

WIRETAPPING, CRIMES AGAINST THE FAMILY AND ETHICAL TREATMENT IN FAMILY LAW



March 18, 2014
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Purdon's Pennsylvania Statutes and Consolidated Statutes
Title 18 Pa.C.S.A. Crimes and Offenses (Refs & Annos)
Part II. Definition of Specific Offenses
Article F. Offenses Against Public Order and Decency
Chapter 57. Wiretapping and Electronic Surveillance (Refs & Annos)
Subchapter A. General Provisions (Refs & Annos)

18 Pa.C.S.A. § 5701

§ 5701. Short title of chapter

Currentness

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

Credits

1978, Oct. 4, P.L. 831, No. 164, § 2, effective in 60 days.

Editors' Notes

EXPIRATION

<See 18 Pa.C.S.A. § 5781 for expiration of Chapter 57.>

Notes of Decisions (33)

18 Pa.C.S.A. § 5701, PA ST 18 Pa.C.S.A. § 5701

Current through Regular Session Act 2013-88, 91, 93 to 97, 99 to 103, except 20 Pa.C.S.A. § 7101 to End current through 2013-104

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Chapter 57. Wiretapping and Electronic Surveillance (Refs & Annos)
Subchapter A. General Provisions (Refs & Annos)

18 Pa.C.S.A. § 5702

§ 5702. Definitions

Effective: December 24, 2012

Currentness

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

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

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

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

"Communication service." Any service which provides to users the ability to send or receive wire or electronic communications.

"Communication system." Any wire, radio, electromagnetic, photo-optical or photoelectronic facilities for the transmission of communications and any computer facilities or related electronic equipment for the electronic storage of such communications.

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

"Court." The Superior Court. For the purposes of Subchapter C only, the term shall mean the court of common pleas.

"Crime of violence." Any of the following:

(1) Any of the following crimes:

(i) Murder in any degree as defined in section 2502(a), (b) or (c) (relating to murder).

(ii) Voluntary manslaughter as defined in section 2503 (relating to voluntary manslaughter), drug delivery resulting in death as defined in section 2506(a) (relating to drug delivery resulting in death), aggravated assault as defined in section

2702(a)(1) or (2) (relating to aggravated assault), kidnapping as defined in section 2901(a) or (a.1) (relating to kidnapping), rape as defined in section 3121(a), (c) or (d) (relating to rape), involuntary deviate sexual intercourse as defined in section 3123(a), (b) or (c) (relating to involuntary deviate sexual intercourse), sexual assault as defined in section 3124.1 (relating to sexual assault), aggravated indecent assault as defined in section 3125(a) or (b) (relating to aggravated indecent assault), incest as defined in section 4302(a) or (b) (relating to incest), arson as defined in section 3301(a) (relating to arson and related offenses), burglary as defined in section 3502(a)(1) (relating to burglary), robbery as defined in section 3701(a)(1)(i), (ii) or (iii) (relating to robbery) or robbery of a motor vehicle as defined in section 3702(a) (relating to robbery of a motor vehicle).

(iii) Intimidation of witness or victim as defined in section 4952(a) and (b) (relating to intimidation of witnesses or victims).

(iv) Retaliation against witness, victim or party as defined in section 4953(a) and (b) (relating to retaliation against witness, victim or party).

(v) Criminal attempt as defined in section 901(a) (relating to criminal attempt), criminal solicitation as defined in section 902(a) (relating to criminal solicitation) or criminal conspiracy as defined in section 903(a) (relating to criminal conspiracy) to commit any of the offenses specified in this definition.

(2) Any offense equivalent to an offense under paragraph (1) under the laws of this Commonwealth in effect at the time of the commission of that offense or under the laws of another jurisdiction.

“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) Deleted.

(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).

“Electronic storage.”

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

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

“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.

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

“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. The term shall not include the acquisition of the contents of a communication made through any electronic, mechanical or other device or telephone instrument to an investigative or law enforcement officer, or between a person and an investigative or law enforcement officer, where the investigative or law enforcement officer poses as an actual person who is the intended recipient of the communication, provided that the Attorney General, a deputy attorney general designated in writing by the Attorney General, a district attorney or an assistant district attorney designated in writing by a district attorney of the county wherein the investigative or law enforcement officer is to receive or make the communication has reviewed the facts and is satisfied that the communication involves suspected criminal activities and has given prior approval for the communication.

“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.

“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 Subchapter B (relating to wire, electronic or oral communication), any judge of the Superior Court.

“Mobile communications tracking information.” Information generated by a communication common carrier or a communication service which indicates the location of an electronic device supported by the communication common carrier or communication service.

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

"Oral communication." Any oral communication uttered by a person possessing an expectation that such communication is not subject to interception under circumstances justifying such expectation. The term does not include any electronic communication.

"Organized crime,"

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

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

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

(ii) improper governmental influence.

"Pen register." A device which is used to capture, record or decode electronic or other impulses which identify the numbers dialed or otherwise transmitted, with respect to wire or electronic communications, on the targeted telephone. 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.

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

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

(1) scrambled or encrypted;

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

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

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

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

“Remote computing service.” The provision to the public of computer storage or processing services by means of an electronic communications system.

“Signed, written record.” A memorialization of the contents of any wire, electronic or oral communication intercepted in accordance with this subchapter, including the name of the investigative or law enforcement officer who transcribed the record, kept in electronic, paper or any form. The signature of the transcribing officer shall not be required to be written, but may be electronic.

“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.

“Suspected criminal activity.” A particular offense that has been, is or is about to occur as set forth under section 5709(3)(ii) (relating to application for order), any communications to be intercepted as set forth under section 5709(3)(iii) or any of the criminal activity set forth under section 5709(3)(iv) establishing probable cause for the issuance of an order.

“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.

“Tracking device.” An electronic or mechanical device which permits only the tracking of the movement of a person or object.

“Trap and trace device.” A device which captures the incoming electronic or other impulses which identify the originating number of an instrument or device from which a wire or communication was transmitted. The term includes caller ID, deluxe caller ID or any other features available to ascertain the telephone number, location or subscriber information of a facility contacting the facility whose communications are to be intercepted.

“User.” Any person or entity who:

(1) uses an electronic communication service; and

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

“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.

Credits

1978, Oct. 4, P.L. 831, No. 164, § 2, effective in 60 days. Amended 1981, Dec. 23, P.L. 593, No. 175, § 1, effective in 60 days; 1988, Oct. 21, P.L. 1000, No. 115, § 3, imd. effective; 1998, Feb. 18, P.L. 102, No. 19, § 5, imd. effective; 2002, Dec. 9, P.L. 1350, No. 162, § 3, effective in 60 days; 2012, Oct. 25, P.L. 1634, No. 202, § 1, effective in 60 days [Dec. 24, 2012].

Editors' Notes

EXPIRATION

<See 18 Pa.C.S.A. § 5781 for expiration of Chapter 57.>

Notes of Decisions (36)

18 Pa.C.S.A. § 5702, PA ST 18 Pa.C.S.A. § 5702

Current through Regular Session Act 2013-88, 91, 93 to 97, 99 to 103, except 20 Pa.C.S.A. § 7101 to End current through 2013-104

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Purdon's Pennsylvania Statutes and Consolidated Statutes

Title 18 Pa.C.S.A. Crimes and Offenses

Part II. Definition of Specific Offenses

Article F. Offenses Against Public Order and Decency

Chapter 57. Wiretapping and Electronic Surveillance

Subchapter B. Wire, Electronic or Oral Communication

T. 18 Pa.C.S.A., Pt. II, Art. F, Ch. 57, Subch. B, Refs & Annos
Currentness

T. 18 Pa.C.S.A., Pt. II, Art. F, Ch. 57, Subch. B, Refs & Annos, PA ST T. 18 Pa.C.S.A., Pt. II, Art. F, Ch. 57, Subch. B, Refs
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Subchapter B. Wire, Electronic or Oral Communication (Refs & Annos)

18 Pa.C.S.A. § 5703

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

Currentness

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

- (1) intentionally intercepts, endeavors to intercept, or procures any other person to intercept or endeavor to intercept any wire, electronic or oral communication;
- (2) intentionally discloses or endeavors to disclose to any other person the contents of any wire, electronic or oral communication, or evidence derived therefrom, knowing or having reason to know that the information was obtained through the interception of a wire, electronic or oral communication; or
- (3) intentionally uses or endeavors to use the contents of any wire, electronic or oral communication, or evidence derived therefrom, knowing or having reason to know, that the information was obtained through the interception of a wire, electronic or oral communication.

Credits

1978, Oct. 4, P.L. 831, No. 164, § 2, effective in 60 days. Amended 1988, Oct. 21, P.L. 1000, No. 115, § 5, imd. effective.

Editors' Notes

EXPIRATION

<See 18 Pa.C.S.A. § 5781 for expiration of Chapter 57.>

Notes of Decisions (82)

18 Pa.C.S.A. § 5703, PA ST 18 Pa.C.S.A. § 5703

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Chapter 57. Wiretapping and Electronic Surveillance (Refs & Annos)

Subchapter B. Wire, Electronic or Oral Communication (Refs & Annos)

18 Pa.C.S.A. § 5704

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

Effective: December 24, 2012

Currentness

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

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

(2) Any investigative or law enforcement officer or any person acting at the direction or request of an investigative or law enforcement officer to intercept a wire, 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) Deleted.

(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 initiated, 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;

(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 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.

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

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

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

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

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

(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, trap and trace device or telecommunication identification interception device as provided in Subchapter E (relating to pen registers, trap and trace devices and telecommunication identification interception devices).

(6) Personnel of any public utility to record telephone conversations with utility customers or the general public relating to receiving and dispatching of emergency and service calls provided there is, during such recording, a periodic warning which indicates to the parties to the conversation that the call is being recorded.

(7) A user, or any officer, employee or agent of such user, to record telephone communications between himself and a contractor or designer, or any officer, employee or agent of such contractor or designer, pertaining to excavation or demolition work or other related matters, if the user or its agent indicates to the parties to the conversation that the call will be or is being recorded. As used in this paragraph, the terms "user," "contractor," "demolition work," "designer" and "excavation work" shall have the meanings given to them in the act of December 10, 1974 (P.L. 852, No. 287), referred to as the Underground Utility Line Protection Law;¹ and a one call system shall be considered for this purpose to be an agent of any user which is a member thereof.

(8) A provider of electronic communication service 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 or electronic communication, or a user of that service, from fraudulent, unlawful or abusive use of the service.

(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.

(10) Any person:

(i) to intercept or access an electronic communication made through an electronic communication system configured so that the electronic communication is readily accessible to the general public;

(ii) to intercept any radio communication which is transmitted:

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

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

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

(D) by any marine or aeronautical communication system;

(iii) to engage in any conduct which:

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

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

(iv) to intercept any wire or electronic communication the transmission of which is causing harmful interference to any lawfully operating station, to the extent necessary to identify the source of the interference.

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

(12) Any investigative or law enforcement officer or any person acting at the direction or request of an investigative or law enforcement officer to intercept a wire or oral communication involving suspected criminal activities where the officer or the person is a party to the communication and there is reasonable cause to believe that:

(i) the other party to the communication is either:

(A) holding a hostage; or

(B) has barricaded himself and taken a position of confinement to avoid apprehension; and

(ii) that party:

(A) may resist with the use of weapons; or

(B) is threatening suicide or harm to himself or others.

(13) An investigative officer, a law enforcement officer or employees of the Department of Corrections for State correctional facilities to intercept, record, monitor or divulge any telephone calls from or to an inmate in a facility under the following conditions:

(i) The Department of Corrections shall adhere to the following procedures and restrictions when intercepting, recording, monitoring or divulging any telephone calls from or to an inmate in a State correctional facility as provided for by this paragraph:

(A) Before the implementation of this paragraph, all inmates of the facility shall be notified in writing that, as of the effective date of this paragraph, their telephone conversations may be intercepted, recorded, monitored or divulged.

(B) Unless otherwise provided for in this paragraph, after intercepting or recording a telephone conversation, only the superintendent, warden or a designee of the superintendent or warden or other chief administrative official or his or her designee, or law enforcement officers shall have access to that recording.

(C) The contents of an intercepted and recorded telephone conversation shall be divulged only as is necessary to safeguard the orderly operation of the facility, in response to a court order or in the prosecution or investigation of any crime.

(ii) So as to safeguard the attorney-client privilege, the Department of Corrections shall not intercept, record, monitor or divulge any conversation between an inmate and an attorney.

(iii) Persons who are calling in to a facility to speak to an inmate shall be notified that the call may be recorded or monitored.

(iv) The Department of Corrections shall promulgate guidelines to implement the provisions of this paragraph for State correctional facilities.

(14) An investigative officer, a law enforcement officer or employees of a county correctional facility to intercept, record, monitor or divulge any telephone calls from or to an inmate in a facility under the following conditions:

(i) The county correctional facility shall adhere to the following procedures and restrictions when intercepting, recording, monitoring or divulging any telephone calls from or to an inmate in a county correctional facility as provided for by this paragraph:

(A) Before the implementation of this paragraph, all inmates of the facility shall be notified in writing that, as of the effective date of this paragraph, their telephone conversations may be intercepted, recorded, monitored or divulged.

(B) Unless otherwise provided for in this paragraph, after intercepting or recording a telephone conversation, only the superintendent, warden or a designee of the superintendent or warden or other chief administrative official or his or her designee, or law enforcement officers shall have access to that recording.

(C) The contents of an intercepted and recorded telephone conversation shall be divulged only as is necessary to safeguard the orderly operation of the facility, in response to a court order or in the prosecution or investigation of any crime.

(ii) So as to safeguard the attorney-client privilege, the county correctional facility shall not intercept, record, monitor or divulge any conversation between an inmate and an attorney.

- (iii) Persons who are calling into a facility to speak to an inmate shall be notified that the call may be recorded or monitored.
- (iv) The superintendent, warden or a designee of the superintendent or warden or other chief administrative official of the county correctional system shall promulgate guidelines to implement the provisions of this paragraph for county correctional facilities.
- (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.
- (16) A law enforcement officer, whether or not certified under section 5724 (relating to training), acting in the performance of his official duties to intercept and record an oral communication between individuals in accordance with the following:
 - (i) At the time of the interception, the oral communication does not occur inside the residence of any of the individuals.
 - (ii) At the time of the interception, the law enforcement officer:
 - (A) is operating the visual or audible warning system of the law enforcement officer's vehicle authorized by 75 Pa.C.S. § 4571 (relating to visual and audible signals on emergency vehicles) or is clearly identifiable as a law enforcement officer;
 - (B) is in close proximity to the individuals' oral communication;
 - (C) is using an electronic, mechanical or other device which has been approved under section 5706(b) (4) (relating to exceptions to prohibitions in possession, sale, distribution, manufacture or advertisement of electronic, mechanical or other devices) to intercept the oral communication, the recorder of which is mounted in the law enforcement officer's vehicle; and
 - (D) informs, as soon as reasonably practicable, the individuals identifiably present that he has intercepted and recorded the oral communication.
 - (iii) As used in this paragraph, the following words and phrases shall have the meanings given to them in this subparagraph:
 - "Law enforcement officer." A member of the Pennsylvania State Police or an individual employed as a police officer who holds a current certificate under 53 Pa.C.S. Ch. 21 Subch. D² (relating to municipal police education and training).
 - "Recorder." An electronic, mechanical or other device used to store an oral communication on tape or on some other comparable medium.

(17) Any victim, witness or private detective licensed under the act of August 21, 1953 (P.L. 1273, No. 361),³ known as The Private Detective Act of 1953, to intercept the contents of any wire, electronic or oral communication, if that person is under a reasonable suspicion that the intercepted party is committing, about to commit or has committed a crime of violence and there is reason to believe that evidence of the crime of violence may be obtained from the interception.

Credits

1978, Oct. 4, P.L. 831, No. 164, § 2, effective in 60 days. Amended 1981, July 10, P.L. 227, No. 72, § 1, effective in 60 days; 1981, Dec. 23, P.L. 593, No. 175, § 2, effective in 60 days; 1988, Oct. 21, P.L. 1000, No. 115, § 5, imd. effective; 1995, Sept. 26, P.L. 1056, No. 20 (Spec. Sess. No. 1), § 2, effective in 60 days; 1996, Dec. 19, P.L. 1458, No. 186, § 1, effective in 60 days; 1998, Feb. 18, P.L. 102, No. 19, § 6, imd. effective; 2002, June 11, P.L. 367, No. 52, § 1, imd. effective; 2012, Oct. 25, P.L. 1634, No. 202, § 2, effective in 60 days [Dec. 24, 2012].

Editors' Notes

EXPIRATION

<See 18 Pa.C.S.A. § 5781 for expiration of Chapter 57.>

Notes of Decisions (110)

Footnotes

1 73 P.S. § 176 et seq.

2 53 Pa.C.S.A. § 2161 et seq.

3 22 P.S. § 11 et seq.

18 Pa.C.S.A. § 5704, PA ST 18 Pa.C.S.A. § 5704

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Subchapter B. Wire, Electronic or Oral Communication (Refs & Annos)

18 Pa.C.S.A. § 5705

§ 5705. Possession, sale, distribution, manufacture or advertisement of electronic, mechanical or other devices and telecommunication identification interception devices

Effective: December 24, 2012

Currentness

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

- (1) Intentionally possesses an electronic, mechanical or other device, knowing or having reason to know that the design of such device renders it primarily useful for the purpose of the surreptitious interception of a wire, electronic or oral communication.
- (2) Intentionally sells, transfers or distributes an electronic, mechanical or other device, knowing or having reason to know that the design of such device renders it primarily useful for the purpose of the surreptitious interception of a wire, electronic or oral communication.
- (3) Intentionally manufactures or assembles an electronic, mechanical or other device, knowing or having reason to know that the design of such device renders it primarily useful for the purpose of the surreptitious interception of a wire, electronic or oral communication.
- (4) Intentionally places in any newspaper, magazine, handbill, or other publication any advertisement of an electronic, mechanical or other device, knowing or having reason to know that the design of such device renders it primarily useful for the purpose of the surreptitious interception of a wire, electronic or oral communication or of an electronic, mechanical or other device where such advertisement promotes the use of such device for the purpose of the surreptitious interception of a wire, electronic or oral communication.
- (5) Intentionally possesses a telecommunication identification interception device.

Credits

1978, Oct. 4, P.L. 831, No. 164, § 2, effective in 60 days. Amended 1988, Oct. 21, P.L. 1000, No. 115, § 5, imd. effective; 2012, Oct. 25, P.L. 1634, No. 202, § 3, effective in 60 days [Dec. 24, 2012].

Editors' Notes

EXPIRATION

<See 18 Pa.C.S.A. § 5781 for expiration of Chapter 57.>

18 Pa.C.S.A. § 5705, PA ST 18 Pa.C.S.A. § 5705

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Chapter 57. Wiretapping and Electronic Surveillance (Refs & Annos)

Subchapter B. Wire, Electronic or Oral Communication (Refs & Annos)

18 Pa.C.S.A. § 5706

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

Effective: December 9, 2002

Currentness

(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, 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.—

(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 suspected criminal activity has been, is or is about to occur.

