

No. 1998-19

## AN ACT

SB 635

Amending Title 18 (Crimes and Offenses) of the Pennsylvania Consolidated Statutes, further providing for sentencing for the offense of drug delivery resulting in death, for certain assaults by prisoners and for wiretapping and electronic surveillance; and providing for the Office of Attorney General, the General Counsel, special investigative counsel and independent counsel and their powers and duties.

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

Section 1. Section 2506 of Title 18 of the Pennsylvania Consolidated Statutes is amended to read:

§ 2506. Drug delivery resulting in death.

(a) General rule.—A person commits murder of the third degree who administers, dispenses, delivers, gives, prescribes, sells or distributes any controlled substance or counterfeit controlled substance in violation of section 13(a)(14) or (30) of the act of April 14, 1972 (P.L.233, No.64), known as The Controlled Substance, Drug, Device and Cosmetic Act, and another person dies as a result of using the substance.

(b) Mandatory minimum sentence.—A person convicted under subsection (a) shall be sentenced to a **[mandatory minimum term of imprisonment of five years]** *minimum sentence of at least five years of total confinement* and a fine of \$15,000, or such larger amount as is sufficient to exhaust the assets utilized in and the proceeds from the illegal activity, *notwithstanding any other provision of this title or other statute to the contrary.*

[(c) Proof of sentencing.—Provisions of this section shall not be an element of the crime. Notice of the applicability of this section to the defendant shall not be required prior to conviction, but reasonable notice of the Commonwealth's intention to proceed under this section shall be provided after conviction and before sentencing. The applicability of this section shall be determined at sentencing. The court shall consider evidence presented at trial, shall afford the Commonwealth and the defendant an opportunity to present necessary additional evidence and shall determine, by a preponderance of the evidence, if this section is applicable.]

(d) **[Mandatory]** *Authority of court in sentencing.*—There shall be no authority in any court to impose on an offender to which this section is applicable a lesser sentence than provided for herein or to place the offender on probation, parole, work release or prerelease or to suspend sentence. Nothing in this section shall prevent the sentencing court from imposing a sentence greater than provided herein. Sentencing guidelines promulgated by

the Pennsylvania Commission on Sentencing shall not supersede the mandatory sentences provided herein. Disposition under section 17 or 18 of The Controlled Substance, Drug, Device and Cosmetic Act shall not be available to a defendant to which this section applies.

(e) **[Appellate review] *Appeal by Commonwealth.***—If a sentencing court refuses to apply **[this section] subsection (b)** where applicable, the Commonwealth shall have the right to appellate review of the action of the sentencing court. The appellate court shall vacate the sentence and remand the case to the sentencing court for imposition of a sentence in accordance with **[this section] subsection (b)** if it finds that the sentence was imposed in violation of **[this section] subsection (b)**.

(f) **Forfeiture.**—Assets against which a forfeiture petition has been filed and is pending or against which the Commonwealth has indicated an intention to file a forfeiture petition shall not be subject to a fine. Nothing in this section shall prevent a fine from being imposed on assets which have been subject to an unsuccessful forfeiture petition.

Section 2. Section 2703 of Title 18 is amended to read:

§ 2703. Assault by prisoner.

(a) ***Offense defined.***—A person who **[has been found guilty and is awaiting sentence to imprisonment, or a person who has been sentenced to imprisonment for a term of years in]** ***is confined in or committed to any local or county detention facility, jail or prison or any State penal or correctional institution or other State penal or correctional facility[,]*** located in this Commonwealth[,] **is guilty of a felony of the second degree if he, while so confined or committed or while undergoing transportation to or from such an institution or facility in or to which he was confined or committed intentionally or knowingly, commits an assault upon another with a deadly weapon or instrument, or by any means or force likely to produce serious bodily injury. A person is guilty of this offense if he intentionally or knowingly causes another to come into contact with blood, seminal fluid, saliva, urine or feces by throwing, tossing, spitting or expelling such fluid or material when, at the time of the offense, the person knew, had reason to know, should have known or believed such fluid or material to have been obtained from an individual, including the person charged under this section, infected by a communicable disease, including, but not limited to, human immunodeficiency virus (HIV) or hepatitis B.**

(b) ***Consecutive sentences.***—***The court shall order that any sentence imposed for a violation of subsection (a), or any sentence imposed for a violation of section 2702(a) (relating to aggravated assault) where the victim is a detention facility or correctional facility employee, be served consecutively with the person's current sentence.***

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

§ 2703.1. ***Aggravated harassment by prisoner.***

***A person who is confined in or committed to any local or county detention facility, jail or prison or any State penal or correctional***

*institution or other State penal or correctional facility located in this Commonwealth commits a felony of the third degree if he, while so confined or committed or while undergoing transportation to or from such an institution or facility in or to which he was confined or committed, intentionally or knowingly causes or attempts to cause another to come into contact with blood, seminal fluid, saliva, urine or feces by throwing, tossing, spitting or expelling such fluid or material.*

Section 4. Section 2704 of Title 18 is amended to read:

§ 2704. Assault by life prisoner.

Every person who has been sentenced to death or life imprisonment in any penal institution located in this Commonwealth, and whose sentence has not been commuted, who commits an aggravated assault with a deadly weapon or instrument upon another, or by any means of force likely to produce serious bodily injury, is guilty of a crime, the penalty for which shall be the same as the penalty for murder of the second degree. *A person is guilty of this offense if he intentionally or knowingly causes another to come into contact with blood, seminal fluid, saliva, urine or feces by throwing, tossing, spitting or expelling such fluid or material when, at the time of the offense, the person knew, had reason to know, should have known or believed such fluid or material to have been obtained from an individual, including the person charged under this section, infected by a communicable disease, including, but not limited to, human immunodeficiency virus (HIV) or hepatitis B.*

Section 5. The definitions of “electronic communication,” “electronic, mechanical or other device,” “intercept,” “investigative or law enforcement officer,” “judge,” “pen register” and “wire communication” in section 5702 of Title 18 are amended and the section is amended by adding definitions to read:

§ 5702. Definitions.

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

\* \* \*

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

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

(2) Any wire or oral communication.

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

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

\* \* \*

“Electronic, mechanical or other device.” Any device or apparatus, including, *but not limited to*, an induction coil *or a telecommunication identification interception device*, that can be used to intercept a wire, electronic or oral communication other than:

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

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

(3) *Equipment or devices used to conduct interceptions under section 5704(15) (relating to exceptions to prohibition of interception and disclosure of communications).*

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“Home.” *The residence of a nonconsenting party to an interception, provided that access to the residence is not generally permitted to members of the public and the party has a reasonable expectation of privacy in the residence under the circumstances.*

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“Intercept.” Aural or other acquisition of the contents of any wire, electronic or oral communication through the use of any electronic, mechanical or other device. *The term shall include the point at which the contents of the communication are monitored by investigative or law enforcement officers.*

“Investigative or law enforcement officer.” Any officer of the United States, *of another state or political subdivision thereof* 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 *or an equivalent crime in another jurisdiction*, 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.” When referring to a judge authorized to receive applications for, and to enter, orders authorizing interceptions of wire, electronic or oral communications pursuant to [this chapter] *Subchapter B (relating to wire, electronic or oral communication)*, any judge of the Superior Court.

