil and criminal liability for any assistance rendered to the applicant pursuant to this section.

(g) Entry by law enforcement officers.—An order authorizing the interception of a wire or oral communication shall, if requested, authorize the entry of premises or facilities specified in subsection (a)(3), or premises necessary to obtain access to the premises or facilities specified in subsection (a)(3), by the law enforcement officers specified in subsection (a)(1), as often as necessary solely for the purposes of installing, maintaining or removing an intercepting device or devices provided that such entry is reasonably necessary to accomplish the purposes of this chapter and provided that the judge who issues the order shall be notified of the time and method of each such entry prior to entry if practical and, in any case, within 48 hours of entry.

§ 5713. Emergency situations.

(a) Application.—Whenever, upon informal application by the Attorney General or a designated attorney general authorized in writing by the Attorney General or a district attorney or an assistant district attorney authorized in writing by the district attorney of a county wherein the interception is to be made, a judge determines there are grounds upon which an order could be issued pursuant to this chapter, and that an emergency situation exists with respect to the investigation of an offense designated in section 5708 (relating to order authorizing interception of wire or oral communications), and involving conspiratorial activities characteristic of organized crime and a substantial danger to life or limb, dictating authorization for immediate interception of wire or oral communication before an application for an order could with due diligence be submitted to him and acted upon, the judge may grant oral approval for such interception without an order, conditioned upon the filing with him, within 48 hours thereafter, of an application for an order which, if granted, shall recite the oral approval and be retroactive to the time of such oral approval. Such interception shall immediately terminate when the communication sought is obtained or when the application for an order is denied, whichever is earlier. In the event no application for an order is made, the content of any wire or oral communication intercepted shall be treated as having been obtained in violation of this chapter.

(b) Further proceedings.—In the event no application is made or an application made pursuant to this section is denied, the court shall cause an inventory to be served as provided in section 5716 (relating to service of inventory and inspection of intercepted communications) and shall require the tape or other recording of the intercepted communication to be delivered to, and sealed by, the court. Such evidence shall be retained by the court in accordance with section 5714 (relating to recording of intercepted communications) and the same shall not be used or disclosed in any legal proceeding except in a civil action brought by an aggrieved person pursuant to section 5725 (relating to civil action for unlawful interception, disclosure or use of wire or oral communication) or as otherwise authorized by court order. In addition to other remedies and penalties provided by this chapter, failure to effect delivery of any such tape or other recording shall be punishable as contempt by the court directing such delivery. Evidence of oral authorization to intercept an oral or wire communication shall be a defense to any charge against the investigating or law enforcement officer for engaging in unlawful interception.

§ 5714. Recording of intercepted communications.

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

- (1) The date and hours of surveillance.
- (2) The time and duration of each intercepted communication.
- (3) The participant, if known, in each intercepted conversation.
- (4) A summary of the content of each intercepted communication.

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

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

Applications made, final reports, and orders granted pursuant to this chapter and supporting papers and monitor's records shall be sealed by the

court and shall be held in custody as the court shall direct and shall not be destroyed except on order of the court and in any event shall be kept for ten years. They may be disclosed only upon a showing of good cause before a court of competent jurisdiction except that any investigative or law enforcement officer may disclose such applications, orders and supporting papers to investigative or law enforcement officers of this or another state, any of its political subdivisions, or of the United States to the extent that such disclosure is appropriate to the proper performance of the official duties of the officer making or receiving the disclosure. In addition to any remedies and penalties provided by this chapter, any violation of the provisions of this section may be punished as contempt of the court.

§ 5716. Service of inventory and inspection of intercepted communications.

(a) Service of inventory.—Within a reasonable time but not later than 90 days after the termination of the period of the order or of extensions or renewals thereof, or the date of the denial of an order applied for under section 5713 (relating to emergency situations), the issuing or denying judge shall cause to be served on the persons named in the order, application, or final report an inventory which shall include the following:

(1) Notice of the entry of the order or the application for an order denied under section 5713.

(2) The date of the entry of the order or the denial of an order applied for under section 5713.

(3) The period of authorized or disapproved interception.

(4) The fact that during the period wire or oral communications were or were not intercepted.

(b) Postponement.—On an ex parte showing of good cause to the issuing or denying judge the service of the inventory required by this section may be postponed for a period of 30 days. Additional postponements may be granted for periods of not more than 30 days on an ex parte showing of good cause to the issuing or denying judge.

(c) Inspections.—The court, upon the filing of a motion, shall make available to such persons or their attorneys for inspection, the intercepted communications and monitor's records to which the movant was a participant and the applications and orders.

§ 5717. Disclosure or use of contents of wire or oral communications or derivative evidence.