(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.

(4) The Pennsylvania State Police shall annually establish equipment standards for any electronic, mechanical or other device which is to be used by law enforcement officers for purposes of interception as authorized under section 5704(16). The equipment standards shall be published annually in the Pennsylvania Bulletin.

Credits

1978, Oct. 4, P.L. 831, No. 164, § 2, effective in 60 days. Amended 1988, Oct. 21, P.L. 1000, No. 115, § 5, imd. effective; 1998, Feb. 18, P.L. 102, No. 19, § 7, imd. effective; 2002, June 11, P.L. 367, No. 52, § 1, imd. effective; 2002, Dec. 9, P.L. 1350, No. 162, § 4, effective in 60 days.

Editors' Notes

EXPIRATION

<See 18 Pa.C.S.A. § 5781 for expiration of Chapter 57.>

18 Pa.C.S.A. § 5706, PA ST 18 Pa.C.S.A. § 5706

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Subchapter B. Wire, Electronic or Oral Communication (Refs & Annos)

18 Pa.C.S.A. § 5707

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

Currentness

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

Credits

1978, Oct. 4, P.L. 831, No. 164, § 2, effective in 60 days. Amended 1988, Oct. 21, P.L. 1000, No. 115, § 5, imd. effective.

Editors' Notes

EXPIRATION

<See 18 Pa.C.S.A. § 5781 for expiration of Chapter 57.>

18 Pa.C.S.A. § 5707, PA ST 18 Pa.C.S.A. § 5707

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Subchapter B. Wire, Electronic or Oral Communication (Refs & Annos)

18 Pa.C.S.A. § 5708

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

Effective: January 8, 2007

Currentness

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 suspected criminal activity has been, is or is about to occur, 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 2709.1 (relating to stalking)

Section 2716 (relating to weapons of mass destruction)

Section 2901 (relating to kidnapping)

Section 3002 (relating to trafficking of persons)

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 5516 (relating to facsimile weapons of mass destruction)

Section 6318 (relating to unlawful contact 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 2709(a)(4), (5), (6) or (7) (relating to harassment)

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 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),¹ 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),² 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).³

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

(7) Under the act of November 24, 1998 (P.L. 874, No. 110), known as the Motor Vehicle Chop Shop and Illegally Obtained and Altered Property Act.

Credits

1978, Oct. 4, P.L. 831, No. 164, § 2, effective in 60 days. Amended 1983, Dec. 2, P.L. 248, No. 67, § 2, imd. effective; 1988, Oct. 21, P.L. 1000, No. 115, § 5, imd. effective; 1990, Feb. 2, P.L. 4, No. 3, § 1, imd. effective; 1998, Feb. 18, P.L. 102, No. 19, § 7, imd. effective; 1998, Dec. 21, P.L. 1086, No. 145, § 1, effective in 60 days; 2002, June 28, P.L. 481, No. 82, § 5, effective in 60 days; 2002, Nov. 20, P.L. 1104, No. 134, § 1, effective in 60 days; 2002, Dec. 9, P.L. 1350, No. 162, § 4, effective in 60 days; 2002, Dec. 9, P.L. 1759, No. 218, § 5, effective in 60 days; 2006, Nov. 9, P.L. 1340, No. 139, § 3, effective in 60 days [Jan. 8, 2007].

Editors' Notes

EXPIRATION

<See 18 Pa.C.S.A. § 5781 for expiration of Chapter 57.>

Notes of Decisions (9)

Footnotes

1 72 P.S. § 7101 et seq.

2 35 P.S. § 780-113(a).

3 18 P.S. § 3923 (repealed); see now, 18 Pa.C.S.A. § 911.

18 Pa.C.S.A. § 5708, PA ST 18 Pa.C.S.A. § 5708

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18 Pa.C.S.A. § 5709

§ 5709. Application for order

Effective: February 7, 2003

Currentness

Each application for an order of authorization to intercept a wire, electronic or oral communication shall be made in writing upon the personal oath or affirmation of the Attorney General or a district attorney of the county wherein the suspected criminal activity has been, is or is about to occur and shall contain all of the following:

- (1) A statement of the authority of the applicant to make such application.
- (2) A statement of the identity and qualifications of the investigative or law enforcement officers or agency for whom the authority to intercept a wire, electronic or oral communication is sought.
- (3) A sworn statement by the investigative or law enforcement officer who has knowledge of relevant information justifying the application, which shall include:
 - (i) The identity of the particular person, if known, committing the offense and whose communications are to be intercepted.
 - (ii) The details as to the particular offense that has been, is being, or is about to be committed.
 - (iii) The particular type of communication to be intercepted.
 - (iv) A showing that there is probable cause to believe that such communication will be communicated on the wire communication facility involved or at the particular place where the oral communication is to be intercepted.
 - (v) The character and location of the particular wire communication facility involved or the particular place where the oral communication is to be intercepted.
 - (vi) A statement of the period of time for which the interception is required to be maintained, and, if the character of the investigation is such that the authorization for interception should not automatically terminate when the described type of communication has been first obtained, a particular statement of facts establishing probable cause to believe that additional communications of the same type will occur thereafter.

- (vii) A particular statement of facts showing that other normal investigative procedures with respect to the offense have been tried and have failed, or reasonably appear to be unlikely to succeed if tried or are too dangerous to employ.
- (4) Where the application is for the renewal or extension of an order, a particular statement of facts showing the results thus far obtained from the interception, or a reasonable explanation of the failure to obtain such results.
- (5) A complete statement of the facts concerning all previous applications, known to the applicant made to any court for authorization to intercept a wire, electronic or oral communication involving any of the same facilities or places specified in the application or involving any person whose communication is to be intercepted, and the action taken by the court on each such application.
- (6) A proposed order of authorization for consideration by the judge.
- (7) Such additional testimony or documentary evidence in support of the application as the judge may require.

Credits

1978, Oct. 4, P.L. 831, No. 164, § 2, effective in 60 days. Amended 1988, Oct. 21, P.L. 1000, No. 115, § 5, imd. effective; 2002, Dec. 9, P.L. 1350, No. 162, § 4, effective in 60 days.

Editors' Notes

EXPIRATION

<See 18 Pa.C.S.A. § 5781 for expiration of Chapter 57.>

Notes of Decisions (9)

18 Pa.C.S.A. § 5709, PA ST 18 Pa.C.S.A. § 5709

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18 Pa.C.S.A. § 5710

§ 5710. Grounds for entry of order

Currentness

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

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

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

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

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

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

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

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

Credits

1978, Oct. 4, P.L. 831, No. 164, § 2, effective in 60 days. Amended 1988, Oct. 21, P.L. 1000, No. 115, § 5, imd. effective.

Editors' Notes

EXPIRATION

<See 18 Pa.C.S.A. § 5781 for expiration of Chapter 57.>

Notes of Decisions (30)

18 Pa.C.S.A. § 5710, PA ST 18 Pa.C.S.A. § 5710

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18 Pa.C.S.A. § 5711

§ 5711. Privileged communications

Currentness

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

Credits

1978, Oct. 4, P.L. 831, No. 164, § 2, effective in 60 days.

Editors' Notes

EXPIRATION

<See 18 Pa.C.S.A. § 5781 for expiration of Chapter 57.>

Notes of Decisions (2)

18 Pa.C.S.A. § 5711, PA ST 18 Pa.C.S.A. § 5711

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Subchapter B. Wire, Electronic or Oral Communication (Refs & Annos)

18 Pa.C.S.A. § 5712

§ 5712. Issuance of order and effect

Effective: December 24, 2012

Currentness

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

- (1) The identity of the investigative or law enforcement officers or agency to whom the authority to intercept wire, electronic or oral communications is given and the name and official identity of the person who made the application.
- (2) The identity of, or a particular description of, the person, if known, whose communications are to be intercepted.
- (3) The character and location of the particular communication facilities as to which, or the particular place of the communication as to which, authority to intercept is granted.
- (4) A particular description of the type of the communication to be intercepted and a statement of the particular offense to which it relates.
- (5) The period of time during which such interception is authorized, including a statement as to whether or not the interception shall automatically terminate when the described communication has been first obtained.

(b) Time limits.—No order entered under this section shall authorize the interception of any wire, electronic or oral communication for a period of time in excess of that necessary under the circumstances. Every order entered under this section shall require that such interception begin and terminate as soon as practicable and be conducted in such a manner as to minimize or eliminate the interception of such communications not otherwise subject to interception under this chapter by making reasonable efforts, whenever possible, to reduce the hours of interception authorized by said order. In the event the intercepted communication is in a code or foreign language and an expert in that code or foreign language is not reasonably available during the interception period, minimization may be accomplished as soon as practicable after such interception. No order entered under this section shall authorize the interception of wire, electronic or oral communications for any period exceeding 30 days. The 30-day period begins on the day on which the investigative or law enforcement officers or agency first begins to conduct an interception under the order, or ten days after the order is entered, whichever is earlier. Extensions or renewals of such an order may be granted for additional periods of not more than 30 days each. No extension or renewal shall be granted unless an application for it is made in accordance with this section, and the judge makes the findings required by section 5710 (relating to grounds for entry of order).

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

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

(e) Final report.—Whenever 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 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 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 communication service under such an order may include, but is not limited to, installation of a pen register or of a trap and trace device, providing caller ID, deluxe caller ID or any other features available to ascertain the telephone number, location or subscriber information of a facility contacting the facility whose communications are to be intercepted, 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 communications service is technologically feasible. The order shall apply regardless of whether the electronic service provider is headquartered within this Commonwealth, if the interception is otherwise conducted within this Commonwealth as provided under this chapter. The order regarding disclosure of a record or other information otherwise available under section 5743 shall apply to all electronic service providers who service facilities which contact or are contacted by the facility whose communications are to be intercepted, regardless of whether the order specifically names any provider of communication service. The order may specify the period of time an electronic service provider has to furnish to the applicant who requests disclosure of a record or other information otherwise available under section 5743. Any provider of 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 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.

Credits

1978, Oct. 4, P.L. 831, No. 164, § 2, effective in 60 days. Amended 1988, Oct. 21, P.L. 1000, No. 115, § 5, imd. effective; 1998, Feb. 18, P.L. 102, No. 19, § 8, imd. effective; 2012, Oct. 25, P.L. 1634, No. 202, § 4, effective in 60 days [Dec. 24, 2012].

Editors' Notes

EXPIRATION

<See 18 Pa.C.S.A. § 5781 for expiration of Chapter 57.>

Notes of Decisions (15)

18 Pa.C.S.A. § 5712, PA ST 18 Pa.C.S.A. § 5712

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18 Pa.C.S.A. § 5712.1

§ 5712.1. Target-specific orders

Effective: December 24, 2012

Currentness

(a) Target-specific wiretaps.--The requirements of sections 5712(a)(3) (relating to issuance of order and effect) and 5709(3) (iv) and (v) (relating to application for order) shall not apply if:

(1) In the case of an application with respect to the interception of an oral communication, all of the following apply:

(i) The application contains a full and complete statement as to why specification is not practical and identifies the person committing the offense and whose communications are to be intercepted.

(ii) The judge finds the specification is not practical.

(2) In the case of an application with respect to a wire or electronic communication, all of the following apply:

(i) The application identifies the person believed to be committing the offense and whose communications are to be intercepted and the applicant makes a showing that there is probable cause to believe that the person's actions could have the effect of thwarting interception by changing facilities or devices.

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

(b) Supplementary orders.--Following the issuance of a target-specific wiretap order, the judge shall sign supplementary orders upon request and in a timely manner, authorizing the investigative or law enforcement officers or agency to intercept additional communications devices or facilities upon a showing of reasonable suspicion that all of the following apply:

(1) The target of the original order has in fact changed communications devices or facilities or is presently using additional communications devices, communications facilities or places.

(2) The target of the original order is likely to use the specified communications device or facility for criminal purposes similar to or related to those specified in the original order.

(c) Application for supplementary orders.—An application for a supplementary order shall contain all of the following:

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

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

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

(4) A showing of reasonable suspicion that the target of the original order has in fact changed communications devices or facilities.

(5) A showing of reasonable suspicion that the target of the original order is likely to use the additional facility or device or place for criminal purposes similar to or related to those specified in the original order.

(d) Time limits.—A supplementary order shall not act as an extension of the time limit identified in [section 5712\(b\)](#).

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

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

(g) Final report.—If an interception is authorized under 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 as soon as practical after the authorized interception is terminated.

(h) Assistance.—

(1) An order authorizing the interception of a wire, electronic or oral communication shall, upon request of the applicant, direct that a provider of communication service furnish the applicant with all information, facilities and technical assistance necessary to accomplish the interception unobtrusively and with a minimum of interference with the services that the service provider is affording the person whose communications are to be intercepted.

(2) The obligation of a provider of communication service under an order may include 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, if the obligation of a provider of communications service is technologically feasible.

(3) A provider of communication service furnishing facilities or technical assistance shall be compensated by the applicant for reasonable expenses incurred in providing the facilities or assistance.

(4) A service provider shall be immune from civil and criminal liability for any assistance rendered to an applicant under this section.

(i) 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 under subsection (c)(3) or premises necessary to obtain access to the premises or facilities specified under subsection (c)(3) by law enforcement officers specified under subsection (c)(1) as often as necessary solely for the purposes of installing, maintaining or removing an electronic, mechanical or other device, if all of the following apply:

(1) The entry is reasonably necessary to accomplish the purposes of this subchapter.

(2) The judge who issues the order is notified of the time and method of each entry prior to entry within 48 hours of entry.

Credits

2012, Oct. 25, P.L. 1634, No. 202, § 5, effective in 60 days [Dec. 24, 2012].

Editors' Notes

EXPIRATION

<See 18 Pa.C.S.A. § 5781 for expiration of Chapter 57.>

18 Pa.C.S.A. § 5712.1, PA ST 18 Pa.C.S.A. § 5712.1

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Subchapter B. Wire, Electronic or Oral Communication (Refs & Annos)

18 Pa.C.S.A. § 5713

§ 5713. Emergency situations

Effective: February 7, 2003

Currentness

(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 suspected criminal activity has been, is or is about to occur, 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 subchapter.

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

Credits

1978, Oct. 4, P.L. 831, No. 164, § 2, effective in 60 days. Amended 1988, Oct. 21, P.L. 1000, No. 115, § 5, imd. effective; 1998, Feb. 18, P.L. 102, No. 19, § 9, imd. effective; 2002, Dec. 9, P.L. 1350, No. 162, § 4, effective in 60 days.

Editors' Notes

EXPIRATION

<See 18 Pa.C.S.A. § 5781 for expiration of Chapter 57.>

18 Pa.C.S.A. § 5713, PA ST 18 Pa.C.S.A. § 5713

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18 Pa.C.S.A. § 5713.1

§ 5713.1. Emergency hostage and barricade situations

Effective: December 24, 2012

Currentness

(a) Designation.—The Attorney General or a district attorney may designate supervising law enforcement officers for the purpose of authorizing the interception of wire or oral communications as provided in this section.

(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 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 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 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.

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

“Emergency situation.” Any situation where:

- (1) a person is holding a hostage and is threatening serious physical injury and may resist with the use of weapons; or

(2) a person has barricaded himself and taken a position of confinement to avoid apprehension and:

(i) has the ability to resist with the use of weapons; or

(ii) is threatening suicide or harm to himself or others.

“Supervising law enforcement officer.”

(1) For designations by a district attorney, any law enforcement officer trained pursuant to [section 5724](#) (relating to training) to carry out interceptions under this section who has attained the rank of lieutenant or higher in a law enforcement agency within the county or who is in charge of a county law enforcement agency.

(2) For designations by the Attorney General, any member of the Pennsylvania State Police trained pursuant to [section 5724](#) to carry out interceptions under this section and designated by the Commissioner of the Pennsylvania State Police who:

(i) has attained the rank of lieutenant or higher; or

(ii) is in charge of a Pennsylvania State Police barracks.

Credits

1988, Oct. 21, P.L. 1000, No. 115, § 5, imd. effective. Amended 1998, Feb. 18, P.L. 102, No. 19, § 9, imd. effective; 2012, Oct. 25, P.L. 1634, No. 202, § 6, effective in 60 days [Dec. 24, 2012].

Editors' Notes

EXPIRATION

<See 18 Pa.C.S.A. § 5781 for expiration of Chapter 57.>

18 Pa.C.S.A. § 5713.1, PA ST 18 Pa.C.S.A. § 5713.1

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18 Pa.C.S.A. § 5714

§ 5714. Recording of intercepted communications

Currentness

(a) Recording and monitoring.—Any wire, electronic or oral communication intercepted in accordance with this 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\(b\)](#).

Credits

1978, Oct. 4, P.L. 831, No. 164, § 2, effective in 60 days. Amended 1988, Oct. 21, P.L. 1000, No. 115, § 5, imd. effective; 1998, Feb. 18, P.L. 102, No. 19, § 9, imd. effective.

Editors' Notes

EXPIRATION

<See 18 Pa.C.S.A. § 5781 for expiration of Chapter 57.>

Notes of Decisions (5)

18 Pa.C.S.A. § 5714, PA ST 18 Pa.C.S.A. § 5714

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18 Pa.C.S.A. § 5715

§ 5715. Sealing of applications, orders and supporting papers

Currentness

Applications made, final reports, and orders granted pursuant to this 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 subchapter, any violation of the provisions of this section may be punished as contempt of the court.

Credits

1978, Oct. 4, P.L. 831, No. 164, § 2, effective in 60 days. Amended 1988, Oct. 21, P.L. 1000, No. 115, § 5, imd. effective; 1998, Feb. 18, P.L. 102, No. 19, § 9, imd. effective.

Editors' Notes

EXPIRATION

<See 18 Pa.C.S.A. § 5781 for expiration of Chapter 57.>

18 Pa.C.S.A. § 5715, PA ST 18 Pa.C.S.A. § 5715

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Subchapter B. Wire, Electronic or Oral Communication (Refs & Annos)

18 Pa.C.S.A. § 5716

§ 5716. Service of inventory and inspection of intercepted communications

Currentness

(a) Service of inventory.--Within a reasonable time but not later than 90 days after the termination of the period of the order or of extensions or renewals thereof, or the date of the denial of an order applied for under [section 5713](#) (relating to emergency situations) or 5713.1 (relating to emergency hostage and barricade situations), the issuing or denying judge shall cause to be served on the persons named in the order, application, or final report an inventory which shall include the following:

- (1) Notice of the entry of the order or the application for an order denied under [section 5713](#) or 5713.1.
- (2) The date of the entry of the order or the denial of an order applied for under [section 5713](#) or 5713.1.
- (3) The period of authorized or disapproved interception.
- (4) The fact that during the period wire or oral communications were or were not intercepted.