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“Pen register.” A device which [records or decodes] *is used to capture, record or decode* electronic or other impulses which identify the numbers

diald or otherwise transmitted, with respect to wire *or electronic* communications, on the *targeted* telephone [line to which the device is attached]. *The term includes a device which is used to record or decode electronic or other impulses which identify the existence of incoming and outgoing wire or electronic communications on the targeted telephone.* The term does not include a device used by a provider or customer of a wire or electronic communication service for billing, or recording as an incident to billing, for communication service provided by the provider, or any device used by a provider, or customer of a wire communication service for cost accounting or other like purposes in the ordinary course of business.

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*“State.” Any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico and any territory or possession of the United States.*

*“Telecommunication identification interception device.” Any equipment or device capable of intercepting any electronic communication which contains any electronic serial number, mobile identification number, personal identification number or other identification number assigned by a telecommunication service provider for activation or operation of a telecommunication device.*

\* \* \*

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

Section 6. Section 5704 introductory paragraph and (2), (5) and (9) of Title 18 are amended and the section is amended by adding a paragraph to read:

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

It shall not be unlawful *and no prior court approval shall be required* under this chapter for:

\* \* \*

(2) Any investigative or law enforcement officer or any person acting at the direction or request of an investigative or law enforcement officer to intercept a wire, electronic or oral communication involving suspected criminal activities, *including, but not limited to, the crimes enumerated in section 5708 (relating to order authorizing interception of wire, electronic or oral communications)*, where:

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

(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; [or]

(iii) the investigative or law enforcement officer meets in person with a suspected felon and wears a concealed electronic or mechanical device capable of intercepting or recording oral communications. However, no interception under this subparagraph may be used in any criminal prosecution except for a prosecution involving harm done to the investigative or law enforcement officer. This subparagraph shall not be construed to limit the interception and disclosure authority provided for in [subparagraph (i).] *this subchapter; or*

*(iv) the requirements of this subparagraph are met. If an oral interception otherwise authorized under this paragraph will take place in the home of a nonconsenting party, then, in addition to the requirements of subparagraph (ii), the interception shall not be conducted until an order is first obtained from the president judge, or his designee who shall also be a judge, of a court of common pleas, authorizing such in-home interception, based upon an affidavit by an investigative or law enforcement officer that establishes probable cause for the issuance of such an order. No such order or affidavit shall be required where probable cause and exigent circumstances exist. For the purposes of this paragraph, an oral interception shall be deemed to take place in the home of a nonconsenting party only if both the consenting and nonconsenting parties are physically present in the home at the time of the interception.*

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(5) Any investigative or law enforcement officer, or communication 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 [or], trap and trace device *or telecommunication identification interception device* as provided in [this chapter] *Subchapter E (relating to pen registers, trap and trace devices and telecommunication identification interception devices).*

\* \* \*

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

(i) as otherwise authorized in this section or section 5717 (relating to *investigative* disclosure or use of contents of wire, electronic or oral communications or derivative evidence);

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

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

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

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

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***(15) The personnel of a business engaged in telephone marketing or telephone customer service by means of wire, oral or electronic communication to intercept such marketing or customer service communications where such interception is made for the sole purpose of training, quality control or monitoring by the business, provided that one party involved in the communications has consented to such intercept. Any communications recorded pursuant to this paragraph may only be used by the business for the purpose of training or quality control. Unless otherwise required by Federal or State law, communications recorded pursuant to this paragraph shall be destroyed within one year from the date of recording.***

Section 7. Sections 5706 and 5708 of Title 18 are amended to read:

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

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

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

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

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

(b) Responsibility.—[The]

(1) *Except as provided under paragraph (2), the Attorney General and the district attorney or their designees so designated in writing shall have the sole responsibility to buy, possess and loan any electronic, mechanical or other device which is to be used by investigative or law enforcement officers for purposes of interception as authorized under section 5704(2), (5) and (12) (relating to exceptions to prohibition of interception and disclosure of communications), 5712 (relating to issuance of order and effect), 5713 (relating to emergency situations) or 5713.1 (relating to emergency hostage and barricade situations).*

(2) *The division or bureau or section of the Pennsylvania State Police responsible for conducting the training in the technical aspects of wiretapping and electronic surveillance as required by section 5724 (relating to training) may buy and possess any electronic, mechanical or other device which is to be used by investigative or law enforcement officers for purposes of interception as authorized under section 5704(2), (5) and (12), 5712, 5713 or 5713.1 for the purpose of training. However, any electronic, mechanical or other device bought or possessed under this provision may be loaned to or used by investigative or law enforcement officers for purposes of interception as authorized under section 5704(2), (5) and (12), 5712, 5713 or 5713.1 only upon written approval by 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.*

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

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

[(a) Authorization.—Except in cases referred to in subsection (b), the] *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, electronic 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 911 (relating to corrupt organizations)

Section 2501 (relating to criminal homicide)

Section 2502 (relating to murder)

Section 2503 (relating to voluntary manslaughter)

**Section 2702 (relating to aggravated assault)**

Section 2706 (relating to terroristic threats)

**Section 2709(b) (relating to harassment and stalking)**

Section 2901 (relating to kidnapping)

Section 3121 (relating to rape)

Section 3123 (relating to involuntary deviate sexual intercourse)

**Section 3124.1 (relating to sexual assault)**

**Section 3125 (relating to aggravated indecent assault)**

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 5512 (relating to lotteries, etc.)

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

Section 5514 (relating to pool selling and bookmaking)

**Section 6318 (relating to unlawful contact or communication with minor)**

(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 telecommunications 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)*

Section 4305 (relating to dealing in infant children)

Section 4902 (relating to perjury)

Section 4909 (relating to witness or informant taking bribe)

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

Section 4952 (relating to intimidation of witnesses or victims)

Section 4953 (relating to retaliation against witness or victim)

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

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

*Section 5121 (relating to escape)*

Section 5504 (relating to harassment by communication or address)

Section 5902 (relating to prostitution and related offenses)

*Section 5903 (relating to obscene and other sexual materials and performances)*

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

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

Section 1272 (relating to sales of unstamped cigarettes)

Section 1273 (relating to possession of unstamped cigarettes)

Section 1274 (relating to 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.