(a) Investigative activities.—Any investigative or law enforcement officer who, by any means authorized by this chapter, has obtained knowledge of the contents of any wire or oral communication, or evidence derived therefrom, may disclose such contents or evidence to another investigative or law enforcement officer or make use of such contents or evidence to the extent that such disclosure or use is appropriate to the proper performance of the official duties of the officer making or receiving the disclosure.

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

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

§ 5718. Interception of communications relating to other offenses.

When an investigative or law enforcement officer, while engaged in court authorized interceptions of wire or oral communications in the manner authorized herein, intercepts wire or oral communications relating to offenses other than those specified in the order of authorization, the contents thereof, and evidence derived therefrom, may be disclosed or used as provided in section 5717(a) (relating to disclosure or use of contents of wire or oral communications or derivative evidence). Such contents and evidence may be disclosed in testimony under oath or affirmation in any criminal proceeding in any court of this Commonwealth or of another state or of the United States or before any state or Federal grand jury when in advance of such disclosure and on application to a court, the court finds that the contents were listed in the final report, pursuant to section 5712(e) (relating to issuance of order and effect), and were otherwise intercepted in accordance with the provisions of this chapter. Such application shall be made as soon as practicable.

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

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

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

The contents of any wire or oral communication intercepted in accordance with the provisions of this chapter, or evidence derived therefrom, shall not be disclosed in any trial, hearing, or other adversary proceeding before any court of the Commonwealth unless not less than ten days before the trial, hearing or proceeding the parties to the action have been served with a copy of the order, the accompanying application and the

final report under which the interception was authorized or, in the case of an interception under section 5704 (relating to exceptions to prohibition on interception and disclosure of communications), notice of the fact and nature of the interception. The service of inventory, order, application, and final report required by this section may be waived by the court only where it finds that the service is not feasible and that the parties will not be prejudiced by the failure to make the service.

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

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

(1) The communication was unlawfully intercepted.

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

(3) The interception unless made in accordance with section 5704 (relating to exceptions to prohibition on interception and disclosure of communications) was not made in conformity with the order of authorization or in accordance with the requirements of section 5712 (relating to issuance of order and effect).

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

(c) Appeal.—In addition to any other right to appeal, the Commonwealth shall have the right to appeal from an order granting a motion to suppress if the official to whom the order authorizing the intercept was granted shall certify to the court that the appeal is not taken for purposes of delay. The appeal shall be taken in accordance with the provisions of Title 42 (Judiciary and Judicial Procedure).

§ 5722. Report by issuing or denying judge.

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

- (1) That an order, extension or renewal was applied for.
- (2) The kind of order applied for.
- (3) That the order was granted as applied for, was modified, or was denied.
- (4) The period of the interceptions authorized by the order, and the number and duration of any extensions or renewals of the order.
- (5) The offense specified in the order, or extension or renewal of an order.
- (6) The name and official identity of the person making the application and of the investigative or law enforcement officer and agency for whom it was made.
- (7) The character of the facilities from which or the place where the communications were to be intercepted.

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

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

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

(b) Attorney General.—In addition to reports required to be made by applicants pursuant to Title 18 U.S.C. § 2519, the Attorney General shall make annual reports on the operation of this chapter to the Administrative Office of Pennsylvania Courts. The reports by the Attorney General shall contain the following information:

- (1) The number of applications made.
- (2) The number of orders issued.
- (3) The effective periods of such orders.
- (4) The number and duration of any renewals thereof.
- (5) The crimes in connection with which the conversations were sought.
- (6) The names and official identity of the applicants.
- (7) The number of indictments or informations resulting from each application.
- (8) The crime or crimes which each indictment or information charges.
- (9) The disposition of each indictment.

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

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

§ 5724. Training.

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

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

(a) Cause of action.—Any person whose wire or oral communications is intercepted, disclosed or used in violation of this chapter shall have a civil cause of action against any person who intercepts, discloses or uses or procures any other person to intercept, disclose or use, such communication; and shall be entitled to recover from any such person:

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

(2) Punitive damages.

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

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

§ 5726. Action for removal from office or employment.

Any aggrieved person shall have the right to bring an action in Commonwealth Court against any investigative or law enforcement officer, public official or public employee seeking the officer's, official's or employee's removal from office or employment on the grounds that the officer, official or employee has willfully violated the provisions of this chapter. If the court shall conclude that such officer, official or employee

has in fact willfully violated the provisions of this chapter, the court shall order the dismissal or removal from office of said officer, official or employee and the forfeiture of said officer, official or employee's pension benefit entitlements, if any.

Section 3. This act shall take effect in 60 days and Chapter 57 shall expire in five years thereafter.

APPROVED—The 4th day of October, A. D. 1978.

MILTON J. SHAPP