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

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

Credits

1978, Oct. 4, P.L. 831, No. 164, § 2, effective in 60 days. Amended 1988, Oct. 21, P.L. 1000, No. 115, § 5, imd. effective.

Editors' Notes

EXPIRATION

<See 18 Pa.C.S.A. § 5781 for expiration of Chapter 57.>

Notes of Decisions (2)

18 Pa.C.S.A. § 5716, PA ST 18 Pa.C.S.A. § 5716

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Subchapter B. Wire, Electronic or Oral Communication (Refs & Annos)

18 Pa.C.S.A. § 5717

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

Effective: December 24, 2012

Currentness

(a) Law enforcement personnel.—Any investigative or law enforcement officer who, under subsection (a.1), (b), (b.1) or (c), 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 to the extent that such disclosure 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.

(b.1) Criminal cases.—Any person who by means authorized by section 5704(17) (relating to exceptions to prohibition of interception and disclosure of communications) has obtained knowledge of the contents of any wire, electronic or oral communication, or evidence derived therefrom, may in addition to disclosures made under subsection (b) disclose such contents or evidence, on the condition that such disclosure is made for the purpose of providing exculpatory evidence in an open or closed criminal case.

(c) Otherwise authorized personnel.—

(1) Except as provided under paragraph (2), 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 from any wire, electronic or oral communication, may disclose the contents or evidence to an investigative or law enforcement officer and may disclose the contents or evidence where otherwise admissible while giving testimony under oath or affirmation in any proceeding in any court of this Commonwealth.

(2) The contents of a nonconsensual interception authorized by the laws of the Federal Government or another state shall not be admissible unless the interception was authorized by a court upon a finding of probable cause that the target of the surveillance is engaged or will engage in a violation of the criminal laws of the Federal Government or any state.

Credits

1978, Oct. 4, P.L. 831, No. 164, § 2, effective in 60 days. Amended 1988, Oct. 21, P.L. 1000, No. 115, § 5, imd. effective; 1998, Feb. 18, P.L. 102, No. 19, § 9, imd. effective; 2012, Oct. 25, P.L. 1634, No. 202, § 7, effective in 60 days [Dec. 24, 2012].

Editors' Notes

EXPIRATION

<See 18 Pa.C.S.A. § 5781 for expiration of Chapter 57.>

Notes of Decisions (26)

18 Pa.C.S.A. § 5717, PA ST 18 Pa.C.S.A. § 5717

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18 Pa.C.S.A. § 5718

§ 5718. Interception of communications relating to other offenses

Currentness

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 subchapter. Such application shall be made as soon as practicable.

Credits

1978, Oct. 4, P.L. 831, No. 164, § 2, effective in 60 days. Amended 1988, Oct. 21, P.L. 1000, No. 115, § 5, imd. effective; 1998, Feb. 18, P.L. 102, No. 19, § 9, imd. effective.

Editors' Notes

EXPIRATION

<See 18 Pa.C.S.A. § 5781 for expiration of Chapter 57.>

Notes of Decisions (11)

18 Pa.C.S.A. § 5718, PA ST 18 Pa.C.S.A. § 5718

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18 Pa.C.S.A. § 5719

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

Currentness

Except as specifically authorized pursuant to this 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.

Credits

1978, Oct. 4, P.L. 831, No. 164, § 2, effective in 60 days. Amended 1988, Oct. 21, P.L. 1000, No. 115, § 5, imd. effective; 1998, Feb. 18, P.L. 102, No. 19, § 9, imd. effective.

Editors' Notes

EXPIRATION

<See 18 Pa.C.S.A. § 5781 for expiration of Chapter 57.>

18 Pa.C.S.A. § 5719, PA ST 18 Pa.C.S.A. § 5719

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Subchapter B. Wire, Electronic or Oral Communication (Refs & Annos)

18 Pa.C.S.A. § 5720

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

Currentness

The contents of any wire, electronic or oral communication intercepted in accordance with the provisions of this 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.

Credits

1978, Oct. 4, P.L. 831, No. 164, § 2, effective in 60 days. Amended 1988, Oct. 21, P.L. 1000, No. 115, § 5, imd. effective; 1998, Feb. 18, P.L. 102, No. 19, § 9, imd. effective.

Editors' Notes

EXPIRATION

<See [18 Pa.C.S.A. § 5781](#) for expiration of Chapter 57.>

SUSPENDED IN PART

<For purposes of delinquency proceedings, [Pa.R.J.C.P. No. 800](#) suspends [18 Pa.C.S.A. § 5720](#) as inconsistent with [Pa.R.J.C.P. No. 340](#) insofar as § 5720 may delay disclosure to a juvenile seeking discovery under [Rule 340\(B\)\(6\)](#).>

<[18 Pa.C.S.A. § 5720](#) is suspended by [Pa.R.Crim.P., Rule 340\(b\)](#), [42 Pa.C.S.A.](#), insofar as it may delay disclosure to a defendant seeking discovery under [Rule 305B\(1\)\(g\)](#), as inconsistent with [Rule 305](#).>

Notes of Decisions (2)

[18 Pa.C.S.A. § 5720](#), [PA ST 18 Pa.C.S.A. § 5720](#)

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18 Pa.C.S.A. § 5721

§ 5721. Repealed. 1998, Feb. 18, P.L. 102, No. 19, imd. effective

Currentness

18 Pa.C.S.A. § 5721, PA ST 18 Pa.C.S.A. § 5721

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18 Pa.C.S.A. § 5721.1

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

Currentness

(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.

Credits

1998, Feb. 18, P.L. 102, No. 19, § 11, imd. effective.

Editors' Notes

EXPIRATION

<See 18 Pa.C.S.A. § 5781 for expiration of Chapter 57.>

Notes of Decisions (26)

18 Pa.C.S.A. § 5721.1, PA ST 18 Pa.C.S.A. § 5721.1

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18 Pa.C.S.A. § 5722

§ 5722. Report by issuing or denying judge

Currentness

Within 30 days after the expiration of an order or an extension or renewal thereof entered under this 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.

Credits

1978, Oct. 4, P.L. 831, No. 164, § 2, effective in 60 days. Amended 1988, Oct. 21, P.L. 1000, No. 115, § 5, imd. effective; 1998, Feb. 18, P.L. 102, No. 19, § 12, imd. effective.

Editors' Notes

EXPIRATION

<See 18 Pa.C.S.A. § 5781 for expiration of Chapter 57.>

18 Pa.C.S.A. § 5722, PA ST 18 Pa.C.S.A. § 5722

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18 Pa.C.S.A. § 5723

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

Currentness

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

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

(b) Attorney General.—In addition to reports required to be made by applicants pursuant to Title 18 U.S.C. § 2519, the Attorney General shall make annual reports on the operation of this chapter to the Administrative Office of Pennsylvania Courts and to the Judiciary Committees of the Senate and House of Representatives. The reports by the Attorney General shall contain the same information which must be reported pursuant to 18 U.S.C. § 2519(2).

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

(d) Other reports.—The Chief Justice of the Supreme Court and the Attorney General shall annually report to the Governor and the General Assembly on such aspects of the operation of this chapter as they deem appropriate and make any recommendations

they feel desirable as to legislative changes or improvements to effectuate the purposes of this chapter and to assure and protect individual rights.

Credits

1978, Oct. 4, P.L. 831, No. 164, § 2, effective in 60 days. Amended 1988, Oct. 21, P.L. 1000, No. 115, § 5, imd. effective.

Editors' Notes

EXPIRATION

<See 18 Pa.C.S.A. § 5781 for expiration of Chapter 57.>

18 Pa.C.S.A. § 5723, PA ST 18 Pa.C.S.A. § 5723

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18 Pa.C.S.A. § 5724

§ 5724. Training

Currentness

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 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.

Credits

1978, Oct. 4, P.L. 831, No. 164, § 2, effective in 60 days. Amended 1988 Oct. 21, P.L. 1000, No. 115, § 5, imd. effective; 1998, Feb. 18, P.L. 102, No. 19, § 12, imd. effective.

Editors' Notes

EXPIRATION

<See 18 Pa.C.S.A. § 5781 for expiration of Chapter 57.>

Notes of Decisions (1)

18 Pa.C.S.A. § 5724, PA ST 18 Pa.C.S.A. § 5724

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Subchapter B. Wire, Electronic or Oral Communication (Refs & Annos)

18 Pa.C.S.A. § 5725

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

Currentness

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

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

(2) Punitive damages.

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

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

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

Credits

1978, Oct. 4, P.L. 831, No. 164, § 2, effective in 60 days. Amended 1981, July 10, P.L. 228, No. 73, § 1, effective in 60 days; 1988, Oct. 21, P.L. 1000, No. 115, § 5, imd. effective.

Editors' Notes

EXPIRATION

<See 18 Pa.C.S.A. § 5781 for expiration of Chapter 57.>

Notes of Decisions (40)

unconstitutional pre-empted

WestlawNext

18 Pa.C.S.A. § 5725, PA ST 18 Pa.C.S.A. § 5725

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Subchapter B. Wire, Electronic or Oral Communication (Refs & Annos)

18 Pa.C.S.A. § 5726

§ 5726. Action for removal from office or employment

Currentness

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

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

Credits

1978, Oct. 4, P.L. 831, No. 164, § 2, effective in 60 days. Amended 1981, July 10, P.L. 228, No. 73, § 2, effective in 60 days.

Editors' Notes

EXPIRATION

<See 18 Pa.C.S.A. § 5781 for expiration of Chapter 57.>

Notes of Decisions (1)

18 Pa.C.S.A. § 5726, PA ST 18 Pa.C.S.A. § 5726

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18 Pa.C.S.A. § 5727

§ 5727. Repealed. 1988, Oct. 21, P.L. 1000, No. 115, § 6, imd. effective.

Currentness

18 Pa.C.S.A. § 5727, PA ST 18 Pa.C.S.A. § 5727

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Subchapter B. Wire, Electronic or Oral Communication (Refs & Annos)

18 Pa.C.S.A. § 5728

§ 5728. Injunction against illegal interception

Currentness

Whenever it shall appear that any person is engaged or is about to engage in any act which constitutes or will constitute a felony violation of this subchapter, the Attorney General may initiate a civil action in the Commonwealth Court to enjoin the violation. The court shall proceed as soon as practicable to the hearing and determination of the action and may, at any time before final determination, enter a restraining order or prohibition, or take such other action, as is warranted to prevent a continuing and substantial injury to the Commonwealth or to any person or class of persons for whose protection the action is brought. A proceeding under this section is governed by the Pennsylvania Rules of Civil Procedure, except that, if a criminal complaint has been filed against the respondent, discovery is governed by the Pennsylvania Rules of Criminal Procedure.

Credits

1988, Oct. 21, P.L. 1000, No. 115, § 7, imd. effective.

Editors' Notes

EXPIRATION

<See 18 Pa.C.S.A. § 5781 for expiration of Chapter 57.>

18 Pa.C.S.A. § 5728, PA ST 18 Pa.C.S.A. § 5728

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Subchapter C. Stored Wire and Electronic Communications and Transactional Records Access

18 Pa.C.S.A. § 5741

§ 5741. Unlawful access to stored communications

Currentness

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

- (1) accessing without authorization a facility through which an electronic communication service is provided; or
- (2) exceeding the scope of one's authorization to access the facility.

(b) Penalty.—

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

- (i) a fine of not more than \$250,000 or imprisonment for not more than one year, or both, in the case of a first offense; or
- (ii) a fine of not more than \$250,000 or imprisonment for not more than two years, or both, for any subsequent offense.

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

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

- (1) by the person or entity providing a wire or electronic communication service;
- (2) by a user of that service with respect to a communication of or intended for that user; or
- (3) in section 5743 (relating to requirements for governmental access) or 5744 (relating to backup preservation).

Credits

1988, Oct. 21, P.L. 1000, No. 115, § 8, imd. effective.

Editors' Notes

EXPIRATION

<See 18 Pa.C.S.A. § 5781 for expiration of Chapter 57.>

Notes of Decisions (4)

18 Pa.C.S.A. § 5741, PA ST 18 Pa.C.S.A. § 5741

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Subchapter C. Stored Wire and Electronic Communications and Transactional Records Access

18 Pa.C.S.A. § 5742

§ 5742. Disclosure of contents and records

Effective: December 8, 2008

Currentness

(a) Prohibitions.—Except as provided in subsection (b) and (c):

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

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

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

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

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

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

(3) A person or entity providing an electronic communication service or remote computing service to the public shall not knowingly divulge a record or other information pertaining to a subscriber to, or customer of, the service.

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

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

(2) as otherwise authorized in [section 5704\(1\)](#) (relating to prohibition of interception and disclosure of communications), 5708 (relating to order authorizing interception of wire, electronic or oral communications) or 5743 (relating to governmental access);

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

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

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

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

(i) Were inadvertently obtained by the service provider.

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

(c) Exceptions for disclosure of records or other information.—A person or entity may divulge a record or other information pertaining to a subscriber to, or customer of, the service if any of the following paragraphs apply:

(1) A record or other information may be divulged incident to any service or other business operation or to the protection of the rights or property of the provider.

(2) A record or other information may be divulged to any of the following:

(i) An investigative or law enforcement official as authorized in [section 5743](#).

(ii) The subscriber or customer upon request.

(iii) A third party, upon receipt from the requester of adequate proof of lawful consent from the subscriber to, or customer of, the service to release the information to the third party.

(iv) A party to a legal proceeding, upon receipt from the party of a court order entered under subsection (c.1). This subparagraph does not apply to an investigative or law enforcement official authorized under [section 5743](#).

(3) Notwithstanding paragraph (2), a record or other information may be divulged as authorized by a Commonwealth statute or as authorized by a Commonwealth regulatory agency with oversight over the person or entity.

(4) Subject to paragraph (2), a record or other information may be divulged as authorized by Federal law or as authorized by a Federal regulatory agency having oversight over the person or entity.

(c.1) Order for release of records.—

(1) An order to divulge a record or other information pertaining to a subscriber or customer under subsection (c)(2)(iv) must be approved by a court presiding over the proceeding in which a party seeks the record or other information.

(2) The order may be issued only after the subscriber or customer received notice from the party seeking the record or other information and was given an opportunity to be heard.

(3) The court may issue a preliminary order directing the provider to furnish the court with the identity of or contact information for the subscriber or customer if the party does not possess this information.

(4) An order for disclosure of a record or other information shall be issued only if the party seeking disclosure demonstrates specific and articulable facts to show that there are reasonable grounds to believe that the record or other information sought is relevant and material to the proceeding. In making its determination, the court shall consider the totality of the circumstances, including input of the subscriber or customer, if any, and the likely impact of the provider.

Credits

1988, Oct. 21, P.L. 1000, No. 115, § 8, imd. effective. Amended 2008, Oct. 9, P.L. 1403, No. 111, § 2, effective in 60 days [Dec. 8, 2008].

Editors' Notes

EXPIRATION

<See 18 Pa.C.S.A. § 5781 for expiration of Chapter 57.>

18 Pa.C.S.A. § 5742, PA ST 18 Pa.C.S.A. § 5742

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Subchapter C. Stored Wire and Electronic Communications and Transactional Records Access

18 Pa.C.S.A. § 5743

§ 5743. Requirements for governmental access

Effective: December 24, 2012

Currentness

(a) Contents of communications in electronic storage.—Investigative or law enforcement officers may require the disclosure by a provider of communication service of the contents of a communication which is in electronic storage in a communication system for:

(1) One hundred eighty days or less only pursuant to a warrant issued under the Pennsylvania Rules of Criminal Procedure.

(2) More than 180 days by the means available under subsection (b).

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

(1) Investigative or law enforcement officers may require a provider of remote computing service to disclose the contents of any communication to which this paragraph is made applicable by paragraph (2):

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

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

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

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

except that delayed notice may be given pursuant to [section 5745](#) (relating to delayed notice).

(2) Paragraph (1) is applicable with respect to a communication which is held or maintained on that service:

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

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

(c) Records concerning electronic communication service or remote computing service.—

(1) Deleted by 2008, Oct. 9, P.L. 1403, No. 111, § 3, effective in 60 days [Dec. 8, 2008].

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

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

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

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

(iv) has the consent of the subscriber or customer to the disclosure.

(3) An investigative or law enforcement officer receiving records or information under paragraph (2) is not required to provide notice to the customer or subscriber.

(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 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 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 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 subchapter.

Credits

1988, Oct. 21, P.L. 1000, No. 115, § 8, imd. effective. Amended 1998, Feb. 18, P.L. 102, No. 19, § 12, imd. effective; 2008, Oct. 9, P.L. 1403, No. 111, § 3, effective in 60 days [Dec. 8, 2008]; 2012, Oct. 25, P.L. 1634, No. 202, § 8, effective in 60 days [Dec. 24, 2012].

Editors' Notes

EXPIRATION

<See 18 Pa.C.S.A. § 5781 for expiration of Chapter 57.>

18 Pa.C.S.A. § 5743, PA ST 18 Pa.C.S.A. § 5743

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18 Pa.C.S.A. § 5744

§ 5744. Backup preservation

Currentness

(a) Backup preservation.--

(1) An investigative or law enforcement officer acting under [section 5743\(b\)\(2\)](#) (relating to requirements for governmental access) may include in its subpoena or court order a requirement that the service provider to whom the request is directed create a backup copy of the contents of the electronic communications sought in order to preserve those communications. Without notifying the subscriber or customer of the subpoena or court order, the service provider shall create the backup copy as soon as practicable, consistent with its regular business practices, and shall confirm to the investigative or law enforcement officer that the backup copy has been made. The backup copy shall be created within two business days after receipt by the service provider of the subpoena or court order.

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

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

(i) the delivery of the information; or

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

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

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

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

(5) An investigative or law enforcement officer may seek to require the creation of a backup copy under paragraph (1) if in his sole discretion the officer determines that there is reason to believe that notification under section 5743 of the existence of the subpoena or court order may result in destruction of or tampering with evidence. This determination is not subject to challenge by the subscriber, customer or service provider.

(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 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 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.

Credits

1988, Oct. 21, P.L. 1000, No. 115, § 8, imd. effective. Amended 1998, Feb. 18, P.L. 102, No. 19, § 12, imd. effective.

Editors' Notes

EXPIRATION

<See 18 Pa.C.S.A. § 5781 for expiration of Chapter 57.>

18 Pa.C.S.A. § 5744, PA ST 18 Pa.C.S.A. § 5744

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18 Pa.C.S.A. § 5745

§ 5745. Delayed notice

Currentness

(a) Delay of notification.--

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

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

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

(2) An adverse result for the purposes of paragraph (1) is:

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

(ii) flight from prosecution;

(iii) destruction of or tampering with evidence;

(iv) intimidation of potential witnesses; or

(v) otherwise seriously jeopardizing an investigation or unduly delaying a trial.