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

Section 8. Section 5712(e), (f) and (g) of Title 18 are amended to read: § 5712. Issuance of order and effect.

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(e) Final report.—Whenever an interception 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] *as soon as practicable after* the authorized interception is terminated.

(f) Assistance.—An order authorizing the interception of a wire, electronic or oral communication shall, upon request of the applicant, direct that a provider of electronic communication service shall furnish the applicant forthwith all information, facilities and technical assistance necessary to accomplish the interception unobtrusively and with a minimum of interference with the services that such service provider is affording the person whose communications are to be intercepted. The obligation of a provider of electronic communication service under such an order may include, but is not limited to, *installation of a pen register or trap and trace device and disclosure of a record or other information otherwise available under section 5743 (relating to requirements for governmental access), including* conducting an in-progress trace during an interception, *provided that such obligation of a provider of electronic communications service is technologically feasible*. Any provider of electronic communication service furnishing such facilities or technical assistance shall be compensated therefor by the applicant for reasonable expenses incurred in providing the facilities or assistance. The service provider shall be immune from civil and criminal liability for any assistance rendered to the applicant pursuant to this section.

(g) Entry by law enforcement officers.—An order authorizing the interception of a wire, electronic or oral communication shall, if requested, authorize the entry of premises or facilities specified 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 electronic, mechanical or other device or devices provided that such entry is reasonably necessary to accomplish the purposes of this [chapter] *subchapter* 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.

Section 9. Sections 5713(a), 5713.1(b) and (c), 5714, 5715, 5717, 5718, 5719 and 5720 of Title 18 are amended to read:

§ 5713. Emergency situations.

(a) Application.—Whenever, upon informal application by the Attorney General or a designated deputy 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, electronic or

oral communications), and involving conspiratorial activities characteristic of organized crime or a substantial danger to life or limb, dictating authorization for immediate interception of wire, electronic or oral communications 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, electronic or oral communication intercepted shall be treated as having been obtained in violation of this [chapter] *subchapter*.

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§ 5713.1. Emergency hostage and barricade situations.

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(b) Procedure.—A supervising law enforcement officer who reasonably determines that an emergency situation exists that requires a wire or oral communication to be intercepted before an order authorizing such interception can, with due diligence, be obtained, and who determines that there are grounds upon which an order could be entered under this chapter to authorize such interception, may intercept such wire or oral communication. An application for an order approving the interception must be made by the supervising law enforcement officer in accordance with section 5709 (relating to application for order) within 48 hours after the interception has occurred or begins to occur. Interceptions pursuant to this section shall be conducted in accordance with the procedures of this [chapter] *subchapter*. Upon request of the supervising law enforcement officer who determines to authorize interceptions of wire communications under this section, a provider of electronic communication service shall provide assistance and be compensated therefor as provided in section 5712(f) (relating to issuance of order and effect). In the absence of an order, such interception shall immediately terminate when the situation giving rise to the hostage or barricade situation ends or when the application for the order is denied, whichever is earlier. In the event such application for approval is denied or in any other case where the interception is terminated without an order having been issued, the contents of any wire or oral communication intercepted shall be treated as having been obtained in violation of this [chapter] *subchapter*, and an inventory shall be served as provided in section 5716 (relating to service of inventory and inspection of intercepted communications). Thereafter, the supervising law enforcement officer shall follow the procedures set forth in section 5713(b) (relating to emergency situations).

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

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

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§ 5714. Recording of intercepted communications.

(a) Recording and monitoring.—Any wire, electronic or oral communication intercepted in accordance with this [chapter] *subchapter* 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 *investigative* disclosure or use of contents of wire, electronic 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, electronic 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] *subchapter* 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 and monitor's records 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] *subchapter*, any violation of the provisions of this section may be punished as contempt of the court.

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

(a) **[Investigative activities.—]***Law enforcement personnel.*—Any investigative or law enforcement officer who, **[by any means authorized by this chapter,]** *under subsection (a.1) or (b)*, has obtained knowledge of the contents of any wire, electronic or oral communication, or evidence derived therefrom, may disclose such contents or evidence to another investigative or law enforcement officer**[, including another investigative or law enforcement officer of another state or political subdivision thereof, 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.

*(a.1) Use of information.—Any investigative or law enforcement officer who, by any means authorized by this subchapter, has obtained knowledge of the contents of any wire, electronic or oral communication or evidence derived therefrom may use such contents or evidence to the extent such use is appropriate to the proper performance of his official duties.*

(b) Evidence.—Any person who by any means authorized by this chapter, has obtained knowledge of the contents of any wire, electronic 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, electronic 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, electronic or oral communications in the manner authorized herein, intercepts wire, electronic 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 *investigative* disclosure or use of contents of wire, electronic 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 authorized by a judge who finds on subsequent

application that the contents were otherwise intercepted in accordance with the provisions of this [chapter] *subchapter*. 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] *subchapter* any person who willfully uses or discloses the existence of an order authorizing interception of a wire, electronic 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, electronic or oral communication intercepted in accordance with the provisions of this [chapter] *subchapter*, 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 of 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.

Section 10. Section 5721 of Title 18 is repealed.

Section 11. Title 18 is amended by adding a section to read:

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

(a) *Disclosure in evidence generally.—*

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

(2) *Any person who has obtained knowledge of the contents of any wire, electronic or oral communication, or evidence derived therefrom, which is properly subject to disclosure under section 5717 (relating to investigative disclosure or use of contents of wire, electronic or oral communications or derivative evidence) may also disclose such contents or evidence in any matter relating to any criminal, quasi-criminal, forfeiture, administrative enforcement or professional disciplinary proceedings in any court, board or agency of this Commonwealth or of another state or of the United States or before any state or Federal grand jury or investigating grand jury. Once such disclosure has been made, then any person may disclose the contents or evidence in any such proceeding.*

**(3) Notwithstanding the provisions of paragraph (2), no disclosure in any such proceeding shall be made so long as any order excluding such contents or evidence pursuant to the provisions of subsection (b) is in effect.**

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

**(1) Unless intercepted pursuant to an exception set forth in section 5704 (relating to exceptions to prohibition of interception and disclosure of communications), the interception was made without prior procurement of an order of authorization under section 5712 (relating to issuance of order and effect) or an order of approval under section 5713(a) (relating to emergency situations) or 5713.1(b) (relating to emergency hostage and barricade situations).**

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

**(3) The order of authorization issued under section 5712 is materially insufficient on its face.**

**(4) The interception materially deviated from the requirements of the order of authorization.**

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

**(6) Where required pursuant to section 5704(2)(iv), the interception was made without prior procurement of a court order or without probable cause.**

**(c) Procedure.—**

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

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

**(3) The movant shall bear the burden of proving by a preponderance of the evidence the grounds for exclusion asserted under subsection (b)(3) and (4).**

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

**(5) With respect to exclusion claims under subsection (b)(6), the movant shall have the initial burden of demonstrating by a**



*preponderance of the evidence that the interception took place in his home. Once he meets this burden, the burden shall shift to the respondent to demonstrate by a preponderance of the evidence that the interception was in accordance with section 5704(2)(iv).*

*(6) Evidence shall not be deemed to have been derived from communications excludable under subsection (b) if the respondent can demonstrate by a preponderance of the evidence that the Commonwealth or the respondent had a basis independent of the excluded communication for discovering such evidence or that such evidence would have been inevitably discovered by the Commonwealth or the respondent absent the excluded communication.*

*(d) Appeal.—In addition to any other right of appeal, the Commonwealth shall have the right to appeal from an order granting a motion to exclude 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 (relating to judiciary and judicial procedure).*

*(e) Exclusiveness of remedies and sanctions.—The remedies and sanctions described in this subchapter with respect to the interception of wire, electronic or oral communications are the only judicial remedies and sanctions for nonconstitutional violations of this subchapter involving such communications.*

Section 12. Sections 5722, 5724, 5743(d) and (e), 5744(b) and 5747(d) of Title 18 are amended to read:

§ 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] *subchapter* 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.

§ 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 as allowed or permitted by this **[chapter] subchapter**, 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.

§ 5743. Requirements for governmental access.

\* \* \*

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

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

§ 5744. Backup preservation.

\* \* \*

(b) Customer challenges.—

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

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

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

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

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

(4) If the court finds that the applicant is not the subscriber or customer for whom the communications sought by the investigative or law enforcement officer are maintained, or that there is reason to believe that the investigative or law enforcement inquiry is legitimate and that the communications sought are relevant to that inquiry, it shall deny the motion or application and order the process enforced. If the court finds that the applicant is the subscriber or customer for whom the communications sought by the governmental entity are maintained, and that there is not reason to believe that the communications sought are relevant to a legitimate investigative or law enforcement inquiry, or that there has not been substantial compliance with the provisions of this **[chapter] subchapter**, it shall order the process quashed.

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

\* \* \*

Section 13. The heading of Subchapter E of Chapter 57 of Title 18 is amended to read:

SUBCHAPTER E  
PEN REGISTERS, TRAP AND TRACE DEVICES  
**AND TELECOMMUNICATION IDENTIFICATION  
INTERCEPTION DEVICES**

Section 14. Sections 5771, 5772 heading and (a), 5773, 5774, 5775 and 5781 of Title 18 are amended to read:

§ 5771. General prohibition **[of pen register and trap and trace device use; exception] on use of certain devices and 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 *or a telecommunication identification interception 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] use of certain devices**).

(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 *or a telecommunication identification interception device* by a provider of electronic or wire communication service:

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

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

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

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

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

§ 5772. Application for an order for **[pen registers and trap and trace devices] use of certain devices.**

(a) Application.—The Attorney General or a deputy attorney general designated in writing by the Attorney General or a district attorney or an assistant district attorney designated in writing by the district attorney may make application for an order or an extension of an order under section 5773 (relating to issuance of an order for **[a pen register or a trap and trace device] use of certain devices**) authorizing or approving the installation and use of a pen register **[or]**, a trap and trace device **or a telecommunication identification interception device** under this **[chapter] subchapter**, in writing, under oath or equivalent affirmation, to a court of common pleas **[.] or to any Superior Court judge when an application for an order authorizing interception of wire or electronic communications is or has been made for the targeted telephone or another application for interception under this subchapter has been made involving the same investigation.**

\* \* \*

§ 5773. Issuance of an order for **[a pen register or a trap and trace device] use of certain devices.**

(a) In general.—Upon an application made under section 5772 (relating to application for an order for **[pen registers and trap and trace devices] use of certain devices**), the court **[of common pleas]** shall enter an ex parte order authorizing the installation and use of a pen register **[or]**, a trap and trace device **or a telecommunication identification interception device** within the jurisdiction of the court if the court finds that there is probable cause to believe that information relevant to an ongoing criminal investigation will be obtained **by such installation and use** on the **targeted** telephone **[line to which the pen register is to be attached]**.

(b) Contents of order.—An order issued under this section shall:

(1) Specify:

(i) That there is probable cause to believe that information relevant to an ongoing criminal investigation will be obtained **[on the telephone line to which the pen register or trap and trace device is to be attached] from the targeted telephone.**

(ii) The identity, if known, of the person to whom is leased or in whose name is listed the **[telephone line to which the pen register or trap and trace device is to be attached.] targeted telephone, or, in the case of the use of a telecommunication identification interception device, the identity, if known, of the person or persons using the targeted telephone.**

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

(iv) **[The number and, if known,] In the use of pen registers and trap and trace devices only,** the physical location of the **[telephone line to which the pen register or trap and trace device is to be attached, and, in the case of a trap and trace device, the geographical limits of the trap and trace order] targeted telephone.**

(v) A statement of the offense to which the information likely to be obtained by the pen register [or], trap and trace device *or the telecommunication identification interception device* relates.

(2) Direct, upon the request of the applicant, the furnishing of information, facilities and technical assistance necessary to accomplish the installation of the pen register under section 5771 (relating to general prohibition [of pen register and trap and trace device use; exception].) *on use of certain devices and exception*).

(3) *In the case of a telecommunication identification interception device, direct that all interceptions be recorded and monitored in accordance with section 5714(a)(1) and (2) and (b) (relating to recording of intercepted communications).*

(c) Time period and extensions.—

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

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

(d) Nondisclosure of existence of pen register [or], trap and trace device *or a telecommunication identification interception device*.—An order authorizing or approving the installation and use of a pen register [or], a trap and trace device *or a telecommunication identification interception device* shall direct that:

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

(2) The person owning or leasing the [line to which the pen register or a trap and trace device is attached] *targeted telephone*, or who has been ordered by the court to provide assistance to the applicant, not disclose the existence of the pen register [or], trap and trace device *or telecommunication identification interception device* or the existence of the investigation to the listed subscriber, or to any other person, unless or until otherwise ordered by the court.

§ 5774. Assistance in installation and use of [pen registers or trap and trace devices] *certain devices*.

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

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

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

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

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

§ 5775. Reports concerning [pen registers] *certain devices*.

(a) Attorney General.—The Attorney General shall annually report to the Administrative Office of Pennsylvania Courts on the number of orders for pen registers [and], trap and trace devices *and telecommunication identification interception devices* applied for by investigative or law enforcement agencies of the Commonwealth or its political subdivisions.