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

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

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

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

(ii) informs the customer or subscriber:

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

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

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

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

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

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

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

(2) flight from prosecution;

(3) destruction of or tampering with evidence;

(4) intimidation of a potential witness; or

(5) otherwise seriously jeopardizing an investigation or unduly delaying a trial.

Credits

1988, Oct. 21, P.L. 1000, No. 115, § 8, imd. effective.

Editors' Notes

EXPIRATION

<See 18 Pa.C.S.A. § 5781 for expiration of Chapter 57.>

18 Pa.C.S.A. § 5745, PA ST 18 Pa.C.S.A. § 5745

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18 Pa.C.S.A. § 5746

§ 5746. Cost reimbursement

Effective: December 24, 2012

Currentness

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

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

(c) Applicability.—The requirement of subsection (a) does not apply with respect to records or other information maintained by a communication common carrier which relates to telephone toll records and telephone listings obtained under section 5743. The court may, however, order reimbursement as described in subsection (a) if the court determines the information required is unusually voluminous or otherwise caused an undue burden on the provider.

(d) Regulations.—The Attorney General shall promulgate regulations to implement this section.

Credits

1988, Oct. 21, P.L. 1000, No. 115, § 8, imd. effective. Amended 2008, Oct. 9, P.L. 1403, No. 111, § 3, effective in 60 days [Dec. 8, 2008]; 2012, Oct. 25, P.L. 1634, No. 202, § 9, effective in 60 days [Dec. 24, 2012].

Editors' Notes

EXPIRATION

<See 18 Pa.C.S.A. § 5781 for expiration of Chapter 57.>

18 Pa.C.S.A. § 5746, PA ST 18 Pa.C.S.A. § 5746

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18 Pa.C.S.A. § 5747

§ 5747. Civil action

Currentness

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

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

(1) such preliminary and other equitable or declaratory relief as may be appropriate;

(2) damages under subsection (c); and

(3) reasonable attorney fees and other litigation costs reasonably incurred.

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

(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 subchapter or any other law.

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

Credits

1988, Oct. 21, P.L. 1000, No. 115, § 8, imd. effective. Amended 1998, Feb. 18, P.L. 102, No. 19, § 12, imd. effective.

Editors' Notes

EXPIRATION

<See 18 Pa.C.S.A. § 5781 for expiration of Chapter 57.>

18 Pa.C.S.A. § 5747, PA ST 18 Pa.C.S.A. § 5747

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18 Pa.C.S.A. § 5748

§ 5748. Exclusivity of remedies

Currentness

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

Credits

1988, Oct. 21, P.L. 1000, No. 115, § 8, imd. effective.

Editors' Notes

EXPIRATION

<See 18 Pa.C.S.A. § 5781 for expiration of Chapter 57.>

18 Pa.C.S.A. § 5748, PA ST 18 Pa.C.S.A. § 5748

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18 Pa.C.S.A. § 5749

§ 5749. Retention of certain records

Effective: June 11, 2002

Currentness

(a) Retention.--The commander shall maintain all recordings of oral communications intercepted under [section 5704\(16\)](#) (relating to exceptions to prohibition of interception and disclosure of communications) for a minimum of 31 days after the date of the interception. All recordings made under [section 5704\(16\)](#) shall be recorded over or otherwise destroyed no later than 90 days after the date of the recording unless any of the following apply:

- (1) The contents of the recording result in the issuance of a citation. Except as otherwise authorized under this subsection, any recording maintained under this paragraph shall be recorded over or destroyed no later than 90 days after the conclusion of the proceedings related to the citation. All recordings under this paragraph shall be maintained in accordance with [section 5714\(a\)](#) (relating to recording of intercepted communications), except that monitors need not be certified under [section 5724](#) (relating to training).
- (2) The commander or a law enforcement officer on the recording believes that the contents of the recording or evidence derived from the recording may be necessary in a proceeding for which disclosure is authorized under [section 5717](#) (relating to investigative disclosure or use of contents of wire, electronic or oral communications or derivative evidence) or [5721.1](#) (relating to evidentiary disclosure of contents of intercepted communication or derivative evidence) or in a civil proceeding. All recordings under this paragraph shall be maintained in accordance with [section 5714\(a\)](#), except that monitors need not be certified under [section 5724](#).
- (3) A criminal defendant who is a participant on the recording reasonably believes that the recording may be useful for its evidentiary value at some later time in a specific criminal proceeding and, no later than 30 days following the filing of criminal charges, provides written notice to the commander indicating a desire that the recording be maintained. The written notice must specify the date, time and location of the recording; the names of the parties involved; and, if known, the case docket number.
- (4) An individual who is a participant on the recording intends to pursue a civil action or has already initiated a civil action and, no later than 30 days after the date of the recording, gives written notice to the commander indicating a desire that the recording be maintained. The written notice must specify the date, time and location of the recording; the names of the parties involved; and, if a civil action has been initiated, the case caption and docket number.
- (5) The commander intends to use the recording for training purposes.

(b) Disclosure.—In addition to any disclosure authorized under sections 5717 and 5721.1, any recording maintained:

(1) Under subsection (a)(4) shall be disclosed pursuant to an order of court or as required by the Pennsylvania Rules of Civil Procedure or the Pennsylvania Rules of Evidence; and

(2) Under subsection (a)(5) shall be disclosed consistent with written consent obtained from the law enforcement officer and all participants.

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

“Commander.” The:

(1) commissioner or a designee, if the recording at issue was made by a member of the Pennsylvania State Police; or

(2) chief or a designee of the law enforcement agency which made the recording at issue.

“Law enforcement officer.” A member of the Pennsylvania State Police or an individual employed as a police officer who is required to be trained under 53 Pa.C.S. Ch. 21 Subch. D¹ (relating to municipal police education and training).

Credits

2002, June 11, P.L. 370, No. 53, § 1, imd. effective.

Editors' Notes

EXPIRATION

<See 18 Pa.C.S.A. § 5781 for expiration of Chapter 57.>

Footnotes

¹ 53 Pa.C.S.A. § 2161 et seq.

18 Pa.C.S.A. § 5749, PA ST 18 Pa.C.S.A. § 5749

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Subchapter D. Mobile Tracking Devices

18 Pa.C.S.A. § 5761

§ 5761. Mobile tracking devices

Effective: December 24, 2012

Currentness

- (a) **Authority to issue.**—Orders for the installation and use of mobile tracking devices may be issued by a court of common pleas.
- (b) **Jurisdiction.**—Orders permitted by this section may authorize the use of mobile tracking devices if the device is installed and monitored within this Commonwealth. The court issuing the order must have jurisdiction over the offense under investigation.
- (c) **Standard for issuance of order.**—An order authorizing the use of one or more mobile tracking devices may be issued to an investigative or law enforcement officer by the court of common pleas upon written application. Each application shall be by written affidavit, signed and sworn to or affirmed before the court of common pleas. The affidavit shall:
- (1) state the name and department, agency or address of the affiant;
 - (2) identify the vehicles, containers or items to which, in which or on which the mobile tracking device shall be attached or be placed, and the names of the owners or possessors of the vehicles, containers or items;
 - (3) state the jurisdictional area in which the vehicles, containers or items are expected to be found; and
 - (4) provide a statement setting forth all facts and circumstances which provide the applicant with probable cause that criminal activity has been, is or will be in progress and that the use of a mobile tracking device will yield information relevant to the investigation of the criminal activity.
- (d) **Notice.**—The court of common pleas shall be notified in writing within 72 hours of the time the mobile tracking device has been activated in place on or within the vehicles, containers or items.
- (e) **Term of authorization.**—Authorization by the court of common pleas for the use of the mobile tracking device may continue for a period of 90 days from the placement of the device. An extension for an additional 90 days may be granted upon good cause shown.

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

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

Credits

1988, Oct. 21, P.L. 1000, No. 115, § 8, imd. effective. Amended 2008, Oct. 9, P.L. 1403, No. 111, § 3, effective in 60 days [Dec. 8, 2008]; 2012, Oct. 25, P.L. 1634, No. 202, § 10, effective in 60 days [Dec. 24, 2012].

Editors' Notes

EXPIRATION

<See 18 Pa.C.S.A. § 5781 for expiration of Chapter 57.>

Notes of Decisions (1)

18 Pa.C.S.A. § 5761, PA ST 18 Pa.C.S.A. § 5761

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Chapter 57. Wiretapping and Electronic Surveillance (Refs & Annos)

Subchapter E. Pen Registers, Trap and Trace Devices, and Telecommunication Identification
Interception Devices

18 Pa.C.S.A. § 5771

§ 5771. General prohibition on use of certain devices and exception

Currentness

(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 use of certain devices).

(b) Exception.—The prohibition of subsection (a) does not apply with respect to the use of a pen register, 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;

(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

(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.

Credits

1988, Oct. 21, P.L. 1000, No. 115, § 8, imd. effective. Amended 1998, Feb. 18, P.L. 102, No. 19, § 14, imd. effective.

Editors' Notes

EXPIRATION

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Subchapter E. Pen Registers, Trap and Trace Devices, and Telecommunication Identification
Interception Devices

18 Pa.C.S.A. § 5772

§ 5772. Application for an order for use of certain devices

Effective: December 24, 2012

Currentness

(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 use of certain devices) authorizing or approving disclosure of mobile communications tracking information or, if necessary, the production and disclosure of mobile communications tracking information, the installation and use of a pen register, a trap and trace device or a telecommunication identification interception device under this subchapter, in writing, under oath or equivalent affirmation, to a court of common pleas having jurisdiction over the offense under investigation or to any Superior Court judge when an application for an order authorizing interception of 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.

(b) Contents of application.—An application under subsection (a) shall include:

- (1) The identity and authority of the attorney making the application and the identity of the investigative or law enforcement agency conducting the investigation.
- (2) A certification by the applicant that the information likely to be obtained is relevant to an ongoing criminal investigation being conducted by that agency.
- (3) An affidavit by an investigative or law enforcement officer which establishes probable cause for the issuance of an order or extension of an order under section 5773.

Credits

1988, Oct. 21, P.L. 1000, No. 115, § 8, imd. effective. Amended 1998, Feb. 18, P.L. 102, No. 19, § 14, imd. effective; 2012, Oct. 25, P.L. 1634, No. 202, § 10, effective in 60 days [Dec. 24, 2012].

Editors' Notes

EXPIRATION

<See 18 Pa.C.S.A. § 5781 for expiration of Chapter 57.>

Notes of Decisions (1)

18 Pa.C.S.A. § 5772, PA ST 18 Pa.C.S.A. § 5772

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Subchapter E. Pen Registers, Trap and Trace Devices, and Telecommunication Identification
Interception Devices

18 Pa.C.S.A. § 5773

§ 5773. Issuance of an order for use of certain devices

Effective: December 24, 2012

Currentness

(a) In general.—Upon an application made under section 5772 (relating to application for an order for use of certain devices), the court shall enter an ex parte order authorizing the disclosure of mobile communications tracking information, the installation and use of a pen register, a trap and trace device or a telecommunication identification interception device within this Commonwealth 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. If exigent circumstances exist, the court may verbally authorize the disclosure of mobile communications tracking information, the installation and use of a pen register, a trap and trace device or a telecommunication identification interception device. The written order authorizing the disclosure must be entered within 72 hours of the court's verbal authorization.

(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 from the targeted telephone.

(ii) The identity, if known, of the person to whom is leased or in whose name is listed the 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) In the use of pen registers and trap and trace devices only, the physical location of the targeted telephone.

(v) A statement of the offense to which the information likely to be obtained by the pen register, 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 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, trap and trace device or a telecommunication identification interception device for a period not to exceed 60 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, trap and trace device or a telecommunication identification interception device.--An order authorizing or approving the installation and use of a pen register, 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 targeted telephone, or who has been ordered by the court to provide assistance to the applicant, not disclose the existence of the pen register, 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.

Credits

1988, Oct. 21, P.L. 1000, No. 115, § 8, imd. effective. Amended 1998, Feb. 18, P.L. 102, No. 19, § 14, imd. effective; 2012, Oct. 25, P.L. 1634, No. 202, § 10, effective in 60 days [Dec. 24, 2012].

Editors' Notes

EXPIRATION

<See 18 Pa.C.S.A. § 5781 for expiration of Chapter 57.>

Notes of Decisions (6)

18 Pa.C.S.A. § 5773, PA ST 18 Pa.C.S.A. § 5773

Current through Regular Session Act 2013-88, 91, 93 to 97, 99 to 103, except 20 Pa.C.S.A. § 7101 to End current through 2013-104

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Purdon's Pennsylvania Statutes and Consolidated Statutes

Title 18 Pa.C.S.A. Crimes and Offenses (Refs & Annos)

Part II. Definition of Specific Offenses

Article F. Offenses Against Public Order and Decency

Chapter 57. Wiretapping and Electronic Surveillance (Refs & Annos)

Subchapter E. Pen Registers, Trap and Trace Devices, and Telecommunication Identification
Interception Devices

18 Pa.C.S.A. § 5774

§ 5774. Assistance in installation and use of certain devices

Currentness

(a) **Pen 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 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 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.

Credits

1988, Oct. 21, P.L. 1000, No. 15, § 8, imd. effective. Amended 1998, Feb. 18, P.L. 102, No. 19, § 14, imd. effective.

Editors' Notes

EXPIRATION

<See 18 Pa.C.S.A. § 5781 for expiration of Chapter 57.>

18 Pa.C.S.A. § 5774, PA ST 18 Pa.C.S.A. § 5774

Current through Regular Session Act 2013-88, 91, 93 to 97, 99 to 103, except 20 Pa.C.S.A. § 7101 to End current through 2013-104

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§ 5775. Reports concerning certain devices

Purdon's Pennsylvania Statutes and Consolidated Statutes Title 18 Pa.C.S.A. Crimes and Offenses (Approx. 2 pages)

Title 18 Pa.C.S.A. Crimes and Offenses (Refs & Annos)

Part II. Definition of Specific Offenses

Article F. Offenses Against Public Order and Decency

Chapter 57. Wiretapping and Electronic Surveillance (Refs & Annos)

**Subchapter E. Pen Registers, Trap and Trace Devices, and Telecommunication
Identification Interception Devices**

18 Pa.C.S.A. § 5775

§ 5775. Reports concerning certain devices

Currentness

(a) Attorney General.--The Attorney General shall annually report to the Administrative Office of Pennsylvania Courts on the number of orders for pen registers, 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, trap and trace devices and telecommunication identification interception devices applied for on forms prescribed by the Attorney General.

Credits

1988, Oct. 21, P.L. No. 115, § 8, imd. effective. Amended 1998, Feb. 18, P.L. 102, No. 19, § 14, imd. effective.

Editors' Notes

Effective: November 27, 2013

18 Pa.C.S.A. § 5781

§ 5781. Expiration of chapter

Currentness

This chapter expires December 31, 2018, unless extended by statute.

Credits

1988, Oct. 21, P.L. 1000, No. 115, § 8, imd. effective. Amended 1994, Dec. 12, P.L. 1248, No. 148, § 1, imd. effective; 1998, Feb. 18, P.L. 102, No. 19, § 14, imd. effective; 2004, Nov. 29, P.L. 1349, No. 173, § 1, imd. effective; 2008, Oct. 9, P.L. 1403, No. 111, § 3, imd. effective; 2013, Nov. 27, P.L. ____, No. 102, § 1, imd. effective.

18 Pa.C.S.A. § 5781, PA ST 18 Pa.C.S.A. § 5781

Current through Regular Session Act 2013-88, 91, 93 to 97, 99 to 103, except 20 Pa.C.S.A. § 7101 to End current through 2013-104

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<See 18 Pa.C.S.A. § 5781 for expiration of Chapter 57.>

Notes of Decisions (5)

18 Pa.C.S.A. § 5771, PA ST 18 Pa.C.S.A. § 5771

Current through Regular Session Act 2013-88, 91, 93 to 97, 99 to 103, except 20 Pa.C.S.A. § 7101 to End current through 2013-104

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23 Pa.C.S.A. § 6108
§ 6108. Relief

Term Best Section

23 Pa.C.S.A. § 6108

Purdon's Pennsylvania Statutes and Consolidated Statutes Currentness
Title 23 Pa.C.S.A. Domestic Relations (Refs & Annos)

Part VII. Abuse of Family

Chapter 61. Protection from Abuse (Refs & Annos)

§ 6108. Relief

(a) General rule.--The court may grant any protection order or approve any consent agreement to bring about a cessation of abuse of the plaintiff or minor children. The order or agreement may include:

- (1) Directing the defendant to refrain from abusing the plaintiff or minor children.
- (2) Granting possession to the plaintiff of the residence or household to the exclusion of the defendant by evicting the defendant or restoring possession to the plaintiff if the residence or household is jointly owned or leased by the parties, is owned or leased by the entireties or is owned or leased solely by the plaintiff.
- (3) If the defendant has a duty to support the plaintiff or minor children living in the residence or household and the defendant is the sole owner or lessee, granting possession to the plaintiff of the residence or household to the exclusion of the defendant by evicting the defendant or restoring possession to the plaintiff or, with the consent of the plaintiff, ordering the defendant to provide suitable alternate housing.
- (4) Awarding temporary custody of or establishing temporary visitation rights with regard to minor children. In determining whether to award temporary custody or establish temporary visitation rights pursuant to this paragraph, the court shall consider any risk posed by the defendant to the children as well as risk to the plaintiff. The following shall apply:
 - (i) A defendant shall not be granted custody, partial custody or unsupervised visitation where it is alleged in the petition, and the court finds after a hearing under this chapter, that the defendant:
 - (A) abused the minor children of the parties or poses a risk of abuse toward the minor children of the parties; or
 - (B) has been convicted of violating 18 Pa.C.S. § 2904 (relating to interference with custody of children) within two calendar years prior to the filing of the petition for protection order or that the defendant poses a risk of violating 18 Pa.C.S. § 2904.
 - (ii) Where the court finds after a hearing under this chapter that the defendant has inflicted abuse upon the plaintiff or a child, the court may require supervised custodial access by a third party. The third party must agree to be accountable to the court for supervision and execute an affidavit of accountability.
 - (iii) Where the court finds after a hearing under this chapter that the defendant has inflicted serious abuse upon the plaintiff or a child or poses a risk of abuse toward the plaintiff or a child, the court may:
 - (A) award supervised visitation in a secure visitation facility; or
 - (B) deny the defendant custodial access to a child.
 - (iv) If a plaintiff petitions for a temporary order under section 6107(b) (relating to hearings) and the

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defendant has partial, shared or full custody of the minor children of the parties by order of court or written agreement of the parties, the custody shall not be disturbed or changed unless the court finds that the defendant is likely to inflict abuse upon the children or to remove the children from the jurisdiction of the court prior to the hearing under section 6107(a). Where the defendant has forcibly or fraudulently removed any minor child from the care and custody of a plaintiff, the court shall order the return of the child to the plaintiff unless the child would be endangered by restoration to the plaintiff.