(b) District attorney.—Each district attorney shall annually provide to the Attorney General information on the number of orders for pen registers [and], trap and trace devices *and telecommunication identification interception devices* applied for on forms prescribed by the Attorney General.

§ 5781. Expiration of chapter.

This chapter expires December 31, [1999] *2004*, unless extended by statute.

Section 15. Title 18 is amended by adding a chapter to read:

CHAPTER 93  
INDEPENDENT COUNSEL

Subchapter

- A. Preliminary Provisions
- B. General Provisions

- C. Authority and Duties of Independent Counsel
- D. Miscellaneous Provisions

## SUBCHAPTER A PRELIMINARY PROVISIONS

Sec.

9301. Short title of chapter.

9302. Definitions.

§ 9301. Short title of chapter.

This chapter shall be known and may be cited as the Independent Counsel Authorization Act.

§ 9302. Definitions.

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

“General Counsel.” The General Counsel of the Commonwealth.

“Grounds to investigate.” Information which would lead a reasonable person to suspect that a crime is being or has been committed.

“Independent counsel.” A person appointed by the Special Independent Prosecutor’s Panel upon the request of a special investigative counsel.

“Panel.” The Special Independent Prosecutor’s Panel established under this chapter.

“Special investigative counsel.” A person appointed by the General Counsel to conduct a preliminary investigation under this chapter.

## SUBCHAPTER B GENERAL PROVISIONS

Sec.

9311. Organization of panel.

9312. Preliminary investigation.

9313. Conduct of preliminary investigation.

9314. Determination that further investigation not warranted.

9315. Determination that further investigation is warranted.

9316. Contents of application.

9317. Disclosure of information.

9318. Limitation on judicial review.

9319. Duties of panel.

§ 9311. Organization of panel.

(a) Composition and selection.—The Special Independent Prosecutor’s Panel shall be composed of one judge of the Commonwealth Court and two judges, including senior judges, of the courts of common pleas of the Commonwealth. The members of the panel shall be chosen by lot. The procedure shall be determined by and supervised by the Court Administrator of Pennsylvania in the Administrative Office of Pennsylvania Courts. The



Administrative Office of Pennsylvania Courts shall disclose to the public the membership of the panel.

(b) Term of members.—Each member of the panel shall hold office for a term of three years. Judges who are members of the panel and are required to retire under section 16 of Article V of the Constitution of Pennsylvania shall also vacate their positions on the panel unless assigned under Chapter 7 of the Rules of Judicial Administration. A judge who is otherwise removed or suspended from office shall automatically forfeit the position held by that judge on the panel.

(c) Vacancies.—Any vacancy in the panel shall be filled only for the remainder of the three-year period in which the vacancy occurs and in the same manner as initial assignments to the panel were made.

(d) Decisions by majority vote.—All decisions of the panel shall be by majority vote of the members.

(e) Clerk.—The Prothonotary of Commonwealth Court shall serve as the clerk of the panel and shall provide such services as are needed by the panel.

(f) Restriction.—No member of the panel who participated in a function conferred on the panel under this chapter involving an independent counsel shall be eligible to participate in any judicial proceeding concerning a matter which involves the independent counsel and which involves the exercise of the independent counsel's official duties, regardless of whether the independent counsel is still serving in that office.

§ 9312. Preliminary investigation.

(a) Preliminary investigation with respect to certain covered persons.—The General Counsel shall appoint a special investigative counsel to conduct a preliminary investigation in accordance with this chapter whenever the General Counsel receives information sufficient to constitute grounds to investigate whether any person described in subsection (c) may have committed any of the following:

(1) An offense which is classified higher than a misdemeanor of the second degree.

(2) An offense which is classified higher than a summary offense and which involves a breach of the public trust. This paragraph includes a violation of the act of June 3, 1937 (P.L.1333, No.320), known as the Pennsylvania Election Code, or the act of October 4, 1978 (P.L.883, No.170), referred to as the Public Official and Employee Ethics Law.

(b) Preliminary investigation with respect to persons not listed in subsection (c).—The Attorney General shall request the General Counsel to appoint a special investigative counsel to conduct a preliminary investigation under the jurisdiction established or conferred under section 205(b) of the act of October 15, 1980 (P.L.950, No.164), known as the Commonwealth Attorneys Act, and where the Attorney General determines that an investigation or prosecution of the person, with respect to the information received, by the Attorney General or other officer of the Attorney General's office may result in a personal, financial or political conflict of interest. In

addition, the Attorney General may request the General Counsel to appoint a special investigative counsel to conduct a preliminary investigation where the Attorney General determines that an investigation or prosecution of the person, with respect to the information received, by the Attorney General or other officer of the Attorney General's office may result in a personal, financial or political conflict of interest.

(c) Persons to whom subsection (a) applies.—The persons referred to in subsection (a) are as follows:

(1) The Attorney General, any Deputy Attorney General or any individual working in the Attorney General's office who is defined as a "public employee" under the Public Official and Employee Ethics Law.

(2) Any individual who leaves any office or position described in paragraph (1) during the incumbency of the Attorney General with or under whom such individual served in the office or position, plus one year after such incumbency, but in no event longer than a period of three years after the individual leaves the office or position.

(3) Any individual who held an office or position described in paragraph (1) during the incumbency of one Attorney General and who continued to hold the office or position for not more than 90 days into the term of the next Attorney General, during the one-year period after the individual leaves the office or position.

(4) The chairman and treasurer of the principal campaign committee seeking the election or reelection of the Attorney General, and any officer of that committee exercising authority at the State level, during the incumbency of the elected Attorney General.

(d) Examination of information to determine need for preliminary investigation.—In determining under subsection (a) whether grounds to investigate exist, the General Counsel shall consider only the specificity of the information received and the credibility of the source of the information. The General Counsel shall determine whether grounds to investigate exist no later than 30 days after the information is first received. If within that 30-day period the General Counsel determines that the information is not specific or is not from a credible source, then the General Counsel shall close the matter. If within that 30-day period the General Counsel determines that the information is specific and from a credible source, the General Counsel shall, upon making that determination, appoint a special investigative counsel to commence a preliminary investigation with respect to that information. If the General Counsel is unable to determine within that 30-day period whether the information is specific and from a credible source, the General Counsel shall at the end of that 30-day period appoint a special investigative counsel to commence a preliminary investigation with respect to that information. If a special investigative counsel is appointed, the special investigative counsel may only accept the appointment when such appointment would not conflict with the rules governing professional conduct.

**§ 9313. Conduct of preliminary investigation.**

(a) In general.—A preliminary investigation conducted under this chapter shall be of matters as the special investigative counsel considers appropriate in order to make a determination under section 9314 (relating to determination that further investigation not warranted) or 9315 (relating to determination that further investigation is warranted) of whether further investigation is warranted with respect to each potential violation or allegation of a violation of criminal law. The special investigative counsel shall make the determination no later than 90 days after the preliminary investigation is commenced. The special investigative counsel shall promptly notify the panel of the date of the commencement of the preliminary investigation.