(v) Nothing in this paragraph shall bar either party from filing a petition for custody under Chapter 53 (relating to custody) or under the Pennsylvania Rules of Civil Procedure.

(vi) In order to prevent further abuse during periods of access to the plaintiff and child during the exercise of custodial rights, the court shall consider, and may impose on a custody award, conditions necessary to assure the safety of the plaintiff and minor children from abuse.

(5) After a hearing in accordance with section 6107(a), directing the defendant to pay financial support to those persons the defendant has a duty to support, requiring the defendant, under sections 4324 (relating to inclusion of medical support) and 4326 (relating to mandatory inclusion of child medical support), to provide health coverage for the minor child and spouse, directing the defendant to pay all of the unreimbursed medical expenses of a spouse or minor child of the defendant to the provider or to the plaintiff when he or she has paid for the medical treatment, and directing the defendant to make or continue to make rent or mortgage payments on the residence of the plaintiff to the extent that the defendant has a duty to support the plaintiff or other dependent household members. The support order shall be temporary, and any beneficiary of the order must file a complaint for support under the provisions of Chapters 43 (relating to support matters generally) and 45 (relating to reciprocal enforcement of support orders) within two weeks of the date of the issuance of the protection order. If a complaint for support is not filed, that portion of the protection order requiring the defendant to pay support is void. When there is a subsequent ruling on a complaint for support, the portion of the protection order requiring the defendant to pay support expires.

(6) Prohibiting the defendant from having any contact with the plaintiff or minor children, including, but not limited to, restraining the defendant from entering the place of employment or business or school of the plaintiff or minor children and from harassing the plaintiff or plaintiff's relatives or minor children.

(7) Ordering the defendant to temporarily relinquish to the sheriff the defendant's other weapons and ammunition which have been used or been threatened to be used in an incident of abuse against the plaintiff or the minor children and the defendant's firearms and prohibiting the defendant from acquiring or possessing any firearm for the duration of the order and requiring the defendant to relinquish to the sheriff any firearm license issued under section 6108.3 (relating to relinquishment to third party for safekeeping) or 18 Pa.C.S. § 6106 (relating to firearms not to be carried without a license) or 6109 (relating to licenses) the defendant may possess. A copy of the court's order shall be transmitted to the chief or head of the police force or police department of the municipality and to the sheriff of the county of which the defendant is a resident. When relinquishment is ordered, the following shall apply:

(i)(A) The court's order shall require the defendant to relinquish such firearms, other weapons, ammunition and any firearm license pursuant to the provisions of this chapter within 24 hours of service of a temporary order or the entry of a final order or the close of the next business day as necessary by closure of the sheriffs' offices, except for cause shown at the hearing, in which case the court shall specify the time for relinquishment of any or all of the defendant's firearms.

(B) A defendant subject to a temporary order requiring the relinquishment of firearms, other weapons or ammunition shall, in lieu of relinquishing specific firearms, other weapons or ammunition which cannot reasonably be retrieved within the time for relinquishment in clause (A) due to their current location, provide the sheriff with an affidavit listing the firearms, other weapons or ammunition and their current location. If the defendant, within the time for relinquishment in clause (A), fails to provide the affidavit or fails to relinquish, pursuant to this chapter, any firearms, other weapons or ammunition ordered to be relinquished which are not specified in the affidavit, the sheriff shall, at a minimum, provide immediate notice to the court, the plaintiff and appropriate law enforcement authorities. The defendant shall not possess any firearms, other weapons or ammunition specifically listed in the affidavit provided to the sheriff pursuant to this clause for the duration of the temporary order.

(C) As used in this subparagraph, the term "cause" shall be limited to facts relating to the inability of the defendant to retrieve a specific firearm within 24 hours due to the current location of the firearm.

(ii) The court's order shall contain a list of any firearm, other weapon or ammunition ordered relinquished. Upon the entry of a final order, the defendant shall inform the court in what manner the defendant is going to relinquish any firearm, other weapon or ammunition ordered relinquished. Relinquishment may occur pursuant to section 6108.2 (relating to relinquishment for consignment sale, lawful transfer or safekeeping) or 6108.3 or to the sheriff pursuant to this paragraph. Where the sheriff is designated, the sheriff shall secure custody of the defendant's firearms, other weapons or ammunition and any firearm license listed in the court's order for the duration of the order or until otherwise directed by court order. In securing custody of the defendant's relinquished firearms, the sheriff shall comply with 18 Pa.C.S. § 6105(f)(4) (relating to persons not to possess, use, manufacture, control, sell or transfer firearms). In securing custody of the defendant's other weapons and ammunition, the sheriff shall provide the defendant with a signed and dated written receipt which shall include a detailed description of the other weapon or ammunition and its condition.

(iii) The sheriff shall provide the plaintiff with the name of the person to which any firearm, other weapon or ammunition was relinquished.

(iv) Unless the defendant has complied with subparagraph (i)(B) or section 6108.2 or 6108.3, if the defendant fails to relinquish any firearm, other weapon, ammunition or firearm license within 24 hours or upon the close of the next business day due to closure of sheriffs' offices or within the time ordered by the court upon cause being shown at the hearing, the sheriff shall, at a minimum, provide immediate notice to the court, the plaintiff and appropriate law enforcement agencies.

(v) Any portion of any order or any petition or other paper which includes a list of any firearm, other weapon or ammunition ordered relinquished shall be kept in the files of the court as a permanent record thereof and withheld from public inspection except:

(A) upon an order of the court granted upon cause shown;

(B) as necessary, by law enforcement and court personnel; or

(C) after redaction of information listing any firearm, other weapon or ammunition.

(vi) As used in this paragraph, the term "defendant's firearms" shall, if the defendant is a licensed firearms dealer, only include firearms in the defendant's personal firearms collection pursuant to 27 CFR § 478.125a (relating to personal firearms collection).

(7.1) If the defendant is a licensed firearms dealer, ordering the defendant to follow such restrictions as the court may require concerning the conduct of his business, which may include ordering the defendant to relinquish any Federal or State license for the sale, manufacture or importation of firearms as well as firearms in the defendant's business inventory. In restricting the defendant pursuant to this paragraph, the court shall make a reasonable effort to preserve the financial assets of the defendant's business while fulfilling the goals of this chapter.

(8) Directing the defendant to pay the plaintiff for reasonable losses suffered as a result of the abuse, including medical, dental, relocation and moving expenses; counseling; loss of earnings or support; costs of repair or replacement of real or personal property damaged, destroyed or taken by the defendant or at the direction of the defendant; and other out-of-pocket losses for injuries sustained. In addition to out-of-pocket losses, the court may direct the defendant to pay reasonable attorney fees. An award under this chapter shall not constitute a bar to litigation for civil damages for injuries sustained from the acts of abuse giving rise to the award or a finding of contempt under this chapter.

(9) Directing the defendant to refrain from ◀stalking▶ or harassing the plaintiff and other designated persons as defined in 18 Pa.C.S. §§ 2709 (relating to harassment) and 2709.1 (relating to ◀stalking▶).

(10) Granting any other appropriate relief sought by the plaintiff.

(b) Identifying information.--Any order issued under this section shall, where furnished by either party, specify the Social Security number and date of birth of the defendant.

(c) Mutual orders of protection.--Mutual orders of protection shall not be awarded unless both parties have filed timely written petitions, complied with service requirements under section 6106 (relating to commencement of proceedings) and are eligible for protection under this chapter. The court shall make separate findings and, where issuing orders on behalf of both petitioners, enter separate orders.

(d) Duration and amendment of order or agreement.--A protection order or approved consent agreement shall be for a fixed period of time not to exceed three years. The court may amend its order or agreement at any time upon subsequent petition filed by either party.

(e) Extension of protection orders.--

(1) An extension of a protection order may be granted:

(i) Where the court finds, after a duly filed petition, notice to the defendant and a hearing, in accordance with the procedures set forth in sections 6106 and 6107, that the defendant committed one or more acts of abuse subsequent to the entry of the final order or that the defendant engaged in a pattern or practice that indicates continued risk of harm to the plaintiff or minor child.

(ii) When a contempt petition or charge has been filed with the court or with a hearing officer in Philadelphia County, but the hearing has not occurred before the expiration of the protection order, the order shall be extended, at a minimum, until the disposition of the contempt petition and may be extended for another term beyond the disposition of the contempt petition.

(2) Service of an extended order shall be made in accordance with section 6109 (relating to service of orders).

(3) There shall be no limitation on the number of extensions that may be granted.

(f) Support procedure.--The domestic relations section shall enforce any support award in a protection order where the plaintiff files a complaint for support under subsection (a)(5).

(g) Notice.--Notice shall be given to the defendant, in orders issued under this section, stating that violations of an order will subject the defendant to arrest under section 6113 (relating to arrest for violation of order) or contempt of court under section 6114 (relating to contempt for violation of order or agreement). Resumption of coresidency on the part of the plaintiff and defendant shall not nullify the provisions of the court order.

(h) Title to real property unaffected.--No order or agreement under this chapter shall in any manner affect title to any real property.

CREDIT(S)

1990, Dec. 19, P.L. 1240, No. 206, § 2, effective in 90 days. Amended 1993, June 23, P.L. 124, No. 28, § 6, imd. effective; 1994, Oct. 6, P.L. 574, No. 85, § 1, effective in 60 days; 1997, Dec. 19, P.L. 549, No. 58, § 12, effective in 60 days; 2000, May 10, P.L. 35, No. 10, imd. effective; 2002, Dec. 9, P.L. 1759, No. 218, § 7, effective in 60 days; 2005, Nov. 10, P.L. 335, No. 66, § 8, effective in 180 days [May 9, 2006].

HISTORICAL AND STATUTORY NOTES

Act 2000-10 legislation

Act 2000-10, in subsec. (d), in the first sentence, substituted "18 months" for "one year".

Act 2002-218 legislation

Act 2002-218, § 7, in subsec. (a)(9), substituted "§§ 2709 (relating to harassment) and 2709.1 (relating to **←stalking→**)" for "§ 2709 (relating to harassment and **←stalking→**)".

Act 2005-66 legislation

Act 2005-66, § 8, in subsec. (a)(2) and (3), substituted "if" for "when"; rewrote subsecs. (a)(4) and (7), which prior thereto read:

"(4) Awarding temporary custody of or establishing temporary visitation rights with regard to minor children. A defendant shall not be granted custody, partial custody or unsupervised visitation where it is alleged in the petition, and the court finds after a hearing under this chapter, that the defendant abused the minor children of the parties or where the defendant has been convicted of violating 18 Pa.C.S. § 2904

(relating to interference with custody of children) within two calendar years prior to the filing of the petition for protection order. Where the court finds after a hearing under this chapter that the defendant has inflicted abuse upon the plaintiff or a child, the court may require supervised custodial access by a third party. The third party must agree to be accountable to the court for supervision and execute an affidavit of accountability. Where the court finds after a hearing under this chapter that the defendant has inflicted serious abuse upon the plaintiff or a child or poses a risk of abuse toward the plaintiff or a child, the court may award supervised visitation in a secure visitation facility or may deny the defendant custodial access to a child. If a plaintiff petitions for a temporary order under section 6107(b) (relating to hearings) and the defendant has partial, shared or full custody of the minor children of the parties by order of court or written agreement of the parties, the custody shall not be disturbed or changed unless the court finds that the defendant is likely to inflict abuse upon the children or to remove the children from the jurisdiction of the court prior to the hearing under section 6107(a). Where the defendant has forcibly or fraudulently removed any minor child from the care and custody of a plaintiff, the court shall order the return of the child to the plaintiff unless the child would be endangered by restoration to the plaintiff. Nothing in this paragraph shall bar either party from filing a petition for custody under Chapter 53 (relating to custody) or under the Pennsylvania Rules of Civil Procedure. In order to prevent further abuse during periods of access to the plaintiff and child during the exercise of custodial rights, the court shall consider, and may impose on a custody award, conditions necessary to assure the safety of the plaintiff and minor children from abuse."

"(7) Ordering the defendant to temporarily relinquish to the sheriff the defendant's weapons which have been used or been threatened to be used in an incident of abuse against the plaintiff or the minor children and prohibiting the defendant from acquiring or possessing any other weapons for the duration of the order and requiring the defendant to relinquish to the sheriff any firearm license the defendant may possess. The court's order shall provide for the return of the weapons and any firearm license to the defendant subject to any restrictions and conditions as the court shall deem appropriate to protect the plaintiff or minor children from further abuse through the use of weapons. A copy of the court's order shall be transmitted to the chief or head of the police force or police department of the municipality and to the sheriff of the county of which the defendant is a resident."

; added subsec. (a)(7.1); in subsec. (d), substituted "three years" for "18 months"; and in subsec. (e)(1)(ii), inserted "with the court or with a hearing officer in Philadelphia County" and "and may be extended for another term beyond the disposition of the contempt petition".

Prior Laws:

- 1976, Oct. 7, P.L. 1090, No. 218, § 6 (35 P.S. § 10186).
- 1978, June 23, P.L. 513, No. 81, § 1.
- 1988, April 20, P.L. 355, No. 56, § 5.
- 1990, July 11, P.L. 454, No. 111, § 2 (42 Pa.C.S.A. § 6708).

23 Pa.C.S.A. § 6108, PA ST 23 Pa.C.S.A. § 6108

Current through Regular Session Act 2014-5

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§ 6113.1. Private criminal complaints for violation of order or agreement.

(a) **General rule.**--A plaintiff may file a private criminal complaint against a defendant, alleging indirect criminal contempt for a noneconomic violation of any provision of an order or court-approved consent agreement issued under this chapter or a foreign protection order, with the court, the office of the district attorney or the magisterial district judge in the jurisdiction or county where the violation occurred, except that, in a city of the first class, a complaint may only be filed with the family division of the court of common pleas or the office of the district attorney.

(b) **Procedure service.**--Procedure for filing and service of a private criminal complaint shall be provided as set forth by local rule. No fees or costs associated with the prosecution of the private criminal complaint shall be assigned to the plaintiff at any stage of the proceeding, including, but not limited to, filing, service, failure to prosecute, withdrawal or dismissal. Nothing in this subsection is intended to expand or diminish the court's authority to enter an order pursuant to Pa.R.C.P. No. 1023.1 (relating to Scope. Signing of Documents. Representations to the Court. Violation).

(c) **Fees and costs.**--After a finding of indirect criminal contempt, fees and costs may be assessed against the defendant. The court shall waive fees and costs imposed pursuant to this chapter upon a showing of good cause or when the court makes a finding that the defendant is not able to pay the costs associated with the indirect criminal contempt action. Nothing in this subsection is intended to expand or diminish the court's authority to enter an order pursuant to Pa.R.C.P. No. 1023.1.
(Oct. 6, 1994, P.L.574, No.85, eff. 60 days; June 22, 2001, P.L.576, No.39, eff. 60 days; Nov. 30, 2004, P.L.1618, No.207, eff. 60 days; Nov. 10, 2005, P.L.335, No.66, eff. 180 days)

2004 Amendment. See sections 28 and 29 of Act 207 in the appendix to this title for special provisions relating to applicability and construction of law.

§ 6114. Contempt for violation of order or agreement.

(a) **General rule.**--Where the police, sheriff or the plaintiff have filed charges of indirect criminal contempt against a defendant for violation of a protection order issued under this chapter, a foreign protection order or a court-approved consent agreement, the court may hold the defendant in indirect criminal contempt and punish the defendant in accordance with law.

(a.1) **Jurisdiction.**--A court shall have jurisdiction over indirect criminal contempt charges for violation of a protection order issued pursuant to this chapter in the county where the violation occurred and in the county where the protection order was granted. A court shall have jurisdiction over indirect criminal contempt charges for violation of a foreign protection order in the county where the violation occurred.

(a.2) **Minor defendant.**--Any defendant who is a minor and who is charged with indirect criminal contempt for allegedly violating a protection from abuse order shall be considered to have committed an alleged delinquent act as that term is defined in 42 Pa.C.S. § 6302 (relating to definitions) and shall be treated as provided in 42 Pa.C.S. Ch. 63 (relating to juvenile matters).

(b) **Trial and punishment.**--

(1) A sentence for contempt under this chapter may include:

- (i) (A) a fine of not less than \$300 nor more than \$1,000 and imprisonment up to six months; or
- (B) a fine of not less than \$300 nor more than \$1,000 and supervised probation not to exceed six months;

and

- (ii) an order for other relief set forth in this chapter.

(2) All money received under this section shall be distributed in the following order of priority:

(i) \$100 shall be forwarded to the Commonwealth and shall be appropriated to the Pennsylvania State Police to establish and maintain the Statewide registry of protection orders provided for in section 6105 (relating to responsibilities of law enforcement agencies).

(ii) \$100 shall be retained by the county and shall be used to carry out the provisions of this chapter as follows:

(A) \$50 shall be used by the sheriff.

(B) \$50 shall be used by the court.

(iii) \$100 shall be forwarded to the Department of Public Welfare for use for victims of domestic violence in accordance with the provisions of section 2333 of the act of April 9, 1929 (P.L.177, No.175), known as The Administrative Code of 1929.

(iv) Any additional money shall be forwarded to the Commonwealth and shall be used by the Pennsylvania State Police to establish and maintain the Statewide registry of protection orders provided for in section 6105.

(3) The defendant shall not have a right to a jury trial on a charge of indirect criminal contempt. However, the defendant shall be entitled to counsel.

(4) Upon conviction for indirect criminal contempt and at the request of the plaintiff, the court shall also grant an extension of the protection order for an additional term.

(5) Upon conviction for indirect criminal contempt, the court shall notify the sheriff of the jurisdiction which issued the protection order of the conviction.

(6) The minimum fine required by subsection (b)(1) allocated pursuant to subsection (b)(2)(i) and (iii) shall be used to supplement and not to supplant any other source of funds received for the purpose of carrying out the provisions of this chapter.

(c) Notification upon release.--The appropriate releasing authority or other official as designated by local rule shall use all reasonable means to notify the victim sufficiently in advance of the release of the offender from any incarceration imposed under subsection (b). Notification shall be required for work release, furlough, medical leave, community service, discharge, escape and recapture. Notification shall include the terms and conditions imposed on any temporary release from custody. The plaintiff must keep the appropriate releasing authority or other official as designated by local rule advised of contact information; failure to do so will constitute waiver of any right to notification under this section.

(d) Multiple remedies.--Disposition of a charge of indirect criminal contempt shall not preclude the prosecution of other criminal charges associated with the incident giving rise to the contempt, nor shall disposition of other criminal charges preclude prosecution of indirect criminal contempt associated with the criminal conduct giving rise to the charges.

(Oct. 6, 1994, P.L.574, No.85, eff. 60 days; Mar. 24, 1998,

P.L.204, No.36, eff. 60 days; June 22, 2001, P.L.576, No.39, eff. 60 days; Nov. 10, 2005, P.L.335, No.66, eff. 180 days)

Cross References. Section 6114 is referred to in sections 5329, 6108 of this title; sections 4136, 4137 of Title 42 (Judiciary and Judicial Procedure).