(b) Limited authority of special investigative counsel.—

(1) In conducting preliminary investigations under this chapter, the special investigative counsel shall have no authority to convene grand juries, plea bargain, grant immunity or issue subpoenas.

(2) The special investigative counsel shall not base a determination under this chapter that information with respect to a violation of criminal law by a person is not specific and from a credible source upon a determination that the person lacked the state of mind required for the violation of criminal law. The special investigative counsel shall not base a determination under this chapter that there are no reasonable grounds to believe that further investigation is warranted upon a determination that the person lacked the state of mind required for the violation of criminal law involved unless there is clear and convincing evidence that the person lacked the required state of mind.

(c) Extension of time for preliminary investigation.—The special investigative counsel may apply to the panel for a single extension, for a period of no more than 60 days, of the 90-day period referred to in subsection (a). The panel may, upon a showing of good cause, grant the extension.

**§ 9314. Determination that further investigation not warranted.**

(a) Notification of panel.—If the special investigative counsel upon completion of a preliminary investigation under this chapter determines that there are no reasonable grounds to believe that further investigation is warranted, the special investigative counsel shall promptly so notify the panel, and the panel shall have no power to appoint an independent counsel with respect to the matters involved.

(b) Form of notification.—The notification shall contain a summary of the information received and a summary of the results of the preliminary investigation. The summary shall be confidential and not subject to public disclosure, except that the person who was the subject of the investigation may request a copy of the summary from the panel.

**§ 9315. Determination that further investigation is warranted.**

(a) Application for appointment of independent counsel.—The special investigative counsel shall apply to the panel for the appointment of an independent counsel if:

(1) the special investigative counsel, upon completion of a preliminary investigation under this chapter, determines that there are reasonable grounds to believe that further investigation is warranted; or

(2) the 90-day period referred to in section 9313(a) (relating to conduct of preliminary investigation) and any extension granted under section 9313(c) have elapsed and the special investigative counsel has not filed a notification with the panel under section 9314(a) (relating to determination that further investigation not warranted).

(b) Receipt of additional information.—If, after submitting a notification under section 9314(a), the special investigative counsel receives additional information sufficient to constitute grounds to investigate the matters to which the notification related, the special investigative counsel shall:

(1) Conduct an additional preliminary investigation as the special investigative counsel considers appropriate for a period of no more than 90 days after the date on which the additional information is received.

(2) Otherwise comply with the provisions of this subchapter with respect to the additional preliminary investigation to the same extent as any other preliminary investigation under this chapter.

#### § 9316. Contents of application.

Any application for the appointment of an independent counsel under this chapter shall contain sufficient information to assist the panel in selecting an independent counsel and in defining that independent counsel's prosecutorial jurisdiction so that the independent counsel has adequate authority to fully investigate and prosecute the subject matter and all matters related to that subject matter.

#### § 9317. Disclosure of information.

Except as otherwise provided in this chapter, no officer or employee of the office of special investigative counsel or the office of independent counsel may, without leave of the panel, disclose to any individual outside the office of special investigative counsel or office of independent counsel any notification, application or any other document, material or memorandum supplied to the panel under this chapter. Nothing in this chapter shall be construed as authorizing the withholding of information from the General Assembly.

#### § 9318. Limitation on judicial review.

The determination of the special investigative counsel under this chapter to apply to the panel for the appointment of an independent counsel shall not be reviewable in any court.

#### § 9319. Duties of panel.

(a) Appointment and jurisdiction of independent counsel.—

(1) Upon receipt of an application, the panel shall appoint an appropriate independent counsel and shall define that independent

counsel's prosecutorial jurisdiction. The appointment shall occur no later than 30 days after the receipt of the application.

(2) The panel shall appoint as independent counsel an individual who has appropriate experience and who will conduct the investigation and any prosecution in a prompt, responsible and cost-effective manner. The panel shall seek to appoint as independent counsel an individual who will serve to the extent necessary to complete the investigation and any prosecution without undue delay. The panel may not appoint as an independent counsel any person who holds any office of profit or trust with the Commonwealth. No person who is serving as a special investigative counsel may be appointed or serve as an independent counsel in the matter for which they had been appointed to investigate as special investigative counsel. If an independent counsel is appointed, the independent counsel may only accept the appointment when such appointment would not conflict with the rules governing professional conduct.

(3) In defining the independent counsel's prosecutorial jurisdiction, the panel shall assure that the independent counsel has adequate authority to fully investigate and prosecute the subject matter with respect to which the special investigative counsel has requested the appointment of the independent counsel and all matters related to that subject matter. Jurisdiction shall also include the authority to investigate and prosecute the following offenses which may arise out of the investigation with respect to which the special investigative counsel's request was made:

(i) An offense classified higher than a misdemeanor of the second degree.

(ii) An offense which is classified higher than a summary offense and which involves a breach of the public trust. This paragraph includes a violation of the act of June 3, 1937 (P.L.1333, No.320), known as the Pennsylvania Election Code, or the act of October 4, 1978 (P.L.883, No.170), referred to as the Public Official and Employee Ethics Law.

(4) The panel shall disclose the identity of the independent counsel upon appointment.

(b) Expansion of jurisdiction.—

(1) The panel upon the request of the General Council may expand the prosecutorial jurisdiction of an independent counsel. The expansion may be in lieu of the appointment of another independent counsel.

(2) If the independent counsel discovers or receives information about possible violations of criminal law by persons as provided in section 9312 (relating to preliminary investigation) which are not covered by the prosecutorial jurisdiction of the independent counsel, the independent counsel may submit the information to the General Council. In accordance with this subchapter, the General Council shall appoint a special investigative counsel to conduct a preliminary investigation of the information, except that the preliminary investigation shall not exceed 30 days from the date the information is received. In making the

determinations required by this subchapter, the special investigative counsel shall give great weight to any recommendations of the independent counsel.

(3) If the special investigative counsel determines, after according great weight to the recommendations of the independent counsel, that there are no reasonable grounds to believe that further investigation is warranted, the special investigative counsel shall promptly so notify the panel, and the panel shall have no power to expand the jurisdiction of the independent counsel or to appoint another independent counsel with respect to the matters involved.

(4) The panel shall expand the jurisdiction of the appropriate independent counsel to include the matters involved or shall appoint another independent counsel to investigate the matters if:

(i) the special investigative counsel determines that there are reasonable grounds to believe that further investigation is warranted; or

(ii) the 30-day period referred to in paragraph (2) elapses without a notification to the panel that no further investigation is warranted.