§ 6114.1. Civil contempt or modification for violation of an order or agreement.

(a) **General rule.**--A plaintiff may file a petition for civil contempt with the issuing court alleging that the defendant has violated any provision of an order or court-approved agreement issued under this chapter or a foreign protection order.

(b) **Civil contempt order.**--Upon finding of a violation of a protection order or court-approved consent agreement issued under this chapter or a foreign protection order, the court, either pursuant to petition for civil contempt or on its own accord, may hold the defendant in civil contempt and constrain him in accordance with law.



(c) **Sentencing.**--A sentence for civil contempt under this chapter may include imprisonment until the defendant complies with provisions in the order or consent agreement or demonstrates the intent to do so, but in no case shall a term of imprisonment under this section exceed a period of six months.

(d) **Jury trial and counsel.**--The defendant shall not have a right to a jury trial; however, the defendant shall be entitled to counsel.

(Oct. 6, 1994, P.L.574, No.85, eff. 60 days; June 22, 2001, P.L.576, No.39, eff. 60 days)

Document Retrieval Result




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18 Pa.C.S.A. § 2709
§ 2709. HarassmentTerm  Best Section 

18 Pa.C.S.A. § 2709

Purdon's Pennsylvania Statutes and Consolidated Statutes [Currentness](#)Title 18 Pa.C.S.A. Crimes and Offenses ([Refs & Annos](#))

Part II. Definition of Specific Offenses

 [Article B. Offenses Involving Danger to the Person](#) ([Refs & Annos](#)) [Chapter 27. Assault](#) ([Refs & Annos](#)) **§ 2709. Harassment**

(a) Offense defined.--A person commits the crime of harassment when, with intent to harass, annoy or alarm another, the person:

- (1) strikes, shoves, kicks or otherwise subjects the other person to physical contact, or attempts or threatens to do the same;
- (2) follows the other person in or about a public place or places;
- (3) engages in a course of conduct or repeatedly commits acts which serve no legitimate purpose;
- (4) communicates to or about such other person any lewd, lascivious, threatening or obscene words, language, drawings or caricatures;
- (5) communicates repeatedly in an anonymous manner;
- (6) communicates repeatedly at extremely inconvenient hours; or
- (7) communicates repeatedly in a manner other than specified in paragraphs (4), (5) and (6).

(b) Deleted by 2002, Dec. 9, P.L. 1759, No. 218, § 1, effective in 60 days.

(b.1) Venue.--

- (1) An offense committed under this section may be deemed to have been committed at either the place at which the communication or communications were made or at the place where the communication or communications were received.
- (2) Acts indicating a course of conduct which occur in more than one jurisdiction may be used by any other jurisdiction in which an act occurred as evidence of a continuing pattern of conduct or a course of conduct.

(c) Grading.--

- (1) Except as provided under paragraph (3), an offense under subsection (a)(1), (2) or (3) shall constitute a summary offense.
- (2) An offense under subsection (a)(4), (5), (6) or (7) shall constitute a misdemeanor of the third degree.
- (3) The grading of an offense under subsection (a)(1), (2) or (3) shall be enhanced one degree if the person has previously violated an order issued under 23 Pa.C.S. § 6108 (relating to relief) involving the same victim, family or household member.

(d) False reports.--A person who knowingly gives false information to any law enforcement officer with the intent to implicate another under this section commits an offense under section 4906 (relating to false reports to law enforcement authorities).

(e) Application of section.--This section shall not apply to conduct by a party to a labor dispute as defined in the act of June 2, 1937 (P.L. 1198, No. 308), [FN1] known as the Labor Anti-Injunction Act, or to any constitutionally protected activity.

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

"Communicates." Conveys a message without intent of legitimate communication or address by oral, nonverbal, written or electronic means, including telephone, electronic mail, Internet, facsimile, telex, wireless communication or similar transmission.

"Course of conduct." A pattern of actions composed of more than one act over a period of time, however short, evidencing a continuity of conduct. Acts indicating a course of conduct which occur in more than one jurisdiction may be used by any other jurisdiction in which an act occurred as evidence of a continuing pattern of conduct or a course of conduct.

"Family or household member." Spouses or persons who have been spouses, persons living as spouses or who lived as spouses, parents and children, other persons related by consanguinity or affinity, current or former sexual or intimate partners or persons who share biological parenthood.

CREDIT(S)

1972, Dec. 6, P.L. 1482, No. 334, § 1, effective June 6, 1973. Amended 1993, June 23, P.L. 124, No. 28, § 1, imd. effective; 1997, Oct. 2, P.L. 379, No. 44, § 3, effective in 60 days; 1999, Dec. 15, P.L. 915, No. 59, § 3, effective in 60 days; 2002, Dec. 9, P.L. 1759, No. 218, § 1, effective in 60 days; 2013, Nov. 27, P.L. 1061, No. 91, § 1, effective in 60 days [Jan. 27, 2014].

[FN1] 43 P.S. § 206a et seq.

OFFICIAL COMMENT--1972

This section is derived from Section 240.25 of the New York Code.

Since the Code's provision for Simple Assault, § 2701, requires "bodily injury," unlike the former law, this provision is designed to cover an obvious potential loophole. See also § 5504 (Harassment by communication or address).

HISTORICAL AND STATUTORY NOTES

Act 1993-28 legislation

The 1993 amendment added "and stalking" to the name line; designated the former text as subsec. (a); substituted "the crime of harassment" for "a summary offense"; and added subsecs. (b) to (f).

Act 1997-44 legislation

The 1997 amendment added subsec. (e.1).

Act 1999-59 legislation

Act 1999-59 rendered subsec. (a) gender-neutral and, in subsec. (f) in the definition of "course of conduct", added the second sentence.

Act 2002-218 legislation

Act 2002-218, § 1, rewrote the section, which prior thereto read:

"(a) Harassment.--A person commits the crime of harassment when, with intent to harass, annoy or alarm another, the person:

- "(1) strikes, shoves, kicks or otherwise subjects the other person to physical contact, or attempts or threatens to do the same;
- "(2) follows the other person in or about a public place or places; or
- "(3) engages in a course of conduct or repeatedly commits acts which serve no legitimate purpose.

"(b) Stalking.--A person commits the crime of stalking when he engages in a course of conduct or repeatedly commits acts toward another person, including following the person without proper authority, under circumstances which demonstrate either of the following:

- "(1) an intent to place the person in reasonable fear of bodily injury; or
- "(2) an intent to cause substantial emotional distress to the person.

"(c) Grading.--

- "(1) An offense under subsection (a) shall constitute a summary offense.
- "(2) (i) An offense under subsection (b) shall constitute a misdemeanor of the first degree.
 - "(ii) A second or subsequent offense under subsection (b) or a first offense under subsection (b) if the person has been previously convicted of any crime of violence involving this same victim, family or household members, including, but not limited to, a violation of section 2701 (relating to simple assault), 2702 (relating to aggravated assault), 2705 (relating to recklessly endangering another person), 2901 (relating to kidnapping), 3121 (relating to rape), 3123 (relating to involuntary deviate sexual intercourse) or 3128 (relating to spousal sexual assault), an order issued under section 4954 (relating to protective orders) or an order issued under 23 Pa.C.S. § 6108 (relating to relief), shall constitute a felony of the third degree.

"(d) False reports.--A person who knowingly gives false information to any law enforcement officer with the intent to implicate another under this section commits an offense under section 4906 (relating to false reports to law enforcement authorities).

"(e) Application of section.--This section shall not apply to conduct by a party to a labor dispute as defined in the act of June 2, 1937 (P.L. 1198, No. 308), known as the Labor Anti-Injunction Act, or to any constitutionally protected activity.

"(e.1) Course of conduct.--Acts indicating a course of conduct which occur in more than one jurisdiction may be used by any other jurisdiction in which an act occurred as evidence of a continuing pattern of conduct or a course of conduct.

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

" 'Course of conduct.' A pattern of actions composed of more than one act over a period of time, however short, evidencing a continuity of conduct. The term includes lewd, lascivious, threatening or obscene words, language, drawings, caricatures or actions, either in person or anonymously.

" 'Emotional distress.' A temporary or permanent state of great physical or mental strain.

" 'Family or household member.' Spouses or persons who have been spouses, persons living as spouses or who lived as spouses, parents and children, other persons related by consanguinity or affinity, current or former sexual or intimate partners or persons who share biological parenthood."

Sections 9 and 10 of 2002, Dec. 9, P.L. 1759, No. 218, effective in 60 days, provide:

"§ 9. (1) Except as otherwise provided for in paragraph (2), any reference in any act or part of an act to 18 Pa.C.S. § 2709 without specification as to subsection (a) or (b) of that section shall be deemed to include a reference to 18 Pa.C.S. § 2709.1 as if fully set forth in that act or part of that act.

"(2) Any reference in any act or part of an act to 18 Pa.C.S. § 2709(b) shall be deemed a reference to 18 Pa.C.S. § 2709.1 as if fully set forth in that act or part of that act."

"§ 10. (1) Except as otherwise provided for in paragraph (2) or (3), any reference in any act or part of an act to 18 Pa.C.S. § 5504 without specification as to subsection (a) or (a.1) of that section shall be deemed a reference to 18 Pa.C.S. §§ 2709(a)(4), (5), (6) and (7) and 2709.1 as if fully set forth in that act or part of

that act.

"(2) Any reference in any act or part of an act to 18 Pa.C.S. § 5504(a) shall be deemed a reference to 18 Pa.C.S. § 2709(a)(4), (5), (6) and (7) as if fully set forth in that act or part of that act.

"(3) Any reference in any act or part of an act to 18 Pa.C.S. § 5504(a.1) shall be deemed a reference to 18 Pa.C.S. § 2709.1 as if fully set forth in that act or part of that act."

Act 2013-91 legislation

Act 2013-91, § 1, rewrote subsec. (c), which prior thereto read:

"(c) Grading.--

"(1) An offense under subsection (a)(1), (2) or (3) shall constitute a summary offense.

"(2) (i) An offense under subsection (a)(4), (5), (6) or (7) shall constitute a misdemeanor of the third degree."

; and in subsec. (f), added the definition of "family or household member".

18 Pa.C.S.A. § 2709, PA ST 18 Pa.C.S.A. § 2709

Current through Regular Session Act 2014-5

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THOMSON REUTERS

PRIVATE DETECTIVE ACT OF 1953, THE
Act of Aug. 21, 1953, P.L. 1273, No. 361
AN ACT

C1. 22

To regulate the business of private detectives, investigators and watch, guard, or patrol agencies, and the licensing thereof in each county; providing penalties.

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

Section 1. Short Title.--This act shall be known and may be cited as "The Private Detective Act of 1953."

Section 2. Definitions.--(a) "Private detective business" shall mean and include the business of private detective, private detective business, the business of investigator, or the business of watch, guard, or patrol agency.

(b) "Private detective business" shall also mean and include, separately or collectively, the making, for hire, reward, or for any consideration whatsoever, of any investigation or investigations for the purpose of obtaining information with reference to any of the following matters, notwithstanding the fact that other functions and services may also be performed for fee, hire, or reward:

(1) Crime or wrongs done or threatened against the government of the United States of America or any state or territory of the United States of America.

(2) The identity, habits, conduct, movements, whereabouts, affiliations, associations, transactions, reputation, or character, of any person, group of persons, association, organization, society, other groups of persons, partnership, or corporation.

(3) The credibility of witnesses or other persons.

(4) The whereabouts of missing persons.

(5) The location or recovery of lost or stolen property.
(6) The causes and origin of, or responsibility for, fires, or libels, or losses, or accidents, or damage, or injuries, to real or personal property.

(7) The affiliation, connection, or relation, of any person, partnership, or corporation, with any union, organization, society, or association, or with any official member or representative thereof.

(8) With reference to any person or persons seeking employment in the place of any person or persons who have quit work by reason of any strike.

(9) With reference to the conduct, honesty, efficiency, loyalty, or activities, of employees, agents, contractors and subcontractors.

(10) The securing of evidence to be used before any authorized investigating committee, board of award, board of arbitration, or in the trial of civil or criminal cases.

(11) The furnishing, for hire or reward, of watchmen, or guards, or private patrolmen, or other persons, to protect persons or property, or to prevent the theft or the unlawful taking of goods, wares and merchandise, or to prevent the misappropriation or concealment of goods, wares or merchandise, money, bonds, stocks, choses in action, notes, or other valuable documents, papers, and articles of value, or to procure the return thereof, or the performing of the service of such guard or other person, or any of said purposes.

The foregoing shall not be deemed to include persons engaged in the business of investigators for or adjusters for insurance companies, nor persons in the exclusive employment of common carriers subject to regulation by the interstate commerce commission or the Public Utility Commission of the Commonwealth of Pennsylvania, nor any telephone, telegraph or other telecommunications company subject to regulation by the Federal Communications Commission or the Public Utility Commission of the Commonwealth of Pennsylvania or an employee of any such company while performing any investigatory activities engaged in by his employer, or investigators in the employment of credit bureaus.

((b) amended Dec. 3, 1987, P.L.405, No.83)

(c) The terms "the business of detective agency," the "business of investigator," the "business of watch, guard or patrol agency," and the terms "private detective" or "investigator" shall mean and include any person, partnership, association, or corporation, engaged in the private detective business, as defined in subsections (a) and (b) of this section, with or without the assistance of any employee or employees.

(d) The term "commissioner" shall mean the Commissioner of the Pennsylvania State Police.

(e) The term "patrol agency" shall mean and include any agency and/or individuals (including therein security guards, uniformed or nonuniformed) employed full time or part time, on a temporary or permanent basis, who, for any consideration whatsoever, patrols, guards, protects, monitors, regulates, secures or watches over persons and/or property, either real or personal. This term specifically includes any person employed in any capacity, for any length of time, to protect property, either real or personal, against labor strikes or against any person or persons who have become a party to any labor strike.

((e) added May 26, 1988, P.L.405, No.68)

Section 3. Licenses.--(a) No person, partnership, association, or corporation, shall engage in the business of private detective, or the business of investigator, or the

business of watch, guard or patrol agency, for the purpose of furnishing guards or patrolmen or other persons to protect persons or property, or to prevent the theft or the unlawful taking of goods, wares and merchandise, or to prevent the misappropriation or concealment of goods, wares, merchandise, money, bonds, stocks, documents, and other articles of value, for hire or reward, or advertise his or their business to be that of detective, or of a detective agency, or investigator, or watch, guard or patrol agency, notwithstanding the name or title used in describing such agency, or notwithstanding the fact that other functions and services may also be performed for fee, hire or reward, without having first obtained a license so to do as hereinafter provided.

(b) No person, partnership, association, or corporation, shall engage in the business of furnishing or supplying for fee, hire, or any consideration or reward, information as to the personal character or activities of any person, partnership, corporation, society, or association, or any person or group of persons, or as to the character or kind of the business and occupation of any person, partnership, association, or corporation, or own or conduct or maintain a bureau or agency for the above mentioned purposes, except exclusively as to the financial rating, standing, and credit responsibility of persons, partnerships, associations, or corporations, or as to the personal habits and financial responsibility of applicants for insurance, indemnity bonds, or commercial credit, or of claimants under insurance policies: Provided, That the business so exempted does not embrace other activities described in subsections (a), (b) and (c) of section two of this act, without having first obtained, as hereafter provided, a license so to do, for each such bureau or agency, and for each and every sub-agency, office and branch office to be owned, conducted, managed, or maintained by such persons, partnership, association, or corporation, for the conduct of such business. ((b) amended Dec. 3, 1987, P.L.405, No.83)

(c) Nothing contained in this section shall be deemed to include the business of investigators for or adjusters for insurance companies, nor persons in the exclusive employment of common carriers subject to regulation by the interstate commerce commission or the Public Utility Commission of the Commonwealth of Pennsylvania, nor any telephone, telegraph or other telecommunications company subject to regulation by the Federal Communications Commission or the Public Utility Commission of the Commonwealth of Pennsylvania or an employee of any such company while performing any investigatory activities engaged in by his employer, or investigators in the employment of credit bureaus. ((c) added Dec. 3, 1987, P.L.405, No.83)

Section 4. Application for Licenses.--Any person, partnership, association, or corporation, intending to conduct a private detective business, the business of investigator, or the business of watch, guard or patrol agency, or the business of a detective agency, and any person, partnership, association, or corporation, intending to conduct the business of furnishing or supplying information as to the personal character of any person, or as to the character or kind of the business and occupation of any person, partnership, corporation, society, or association, or any person or group of persons, or intending to own, conduct, manage or maintain a bureau or agency for the above mentioned purposes, or, while engaged in other lawful business activities, also intending to engage in any one or more of the activities set forth in subsections (a), (b) and

(c) of section two of this act, except exclusively as to the financial rating, standing and credit responsibility of persons, partnerships, associations, or corporations, shall, for each such bureau or agency, and for each and every sub-agency, office and branch office to be owned, conducted, managed or maintained by such person, partnership, association or corporation for the conduct of such business, file, in the office of the clerk of the court of quarter sessions of the county wherein the principal office of such business is located, a written application, duly signed and verified, as follows:

(a) If the applicant is a person, the application shall be signed and verified by such person, and if the applicant is a partnership or association, the application shall be signed and verified by each individual composing or intending to compose such partnership or association. The application shall state the full name, age, residence, present and previous occupations, of each person or individual so signing the same, that he is a citizen of the United States, and shall also specify the name of the city, borough, township, or incorporated town, stating the street and number if the premises have a street and number, and otherwise such apt description as will reasonably indicate the location thereof, where is to be located the principal place of business, and the bureau, agency, sub-agency, office or branch office for which the license is desired, and such further facts as may be required by the court of quarter sessions, to show the good character, competency and integrity of each person or individual so signing such application. Each person or individual signing such application shall, together with such application, submit to the court of quarter sessions his photograph, in duplicate, in passport size, and also fingerprints of his two hands, recorded in such manner as may be specified by the court of quarter sessions. Before approving such application, it shall be the duty of the court of quarter sessions to compare such fingerprints with fingerprints of criminals now or hereafter filed in the records of the Pennsylvania State Police. Every such applicant shall establish, to the satisfaction of the court of quarter sessions and by at least two duly acknowledged certificates, that such applicant, if he be a person, or, in the case of a partnership, association, or corporation, at least one member of such partnership, association, or corporation, has been regularly employed as a detective, or shall have been a member of the United States government investigative service, a sheriff, a member of the Pennsylvania State Police, or a member of a city police department of a rank or grade higher than that of patrolman, for a period of not less than three years. Such application shall be approved as to each person or individual so signing the same by not less than five reputable citizens of the community in which such applicant resides or transacts business, or in which it is proposed to own, conduct, manage or maintain the bureau, agency, sub-agency, office or branch office for which the license is desired, each of whom shall certify that he has personally known the said person or individual for a period of at least five years prior to the filing of such application, that he has read such application and believes each of the statements made therein to be true, that such person is honest, of good character, and competent, and not related or connected to the person so certifying by blood or marriage. The certificate of approval shall be signed by such reputable citizens and duly verified and acknowledged by them before an officer authorized to take oaths and

acknowledgment of deeds. ((a) amended Apr. 30, 1957, P.L.98, No.40)

(b) If the applicant is a corporation, the application shall be signed and verified by the president, secretary and treasurer thereof, and shall specify the name of the corporation, the date and place of its incorporation, the location of its principal place of business, and the name of the city, borough, township, or incorporated town, stating the street and number if the premises have a street and number, and otherwise such apt description as will reasonably indicate the location thereof, where is to be located the bureau, agency, sub-agency, office or branch office for which the license is desired, the amount of the corporation's outstanding paid up capital stock and whether paid in cash or property, and, if in property, the nature of the same, and shall be accompanied by a duly certified copy of its certificate of incorporation. Each and every requirement of clause (a) of this section as to a person or individual member of a partnership or association shall apply to the president, secretary and treasurer, and each such officer, his successor and successors, shall, prior to entering upon the discharge of his duties, sign and verify a like statement, approved in like manner, as is by clause (a) prescribed in the case of a person or individual member of a partnership or association. In the event of the death, resignation or removal of such officer, due notice of that fact shall forthwith be given in writing to the court of quarter sessions, together with a copy of the minutes of any meeting of the board of directors of said corporation, certified by the secretary, indicating the death, resignation or removal of such officer, and the election or designation of the successor of such deceased, resigned or removed officer.