(5) If the independent counsel discovers or receives information about possible violations of criminal law by persons other than those provided for in section 9312 and which are not covered by the prosecutorial jurisdiction of the independent counsel and a request for expansion under this subsection has not been made by the General Counsel or the request for expansion under this subsection has been denied by the panel, the independent counsel shall submit the information to the appropriate law enforcement authority.

(c) Return for further explanation.—Upon receipt of a notification under this subchapter that there are no reasonable grounds to believe that further investigation is warranted with respect to information received under this chapter, the panel shall have no authority to overrule this determination but may return the matter to the special investigative counsel for further explanation of the reasons for the determination.

(d) Vacancies.—If a vacancy in office arises by reason of the resignation, death or removal of an independent counsel, the panel shall appoint an independent counsel to complete the work of the independent counsel whose resignation, death or removal caused the vacancy, except that, in the case of a vacancy arising by reason of the removal of an independent counsel, the panel may appoint an acting independent counsel to serve until any judicial review of the removal is completed.

### SUBCHAPTER C

#### AUTHORITY AND DUTIES OF INDEPENDENT COUNSEL

Sec.

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§ 9331. Authorities.

Notwithstanding any other provision of law, an independent counsel appointed under this chapter shall have, with respect to all matters in the independent counsel's prosecutorial jurisdiction established under this chapter, full power and independent authority to exercise all investigative and prosecutorial functions and powers of the Office of Attorney General, the Attorney General and any other officer or employee of the Office of Attorney General. Investigative and prosecutorial functions and powers shall include, but are not limited to:

- (1) Conducting proceedings before grand juries and other investigations.
- (2) Participating in court proceedings and engaging in any litigation, including civil and criminal matters, that the independent counsel considers necessary.
- (3) Appealing any decision of a court in any case or proceeding in which the independent counsel participates in an official capacity.
- (4) Reviewing all documentary evidence available from any source.
- (5) Determining whether to contest the assertion of any testimonial privilege.
- (6) Receiving appropriate security clearances and, if necessary, contesting in court, including, where appropriate, participating in an in camera proceeding, any claim of privilege or attempt to withhold evidence on grounds of security.
- (7) Making applications to any State court for a grant of immunity to any witness, consistent with applicable statutory requirements, or for warrants, subpoenas or other court orders and exercising the authority vested in the Attorney General or a district attorney.
- (8) Inspecting, obtaining or using the original or a copy of any tax return in accordance with applicable statutes and regulations.

(9) Initiating and conducting prosecutions in any court of competent jurisdiction, framing and signing indictments, filing information and handling all aspects of any case in the name of the Commonwealth.

(10) Consulting with the district attorney for the county in which any violation of law with respect to which the independent counsel is appointed was alleged to have occurred.

§ 9332. Compensation and travel expenses.

An independent counsel appointed under this chapter shall receive compensation at the per diem rate equal to the annual rate of basic pay payable to the Attorney General. An independent counsel and persons appointed under section 9333 (relating to additional personnel) shall be entitled to the payment of travel expenses.

§ 9333. Additional personnel.

For the purposes of carrying out the duties of the office of independent counsel, the independent counsel may appoint, fix the compensation and assign the duties of the employees the independent counsel considers necessary, including, but not limited to, investigators, attorneys and necessary experts to assist with the criminal investigation. The positions of these employees are exempted from the competitive service. Employees shall be compensated at levels not to exceed those payable for comparable positions in the Office of Attorney General.

§ 9334. Assistance of Pennsylvania State Police.

(a) Carrying out functions.—An independent counsel may request assistance from the Pennsylvania State Police in carrying out the functions of the independent counsel, and the Pennsylvania State Police shall provide that assistance, which may include the use of the resources and personnel necessary to perform the independent counsel's duties.

(b) Payment of and reports on expenditures of independent counsel.—Upon the request of the Governor, the General Assembly shall appropriate the necessary funds to the State Treasurer for the use and operation in executing the duties and responsibilities of the position of independent counsel. Upon the request of the Governor, the General Assembly shall appropriate the necessary funds to the Pennsylvania State Police for costs incurred when rendering assistance to the independent counsel as provided for under subsection (a). The State Treasurer shall submit to the General Assembly, no later than 30 days after the end of each fiscal year, a report on amounts paid during that fiscal year for expenses of investigations and prosecutions by independent counsel. Each report shall include a statement of all payments made for activities of independent counsel.

§ 9335. Referral of other matters to independent counsel.

An independent counsel may ask the panel to refer to the independent counsel matters related to the independent counsel's prosecutorial jurisdiction, and the panel may refer these matters. If the Attorney General refers a matter to an independent counsel on the Attorney General's own initiative, the



independent counsel may accept the referral if the matter relates to the independent counsel's prosecutorial jurisdiction.

§ 9336. Dismissal of matters.

The independent counsel shall have full authority to dismiss matters within the independent counsel's prosecutorial jurisdiction without conducting an investigation or at any subsequent time before prosecution.

§ 9337. Reports by independent counsel.

(a) Required reports.—An independent counsel shall:

(1) File with the panel, with respect to the six-month period beginning on the date of his appointment and with respect to each six-month period thereafter until the office of that independent counsel terminates, a report which identifies and explains major expenses, summarizes all other expenses incurred by that office during the six-month period with respect to which the report is filed and estimates future expenses of that office.

(2) Before the termination of the independent counsel's office under section 9343(b) (relating to removal of independent counsel and termination of office), file a final report with the panel, setting forth fully and completely a description of all prosecutions. All other information shall be confidential and not subject to public disclosure.

(b) Disclosure of information in reports.—The panel may release to the General Assembly, the Governor, the State Treasurer, the public or any appropriate person the portions of a report made under this section as the panel considers appropriate. The panel shall make any orders as are appropriate to protect the rights of any individual named in the report and to prevent undue interference with any pending prosecution. The panel may make any portion of a final report filed under subsection (a)(2) available to any individual named in the report for the purposes of receiving within a time limit set by the panel any comments or factual information that the individual may submit. The comments and factual information, in whole or in part, may in the discretion of the panel be included as an appendix to the final report.

§ 9338. Independence from Office of Attorney General.

Each independent counsel appointed under this chapter and the persons appointed by that independent counsel under section 9333 (relating to additional personnel) are separate from and independent of the Office of Attorney General.

§ 9339. Standards of conduct applicable to independent counsel, persons serving in office of independent counsel and their law firms.

(a) Restrictions on employment while independent counsel and appointees are serving.—During the period in which an independent counsel is serving under this chapter, the independent counsel and any person associated with a firm with which the independent counsel is associated may not represent in any matter any person involved in any investigation or prosecution under this chapter. During the period in which any person appointed by an independent counsel under section 9333 (relating to additional personnel) is serving in the

office of independent counsel, the person may not represent in any matter any person involved in any investigation or prosecution under this chapter.