Section 5. Enforcement of Act; Investigations.--(a) The district attorneys of the various counties shall have the power to enforce the provisions of this act, and, upon complaint of any person, or on his own initiative, to investigate any violation thereof, or to investigate the business, business practices and business methods of any person, partnership, association or corporation applying for or holding a license as a private detective or investigator if, in the opinion of the district attorney, such investigation is warranted. Each such applicant or licensee shall be obliged, on request of the district attorney, to supply such information as may be required concerning his or its business, business practices or business methods, or proposed business practices or methods.

(b) For the purpose of enforcing the provisions of this act and in making investigations relating to any violation thereof, and for the purpose of investigating the character, competency and integrity of the applicants or licensees hereunder, and for the purpose of investigating the business, business practices and business methods of any applicant or licensee, or of the officers or agents thereof, the district attorney, acting by such officer or person in the office of the district attorney as the district attorney may designate, shall have the power to subpoena and bring before the officer or person so designated any person in the county, and require the production of any books or papers which he deems relevant to the inquiry, and administer an oath to, and take testimony of, any person, or cause his deposition to be taken, with the same fees and mileage and in the same manner as prescribed by law for civil cases in a court of record, except that any applicant, or licensee, or officer, or agent thereof, shall not be entitled to such fees or mileage. Any person duly subpoenaed who fails to obey such

subpoena without reasonable cause, or without such cause refuses to be examined or to answer any legal or pertinent question as to the character or qualification of such applicant or licensee or such applicant's or licensee's business, business practices and methods, or such violations, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be sentenced to pay a fine of not more than five hundred dollars (\$500) or to undergo imprisonment for not more than one (1) year, or both. The testimony of witnesses in any such proceeding shall be under oath, which the district attorney or his subordinate designated by the district attorney may administer, and wilful, false swearing in any such proceeding shall be punishable as perjury.

Section 6. Issuance of Licenses; Fees; Bonds.--(a) When the application shall have been examined, and such further inquiry and investigation made as the court of quarter sessions or the district attorney shall deem proper, and when the court of quarter sessions shall be satisfied therefrom of the good character, competency and integrity of such applicant, or, if the applicant be a partnership, association or corporation, of the individual members or officers thereof, and a period of ten days from the date of the filing of the application shall have passed, the court of quarter sessions shall issue and deliver to such applicant a certificate of license to conduct such business, and to own, conduct or maintain a bureau, agency, sub-agency, office or branch office for the conduct of such business on the premises stated in such application, upon the applicant's paying to the court of quarter sessions for each such certificate of license so issued, for the use of the county, a license fee of two hundred dollars (\$200), if the applicant be an individual, or of three hundred dollars (\$300), if a partnership, association or corporation, and upon the applicant's executing, delivering and filing in the office of the clerk of the court of quarter sessions a corporate bond in the sum of ten thousand dollars (\$10,000), conditioned for the faithful and honest conduct of such business by such applicant, which surety bond must be written by a corporate surety company authorized to do business in this Commonwealth as surety, and approved by the court of quarter sessions with respect to its form, manner of execution and sufficiency. The license granted pursuant to this act shall last for a period of two years, but shall be revocable at all times by the court of quarter sessions for cause shown. In the event of such revocation or of a surrender of such license, no refund shall be made in respect of any license fee paid under the provisions of this act. Such bond shall be executed to the Commonwealth of Pennsylvania, and any person injured by the violation of any of the provisions of this act, or by the wilful, malicious and wrongful act of the principal or employe, may bring an action against such principal, employe, or both, on said bond, in his own name, to recover damages suffered by reason of such wilful, malicious and wrongful act: Provided, That the aggregate liability of the surety for all such damages shall in no event exceed the sum of such bond. In each and every suit or prosecution arising out of this act, the agency of any employe as to the employment and as to acting in the course of his employment shall be presumed.

The license certificate shall be in a form to be prescribed by the court of quarter sessions, and shall specify the full name of the applicant, the location of the principal office or place of business, and the location of the bureau, agency, sub-agency, office or branch office for which the license is issued, the date on which it is issued, the date on which it will expire, and the names and residences of the applicant or

applicants filing the statement required by section four upon which the license is issued, and in the event of a change of any such address or residence, the court of quarter sessions shall be duly notified in writing of such change within twenty-four hours thereafter, and failure to give such notification shall be sufficient cause for revocation of such license. No such license shall be issued to a person under the age of twenty-five years.

(b) Except as hereinafter provided in this subsection, no such license shall be issued to any person who has been convicted in this State or any other state or territory of a felony, or any of the following offenses: (1) illegally using, carrying or possessing a pistol or other dangerous weapon; (2) making or possessing burglar's instruments; (3) buying or receiving stolen property; (4) unlawful entry of a building; (5) aiding escape from prison; (6) unlawfully possessing or distributing habit forming narcotic drugs; (7) picking pockets or attempting to do so; (8) soliciting any person to commit sodomy or other lewdness; (9) recklessly endangering another person; (10) making terroristic threats; or (11) committing simple assault.

Except as hereinafter in this subsection provided, no license shall be issued to any person whose license has been previously revoked by the court of common pleas or the authorities of any other state or territory because of conviction of any of the crimes or offenses specified in this section. The provisions of this subsection shall not prevent the issuance of a license to any person who, subsequent to his conviction, shall have received executive pardon therefor removing this disability.

((b) amended May 26, 1988, P.L.405, No.68)

(c) There shall be kept in the office of the clerk of the court of quarter sessions a bulletin board, in a place accessible to the general public, on which shall be posted, at noon on Friday of each week, the following: a statement of all pending applications for licenses under this act, giving the name of the applicant, and whether individual, partnership, association or corporation, and the proposed business address, a similar statement of all such licenses issued during the preceding week, a similar statement of all such licenses revoked during the preceding week.

(d) No holder of an employment agency license shall be licensed under this act. While holding a license under this act, a licensee shall not, simultaneously, hold an employment agency license, or have financial interest in, or participate in the control and management of, any employment agency, or any other person, partnership, association or corporation engaged in private detective business, except that a licensee hereunder may own or possess stock in any corporation whose only business is to undertake, for hire, the preparation of payrolls and the transportation of payrolls, moneys, securities and other valuables, or whose only business is to provide or furnish protective or guard service to the government of the United States, or any subdivision, department or agency of the government of the United States. In the event of the filing in the office of the clerk of the court of quarter sessions of a verified statement of objections to the issuance of a license under the provisions of this act, no license shall be issued to such applicant until all objections shall have been heard in a hearing and a determination made by the court of quarter sessions.

Section 7. Refund of Fees.--Moneys heretofore or hereafter received by the court of quarter sessions pursuant to this act

may, within three years from the receipt thereof, be refunded to the person entitled thereto on satisfactory proof that:

(1) Such moneys were in excess of the amount required by this act, to the extent of such excess.

(2) The license for which application was made has been denied.

(3) The applicant for the license has predeceased its issuance.

(4) The licensee has enlisted in or been otherwise inducted into active Federal military, naval or marine service, or in any branch or division thereof, in which event the refund shall be such proportion of the license fee paid as the number of full months remaining unexpired of the license period bears to the total number of months in such period.

Such refunds shall, upon approval by the court of quarter sessions, be paid from any moneys received from the operation of this act and in the custody of the county treasurer.

Section 8. Posting and Surrender of License Certificate.--Immediately upon the receipt of the license certificate issued by the court of quarter sessions pursuant to this act, the licensee named therein shall cause such license certificate to be posted up and at all times displayed in a conspicuous place in the bureau, agency, sub-agency, office or branch office for which it is issued, so that all persons visiting such place may readily see the same. Such license certificate shall, at all reasonable times, be subject to inspection by the district attorney or an authorized representative or representatives of the Pennsylvania State Police and the Attorney General. It shall be unlawful for any person, partnership, association or corporation holding such license certificate to post such certificate, or to permit such certificate to be posted, upon premises other than those described therein, or to which it has been transferred pursuant to the provisions of this act, or knowingly to alter, deface or destroy any such license certificate. Every license certificate shall be surrendered to the court of quarter sessions within seventy-two hours after its term shall have expired, or after notice in writing to the holder that such license has been revoked. Any licensee failing to comply with any of the provisions of this section shall be guilty of a misdemeanor, and, upon conviction thereof, shall be sentenced to pay a fine of not more than five hundred dollars (\$500) or to undergo imprisonment for not more than (1) year, or both. Such failure shall be sufficient cause for the revocation of a license.

Section 9. Certificate, Pocket Card or Badge Lost or Destroyed.--If it shall be established to the satisfaction of the court of quarter sessions, in accordance with rules and regulations promulgated and established by such court, that an unexpired license certificate, pocket card or badge issued in accordance with the provisions of this act has been lost or destroyed without fault on the part of the holder, the court of quarter sessions shall issue a duplicate license certificate or pocket card for the unexpired portion of the term of the original license certificate, and shall issue a duplicate badge for the unexpired portion of the term of the original license, upon payment to the court of quarter sessions of an amount required for such duplicate badge.

Section 10. Removal of Bureau, Agency or Office.--If the holder of an unexpired license certificate issued pursuant to this act shall remove the bureau, agency, sub-agency, office or branch office to a place other than that described in the

license certificate, he shall, within the twenty-four hours immediately following such removal, give written notice of such removal to the court of quarter sessions. Such notice shall describe the premises to which such removal is made, and the date on which it was made. Such license certificate shall be sent to the court of quarter sessions. A judge of such court shall cause to be written or stamped across the face of such license certificate a statement signed by him to the effect that the holder of such license has removed, on the date stated in such written notice, such bureau, agency, sub-agency, office or branch office from the place originally described in such license certificate to the place described in such written notice, and such license certificate, with the indorsement thereon, shall then be returned to the licensee named therein.

Section 11. Renewal of Licenses.--(a) A license granted under the provisions of this act may be renewed by the clerk of courts upon application therefor by the holder thereof upon payment of fee and filing of surety bond, each in amounts equivalent to those specified in section 6 as pertaining to original licenses.

(b) A brief renewal application form shall be prescribed by the Attorney General. Fingerprints and references shall not be required with a renewal application. The clerk of courts shall reissue the license for a period of up to five years, without a mandatory waiting period, unless the clerk perceives a problem which requires submission of the renewal application to the court.

(c) A renewal period, within the meaning of this act, is considered as being six months from the date of expiration of a previously issued license.

(11 amended Dec. 14, 1992, P.L.817, No.132)

Section 12. License Certificates, Pocket Cards, Shields or Badges.--Upon the issuing of a license as hereinbefore provided, the court of quarter sessions shall issue to each such person, individual member of a partnership or association, or officer of a corporation making and filing a statement required by section 4 of this act, a pocket card, of such size and design as such court may prescribe, which card shall contain a photograph of the licensee, the name and business address of the licensee, and the imprint or impress of the seal of the court, and also a metal shield or badge, of such shape and description and bearing such inscription as the court may designate, which pocket card and badge shall be evidence of due authorization pursuant to the terms of this act. All persons to whom such license certificates, pocket cards, shields or badges shall have been issued shall be responsible for the safe keeping of the same, and shall not loan, let or allow any other person to use, wear or display such certificate, pocket card, shield or badge. No person shall wear or display any license certificate, pocket card, shield or badge, purporting to authorize the holder or wearer thereof to act as a private detective or investigator, unless the same shall have been duly issued pursuant to the provisions of this act. Failure to comply with the provisions of this section shall be sufficient cause for revocation of such license, and all such certificates, pocket cards, shields and badges shall be returned to the court of quarter sessions within seventy-two hours after the holder thereof has received notice in writing of the expiration or revocation of such license. No person, except as authorized in this section, shall wear or display a shield or badge of any design or material, purporting to indicate that the wearer or bearer thereof is a private detective or investigator or is

authorized to act as a private detective or investigator, unless required by law to do so. Any person violating the provisions of this section shall be guilty of a misdemeanor, and, upon conviction thereof, shall be sentenced to pay a fine of not more than five hundred dollars (\$500) or to undergo imprisonment for not more than one (1) year, or both.

Section 13. Employees.--(a) The holder of any license certificate issued pursuant to this act may employ to assist him in his work of private detective or investigator as described in section 2 and in the conduct of such business as many persons as he may deem necessary, and shall at all times during such employment be legally responsible for the good conduct in the business of each and every person so employed and shall be responsible for the reasonable supervision of said employees' conduct.

No holder of any unexpired license certificate issued pursuant to this act shall knowingly employ in connection with his or its business, in any capacity whatsoever, any person who has been convicted of a felony, or any of the following offenses, and who has not, subsequent to such conviction, received executive pardon therefor removing this disability: (1) illegally using, carrying or possessing a pistol or other dangerous weapon; (2) making or possessing burglar's instruments; (3) buying or receiving stolen property; (4) unlawful entry of a building; (5) aiding escape from prison; (6) unlawfully possessing or distributing habit forming narcotic drugs; (7) picking pockets or attempting to do so; (8) soliciting any person to commit sodomy or other lewdness; (9) any person whose private detective or investigator's license was revoked or application for such license was denied by the court of common pleas or by the authorities of any other state or territory because of conviction of any of the crimes or offenses specified in this section; (10) recklessly endangering another person; (11) terroristic threats; or (12) committing simple assault.

A holder of an unexpired license certificate issued pursuant to this act who knowingly employs a person who has been convicted of a felony or any of the offenses specified in this section shall be guilty of a misdemeanor and, upon conviction thereof, shall be sentenced to pay a fine of not more than five thousand dollars (\$5000) or to undergo imprisonment for not more than one (1) year, or both.

A first conviction for violation of this section may subject the license holder to revocation of his license by the issuing authority.

Upon the second conviction of a license holder for knowingly hiring a person convicted of a felony or other specified offenses in this section, the license of said holder shall be revoked.

Should the holder of an unexpired license certificate falsely state or represent that a person is or has been in his employ, such false statement or misrepresentation shall be sufficient cause for the revocation of such license. Any person falsely stating or representing that he is or has been a detective or employed by a detective agency shall be guilty of a misdemeanor, and, upon conviction thereof, shall be sentenced to pay a fine of not more than five hundred dollars (\$500) or to undergo imprisonment for not more than one (1) year, or both.

((a) amended May 26, 1988, P.L.405, No.68)

(b) No person shall hereafter be employed by any holder of a license certificate until he shall have executed and furnished

to such license certificate holder a verified statement to be known as "employee's statement," setting forth:

- (1) His full name, age and residence address;
- (2) The country of which he is a citizen;
- (3) The business or occupation engaged in for the three years immediately preceding the date of the filing of the statement, setting forth the place or places where such business or occupation was engaged in, and the name or names of employers, if any;

- (4) That he has not been convicted of a felony, or of any offense involving moral turpitude, or of any of the misdemeanors or offenses described in subsection (a) of this section;

- (5) That he holds current and valid certification under the act of October 10, 1974 (P.L.705, No.235), known as the "Lethal Weapons Training Act," if, as an incidence to employment, he will carry a lethal weapon.

- (6) Such further information as the court of common pleas may by rule require to show the good character, competency and integrity of the person executing the statement.

((b) amended May 26, 1988, P.L.405, No.68)

(c) The license holder shall act with due diligence in taking the necessary steps to ensure the veracity of the employee's statement, and immediately upon the verification of an employee's statement, the holder of a license certificate by whom such person has been or is to be employed shall cause two sets of fingerprints of the two hands of such person to be recorded in such manner as the court of common pleas may by rule prescribe. The holder of a license certificate shall immediately stamp, in indelible ink, the employee's statement and each set of fingerprints with the name, year and license certificate number of such holder, and a number, which number shall be determined by the number of such statements furnished to such holder and shall be in numerical sequence. ((c) amended May 26, 1988, P.L.405, No.68)

(d) The holder of a license certificate shall affix one set of such fingerprints to the employee's statement, in such manner that the prints can be examined without disclosing the contents of the employee's statement, and shall retain such statement and prints so long as he shall be licensed under this act.

(e) The holder of a license certificate shall file the other set of fingerprints with the court of common pleas. Proof of the employee's current and valid certification under the "Lethal Weapons Training Act," must also be submitted to the court if the employee will carry a lethal weapon as an incidence to employment. ((e) amended May 26, 1988, P.L.405, No.68)

(f) Within five days after the filing of such fingerprints, the court of quarter sessions shall cause such fingerprints to be compared with fingerprints of criminals now or hereafter filed in the records of the Pennsylvania State Police, and if the court finds any record affecting such prints, it shall immediately notify the holder of such license certificate and shall also refer the matter to the district attorney of the county. The quarter sessions court may also, from time to time, cause such fingerprints to be checked against the fingerprints of criminals now or hereafter filed in the records of the Pennsylvania State Police or of other official fingerprint files within or without this Commonwealth, and if the court finds that such person has been convicted of a felony or any other offense specified in subsection (a) of this section, he shall immediately notify the holder of such license certificate and shall also refer the matter to the district attorney. The quarter sessions court shall at all times be given access to

and may from time to time examine the fingerprints retained by the holder of a license certificate as provided in subsection (d) of this section.

(g) If any holder of a certificate shall file with the quarter sessions court the fingerprints of a person other than the person so employed, he shall be subject to a fine not exceeding five thousand dollars (\$5000) or to imprisonment not exceeding one (1) year, or both.