(b) Postemployment restrictions on independent counsel and appointees.—

(1) Each independent counsel and each person appointed by that independent counsel under section 9333 may not for three years following the termination of service under this chapter of that independent counsel or appointed person, as the case may be, represent any person in any matter if that individual was the subject of an investigation or prosecution conducted by that independent counsel under this chapter.

(2) Each independent counsel and each person appointed by that independent counsel under section 9333 may not for one year following the termination of service under this chapter of that independent counsel or appointed person, as the case may be, represent any person in any matter involving any investigation or prosecution under this chapter.

(c) One-year ban on representation by members of firms of independent counsel.—Any person who is associated with a firm with which an independent counsel is associated or becomes associated after termination of service of that independent counsel under this chapter may not for one year following the termination represent any person in any matter involving any investigation or prosecution under this chapter.

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

“Associated with a firm.” A person who is an officer, director, partner or other member or employee of a law firm.

“Firm.” A law firm, whether organized as a partnership or corporation.  
§ 9340. Custody of records of independent counsel.

(a) Transfer of records.—Upon termination of the office of independent counsel, that independent counsel shall transfer to the Bureau of Archives and History of the Pennsylvania Historical and Museum Commission all records which have been created or received by that office. Before this transfer, the independent counsel shall clearly identify which of these records are subject to the Pennsylvania Rules of Criminal Procedure as grand jury materials.

(b) Maintenance, use and disposal of records.—Records transferred to the Bureau of Archives and History under this section shall be maintained, used and disposed of as provided by law.

§ 9341. Cost controls and administrative support.

(a) Cost controls.—An independent counsel shall:

(1) Conduct all activities with due regard for expense.

(2) Authorize only reasonable and lawful expenditures.

(3) Promptly upon taking office assign to a specific employee the duty of certifying that expenditures of the independent counsel are reasonable and made in accordance with law.

(b) Office of Administration policies.—An independent counsel shall comply with the established policies of the Office of Administration of the

Governor respecting expenditures of funds, except to the extent that compliance would be inconsistent with the purposes of this chapter.

§ 9342. Legislative oversight.

(a) Oversight of conduct of independent counsel.—An independent counsel appointed under this chapter shall submit to the General Assembly a report detailing all moneys expended as required under section 9337(a)(1) (relating to reports by independent counsel). In addition, the independent counsel shall submit annually a report on the activities of the independent counsel, including a description of the progress of any investigation or prosecution conducted by the independent counsel. The report may omit any matter that in the judgment of the independent counsel should be kept confidential but shall provide information adequate to justify the expenditures that the office of the independent counsel has made.

(b) Information relating to impeachment.—An independent counsel shall advise the House of Representatives of any substantial and credible information which the independent counsel receives in carrying out the independent counsel's responsibilities under this chapter that may constitute grounds for an impeachment. Nothing in this chapter shall prevent the General Assembly or either house thereof from obtaining information in the course of an impeachment proceeding.

§ 9343. Removal of independent counsel and termination of office.

(a) Removal, report on removal and termination.—

(1) An independent counsel appointed under this chapter may be removed from office only by the personal action of the General Council and only for good cause, physical disability, mental incapacity or any other condition that substantially impairs the performance of the independent counsel's duties. For purposes of this paragraph, the term "good cause" includes, but is not limited to, violations of any ethical rules governing the independent counsel, the Attorney General or district attorneys.

(2) If an independent counsel is removed from office, the General Council shall promptly submit to the panel, the Judiciary Committee of the Senate and the Judiciary Committee of the House of Representatives a report specifying the facts found and the ultimate grounds for the removal. The committees may make available to the public the report, except that each committee may, if necessary to protect the rights of any individual named in the report or to prevent undue interference with any pending prosecution, postpone or refrain from publishing any or all of the report. The panel may release any or all of the report in accordance with section 9337(b) (relating to reports by independent counsel).

(3) An independent counsel removed from office may obtain judicial review of the removal in a civil action commenced in the Commonwealth Court. The independent counsel may be reinstated or granted other appropriate relief by order of the Commonwealth Court. A member of the panel may not hear or determine any such civil action or any appeal of a decision in any such civil action.

(b) Termination of office.—

(1) An office of independent counsel shall terminate when the independent counsel:

(i) notifies the panel that the investigation of all matters within the prosecutorial jurisdiction of the independent counsel or accepted by the independent counsel, and any resulting prosecutions, have been completed; and

(ii) files a final report in compliance with section 9337.

(2) The panel shall determine on its own motion whether termination is appropriate under this subsection no later than two years after the appointment of an independent counsel or the reported expenditures of the independent counsel have reached \$2,000,000, whichever occurs first, and at the end of each succeeding one-year period.

§ 9344. Audits.

By December 31 of each year, an independent counsel shall prepare a statement of expenditures for the fiscal year that ended on the immediately preceding June 30. An independent counsel whose office is terminated prior to the end of the fiscal year shall prepare a statement of expenditures within 90 days of the date on which the office is terminated. The Auditor General shall audit each statement and report the results of each audit to the appropriate committees of the General Assembly no later than March 31 of the year following the submission of the statement.

§ 9345. Relationship with Office of Attorney General.

Whenever a matter is in the prosecutorial jurisdiction of an independent counsel or has been accepted by an independent counsel under section 9335 (relating to referral of other matters to independent counsel), the Office of Attorney General, the Attorney General, all other officers and employees of the Office of Attorney General and any district attorney shall suspend all investigations and proceedings regarding that matter and shall turn over to the independent counsel all materials, files and other data relating to that matter.

§ 9346. Venue.

The proper venue for all prosecutions conducted by the independent counsel shall be determined in accordance with the Pennsylvania Rules of Criminal Procedure. For the purposes of convenience and fairness, the panel may, however, set the venue in any other county on its own motion or at the request of the independent counsel or on petition of the defendant.

SUBCHAPTER D  
MISCELLANEOUS PROVISIONS

Sec.

9351. Severability of chapter.

9352. Expiration of chapter.

§ 9351. Severability of chapter.

The provisions of this chapter are severable. If any provision of this chapter or its application to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application.

§ 9352. Expiration of chapter.

This chapter shall expire five years after the date of the enactment of this chapter, except with respect to any matters pending before an independent counsel that in the judgment of the independent counsel require continuation. Matters shall be continued until the independent counsel determines the matters are completed.

Section 16. This act shall take effect as follows:

- (1) The amendment or addition of 18 Pa.C.S. § 2506 and Ch. 93 shall take effect in 60 days.
- (2) The remainder of this act shall take effect immediately.

APPROVED—The 18th day of February, A.D. 1998.

THOMAS J. RIDGE