Section 14. Employees Not to Divulge Information or Make False Reports.--Any person who is or has been an employe of a holder of a license shall not divulge to any one other than his employer or as his employer shall direct, except as he may be required by law, any information acquired by him during such employment in respect of any of the work to which he shall have been assigned by such employer. Any such employe violating the provisions of this section, and any such employe who shall wilfully make a false report to his employer in respect of any of such work, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be sentenced to pay a fine of not more than five hundred dollars (\$500) or to undergo imprisonment for not more than one (1) year, or both. The employer of any employe believed to have violated this section shall, without any liability whatsoever upon said employer, supply the court of quarter sessions, and such court shall, should the facts and circumstances be deemed to warrant, conduct further investigation and submit the evidence thus acquired to the district attorney for appropriate action in accordance with the provisions of section 18 of this act.

Section 15. Application of Act.--Nothing in this act shall apply to any detective officer or man belonging to the Pennsylvania State Police, or to the police force of any county, city, borough, township, or incorporated town, or any employe of such State Police, or such police force, appointed or elected by due authority of law, while engaged in the performance of their official duties, nor to any person, partnership, association, or corporation, or any bureau or agency, whose business is exclusively the furnishing of information as to the business and financial standing and credit responsibility of persons, partnerships, associations, or corporations, or as to the personal habits and financial responsibility of applicants for insurance, indemnity bonds, or commercial credit, or of claimants under insurance policies, and whose business does not embrace other activities described in section 2 of this act, nor to any corporation duly authorized by the Commonwealth to operate a fire alarm protection business, nor to any person while engaged in the business of adjuster for an insurance company, nor to any person regularly employed as special agent, detective or investigator exclusively by one employer in connection with the affairs of that employer only, nor to any charitable or philanthropic society or association duly incorporated under the laws of the Commonwealth and which is organized and maintained for the public good and not for private profit, nor shall anything in this act contained be construed to affect in any way attorneys or counselors at law in the regular practice of their profession, but such exemption shall not enure to the benefit of any employe or representative of such attorney or counselor at law who is not employed solely, exclusively and regularly by such attorney or counselor at law, nor to persons in the exclusive employment of common carriers subject to regulation by the interstate commerce commission or the Public Utility Commission of the Commonwealth of Pennsylvania, nor to investigators in the employment of credit

bureaus. No person, partnership, association, corporation, or any bureau or agency, exempted hereunder from the application of this act, shall perform any manner of detective service as described in section 2 hereof for any other person, partnership, association, corporation, bureau or agency, whether for fee, hire, reward, other compensation, remuneration, or consideration, or as an accommodation without fee, reward, or remuneration, or by a reciprocal arrangement whereby such services are exchanged on request of parties thereto. The commission of a single act prohibited by this act shall constitute a violation thereof.

Nothing in this act shall apply to any telephone, telegraph or other telecommunications company subject to regulation by the Federal Communications Commission or the Public Utility Commission of the Commonwealth of Pennsylvania or to an employee of any such company while performing any investigatory activities engaged in by his employer.

Nothing in this act shall be construed to affect or prohibit the right of any person to form, or become affiliated with, or to continue as a member of, any union, association, society, or organization of his own choosing.

(15 amended Dec. 3, 1987, P.L.405, No.83)

Section 16. Unlawful Acts.--It is unlawful for the holder of a license issued under this act, or for any employee of such licensee, knowingly to commit any of the following acts, within or without the Commonwealth of Pennsylvania: to incite, encourage, or aid in the incitement or encouragement of, any person or persons who have become a party to any strike to do unlawful acts against the person or property of any one, or to incite, stir up, create, or aid in the inciting of discontent or dissatisfaction among the employees of any person, partnership, association, or corporation with the intention of having them strike, to interfere or prevent lawful and peaceful picketing during strikes, to interfere with, restrain, or coerce employees in the exercise of their right to form, join, or assist any labor organization of their own choosing, to interfere or hinder the lawful or peaceful collective bargaining between employees and employers, to pay, offer, or give any money, gratuity, favor, consideration, or other thing of value, directly or indirectly, to any person, for any verbal or written report of the lawful activities of employees in the exercise of their right of self-organization, to form, join, or assist labor organizations, and to bargain collectively through representatives of their own choosing, to advertise for, recruit, furnish or replace, or offer to furnish or replace, for hire or reward, within or without the Commonwealth of Pennsylvania, any help or labor, skilled or unskilled, or to furnish or offer to furnish armed guards, other than armed guards theretofore regularly employed, for the protection of payrolls, property or premises, for service upon property which is being operated in anticipation of or during the course or existence of a strike, or furnish armed guards upon the highways for persons involved in labor disputes, or to furnish or offer to furnish to employers or their agents, any arms, munitions, tear gas, implements, or any other weapons, or to send letters or literature to employers offering to eliminate labor unions, or distribute or circulate any list of members of a labor organization, or to advise any person of the membership of an individual in a labor organization for the express purpose of preventing those so listed or named from obtaining or retaining employment. The violation of any of the provisions of this section shall constitute a misdemeanor, and, upon conviction

thereof, shall be punishable by a fine of not less than five hundred dollars (\$500) nor more than five thousand dollars (\$5000), or to imprisonment for not less than six (6) months nor more than one (1) year or both. If the holder of a license shall violate any of the provisions in this section, the license holder may be subject to the revocation of his license by the issuing authority. Upon the second conviction of a license holder for violation of any of the provisions in this section, the license of said holder shall be revoked.

(16 amended May 26, 1988, P.L.405, No.68)

Section 16.1. Penalty for Unlicensed Acts.--Any person in violation of the provisions of section 3(a) by reason of engaging in the private detective business without a license, shall upon conviction thereof, be guilty of a misdemeanor of the third degree.

(16.1 added Oct. 4, 1978, P.L.1019, No.224)

Section 17. District Attorneys to Prosecute.--Criminal action for violation of this act shall be prosecuted by the district attorney of the county in which any violation of this act occurred.

Section 18. Reward May be Presumed.--In any prosecution under this act, any person, partnership, association, or corporation, who or which performs or commits any of the acts set forth in sections 2 and 3, shall be presumed to do so for a fee, compensation, valuable consideration, or reward.

Section 19. Roster of Licenses.--The clerk of each court of quarter sessions shall publish, at least once in each year, a roster of the names and addresses of all persons, partnerships, associations and corporations licensed by such court under the provisions of this act. A copy of each roster published by each clerk shall be mailed by him to any licensee upon request and without charge, and a copy of each such roster shall also be mailed by him to the commissioner, who shall keep a roster of the names and addresses of all persons, partnerships and corporations in the Commonwealth of Pennsylvania under the provisions of this act. A copy of the roster kept by the commissioner shall be mailed by him to any licensee upon request and without charge.

Section 20. Disposition of Fees and Other Revenue.--All fees and other moneys derived from the operation of this act shall, on the first day of each month, be paid by the court of quarter sessions into the county treasury.

Section 21. Repeals.--The act, approved the twenty-third day of May, one thousand eight hundred eighty-seven (Pamphlet Laws 173), entitled "An act to make the carrying on of the business of detectives without license a misdemeanor, and to regulate the licensing and powers of detectives," as amended by the act, approved the thirty-first day of May, one thousand nine hundred one (Pamphlet Laws 355), is hereby repealed.

All other acts and parts of acts are hereby repealed in so far as they are inconsistent with the provisions of this act.

1. 1915.3-2 CRIMINAL/ABUSE HISTORY;
2. SECTION 5328 (A) OF TITLE 23 OF THE PA CONSOLIDATED STATUTES;
3. SECTION 5329.1(A) AND (B);
4. HOUSE BILL NUMBER 414;
5. 18 PA. CONS. STAT. § 9123;
6. 43 PA. B. 4702 (NOT ATTACHED).

Rule 1915.3-2. Criminal or Abuse History.

(a) *Criminal or Abuse History Verification.* The petitioner must file and serve with the complaint, or any petition for modification, a verification regarding any criminal or abuse history of the petitioner and anyone living in the petitioner's household. The verification shall be substantially in the form set forth in subdivision (c) below. The petitioner must attach a blank verification form to a complaint or petition served upon the respondent. Although the respondent need not file a responsive pleading pursuant to Rule 1915.5, the respondent must file with the court a verification regarding any criminal or abuse history of the respondent and anyone living in the respondent's household on or before the initial in-person contact with the court (including, but not limited to, a conference with a conference officer or judge or conciliation, depending upon the procedure in the judicial district) but not later than 30 days after service of the complaint or petition upon the respondent. Both parties shall file and serve updated verifications five days prior to trial.

(b) *Initial Evaluation.* At the initial in-person contact with the court, the judge, conference officer, conciliator or other appointed individual shall perform an initial evaluation to determine whether the existence of a criminal or abuse history of either party or a party's household member poses a threat to the child and whether counseling is necessary. The initial evaluation required by 23 Pa.C.S. § 5329(c) shall not be conducted by a mental health professional. After the initial evaluation, the court may order further evaluation or counseling by a mental health professional if the court determines it is necessary. Consistent with the best interests of the child, the court may enter a temporary custody order on behalf of a party with a criminal history or a party with a household member who has a criminal history, pending the party's or household member's evaluation and/or counseling.

Official Note: The court shall consider evidence of criminal or abusive history presented by the parties. There is no obligation for the court to conduct an independent investigation of the criminal or abusive history of either party or members of their household. The court should not consider ARD or other diversionary programs. When determining whether a party or household member requires further evaluation or counseling, or whether a party or household member poses a threat to a child, the court should give consideration to the severity of the offense, the age of the offense, whether the victim of the offense was a child or family member and whether the offense involved violence.

(c) *Verification.* The verification regarding criminal or abuse history shall be substantially in the following form:

(Caption)
CRIMINAL RECORD / ABUSE HISTORY VERIFICATION

I

, hereby swear or affirm, subject to penalties of law including 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities that:

1. Unless indicated by my checking the box next to a crime below, neither I nor any other member of my household have been convicted or pled guilty or pled no contest or was adjudicated delinquent where the record is publicly available pursuant to the Juvenile Act, 42 Pa.C.S. § 6307 to any of the following crimes in Pennsylvania or a substantially equivalent crime in any other jurisdiction, including pending charges:

<i>Check all that apply</i>	<i>Crime</i>	<i>Other Self household member</i>	<i>Date of conviction, guilty plea, no contest plea or pending charges</i>	<i>Sentence</i>
<input type="checkbox"/>	18 Pa.C.S. Ch. 25 (relating to criminal homicide)	<input type="checkbox"/>	_____	_____
<input type="checkbox"/>	18 Pa.C.S. § 2702 (relating to aggravated assault)	<input type="checkbox"/>	_____	_____
<input type="checkbox"/>	18 Pa.C.S. § 2706 (relating to terroristic threats)	<input type="checkbox"/>	_____	_____
<input type="checkbox"/>	18 Pa.C.S. § 2709.1 (relating to stalking)	<input type="checkbox"/>	_____	_____
<input type="checkbox"/>	18 Pa.C.S. § 2901 (relating to kidnapping)	<input type="checkbox"/>	_____	_____
<input type="checkbox"/>	18 Pa.C.S. § 2902 (relating to unlawful restraint)	<input type="checkbox"/>	_____	_____
<input type="checkbox"/>	18 Pa.C.S. § 2903 (relating to false imprisonment)	<input type="checkbox"/>	_____	_____
<input type="checkbox"/>	18 Pa.C.S. § 2910 (relating to luring a child into a motor vehicle or structure)	<input type="checkbox"/>	_____	_____
<input type="checkbox"/>	18 Pa.C.S. § 3121 (relating to rape)	<input type="checkbox"/>	_____	_____
<input type="checkbox"/>	18 Pa.C.S. § 3122.1 (relating to statutory sexual assault)	<input type="checkbox"/>	_____	_____
<input type="checkbox"/>	18 Pa.C.S. § 3123 (relating to involuntary deviate sexual intercourse)	<input type="checkbox"/>	_____	_____
<input type="checkbox"/>	18 Pa.C.S. § 3124.1 (relating to sexual assault)	<input type="checkbox"/>	_____	_____
<input type="checkbox"/>	18 Pa.C.S. § 3125 (relating to aggravated indecent assault)	<input type="checkbox"/>	_____	_____
<input type="checkbox"/>	18 Pa.C.S. § 3126 (relating to indecent assault)	<input type="checkbox"/>	_____	_____

- | | | | | | |
|--------------------------|---|--------------------------|--------------------------|-------|-------|
| <input type="checkbox"/> | 18 Pa.C.S. § 3127
(relating to indecent exposure) | <input type="checkbox"/> | <input type="checkbox"/> | _____ | _____ |
| <input type="checkbox"/> | 18 Pa.C.S. § 3129
(relating to sexual intercourse with animal) | <input type="checkbox"/> | <input type="checkbox"/> | _____ | _____ |
| <input type="checkbox"/> | 18 Pa.C.S. § 3130
(relating to conduct relating to sex offenders) | <input type="checkbox"/> | <input type="checkbox"/> | _____ | _____ |
| <input type="checkbox"/> | 18 Pa.C.S. § 3301
(relating to arson and related offenses) | <input type="checkbox"/> | <input type="checkbox"/> | _____ | _____ |
| <input type="checkbox"/> | 18 Pa.C.S. § 4302
(relating to incest) | <input type="checkbox"/> | <input type="checkbox"/> | _____ | _____ |
| <input type="checkbox"/> | 18 Pa.C.S. § 4303
(relating to concealing death of child) | <input type="checkbox"/> | <input type="checkbox"/> | _____ | _____ |
| <input type="checkbox"/> | 18 Pa.C.S. § 4304
(relating to endangering welfare of children) | <input type="checkbox"/> | <input type="checkbox"/> | _____ | _____ |
| <input type="checkbox"/> | 18 Pa.C.S. § 4305
(relating to dealing in infant children) | <input type="checkbox"/> | <input type="checkbox"/> | _____ | _____ |
| <input type="checkbox"/> | 18 Pa.C.S. § 5902(b)
(relating to prostitution and related offenses) | <input type="checkbox"/> | <input type="checkbox"/> | _____ | _____ |
| <input type="checkbox"/> | 18 Pa.C.S. § 5903(c) or (d) (relating to obscene and other sexual materials and performances) | <input type="checkbox"/> | <input type="checkbox"/> | _____ | _____ |
| <input type="checkbox"/> | 18 Pa.C.S. § 6301 (relating to corruption of minors) | <input type="checkbox"/> | <input type="checkbox"/> | _____ | _____ |
| <input type="checkbox"/> | 18 Pa.C.S. § 6312 (relating to sexual abuse of children) | <input type="checkbox"/> | <input type="checkbox"/> | _____ | _____ |
| <input type="checkbox"/> | 18 Pa.C.S. § 6318 (relating to unlawful contact with minor) | <input type="checkbox"/> | <input type="checkbox"/> | _____ | _____ |
| <input type="checkbox"/> | 18 Pa.C.S. § 6320 (relating to sexual exploitation of children) | <input type="checkbox"/> | <input type="checkbox"/> | _____ | _____ |
| <input type="checkbox"/> | 23 Pa.C.S. § 6114 (relating to contempt for violation of protection order or agreement) | <input type="checkbox"/> | <input type="checkbox"/> | _____ | _____ |
| <input type="checkbox"/> | Driving under the influence of drugs or alcohol | <input type="checkbox"/> | <input type="checkbox"/> | _____ | _____ |
| <input type="checkbox"/> | Manufacture, sale, delivery, holding, offering for sale or possession of any controlled substance or other drug or device | <input type="checkbox"/> | <input type="checkbox"/> | _____ | _____ |

2. Unless indicated by my checking the box next to an item below, neither I nor any other member of my household have a history of violent or abusive conduct including the following:

Check

*all
that
apply*

*Other
Self household Date
member*

- | | | | | |
|----------------------------|--|----------------------------|----------------------------|-------|
| <input type="checkbox"/> (| A finding of abuse by a Children & Youth Agency or similar agency in Pennsylvania or similar statute in another jurisdiction | <input type="checkbox"/> (| <input type="checkbox"/> (| _____ |
| <input type="checkbox"/> (| Abusive conduct as defined under the Protection from Abuse Act in Pennsylvania or similar statute in another jurisdiction | <input type="checkbox"/> (| <input type="checkbox"/> (| _____ |
| <input type="checkbox"/> (| Other: _____ | <input type="checkbox"/> (| <input type="checkbox"/> (| _____ |

3. Please list any evaluation, counseling or other treatment received following conviction or finding of abuse:

4. If any conviction above applies to a household member, not a party, state that person's name, date of birth and relationship to the child.

5. If you are aware that the other party or members of the other party's household has or have a criminal/abuse history, please explain:

I verify that the information above is true and correct to the best of my knowledge, information or belief. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to

authorities.

Signature

Printed Name

Source

The provisions of this Rule 1915.3-2 adopted August 1, 2013, effective September 3, 2013, 43 Pa.B. 4702.

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5328. Factors to consider when awarding custody.

(a) Factors.--In ordering any form of custody, the court shall determine the best interest of the child by considering all relevant factors, giving weighted consideration to those factors which affect the safety of the child, including the following:

(1) Which party is more likely to encourage and permit frequent and continuing contact between the child and another party.

(2) The present and past abuse committed by a party or member of the party's household, whether there is a continued risk of harm to the child or an abused party and which party can better provide adequate physical safeguards and supervision of the child.

(2.1) The information set forth in section 5329.1(a) (relating to consideration of child abuse and involvement with protective services).

(3) The parental duties performed by each party on behalf of the child.

(4) The need for stability and continuity in the child's education, family life and community life.

(5) The availability of extended family.

(6) The child's sibling relationships.

(7) The well-reasoned preference of the child, based on the child's maturity and judgment.

(8) The attempts of a parent to turn the child against the other parent, except in cases of domestic violence where reasonable

safety measures are necessary to protect the child from harm.

(9) Which party is more likely to maintain a loving, stable, consistent and nurturing relationship with the child adequate for the child's emotional needs.

(10) Which party is more likely to attend to the daily physical, emotional, developmental, educational and special needs of the child.

(11) The proximity of the residences of the parties.

(12) Each party's availability to care for the child or ability to make appropriate child-care arrangements.

(13) The level of conflict between the parties and the willingness and ability of the parties to cooperate with one another. A party's effort to protect a child from abuse by another party is not evidence of unwillingness or inability to cooperate with that party.

(14) The history of drug or alcohol abuse of a party or member of a party's household.

(15) The mental and physical condition of a party or member of a party's household.

(16) Any other relevant factor.

§ 5329.1. Consideration of child abuse and involvement with protective services.

(a) Information sharing.--In accordance with section 6340(a) (5.1) (relating to release of information in confidential reports), where a party seeks any form of custody subject to the examination of the parties, the court shall determine:

(1) With respect to child abuse under Chapter 63 (relating to child protective services) or a child who is a victim of a crime under 18 Pa.C.S. (relating to crimes and offenses) which would constitute abuse under Chapter 63:

(i) Whether the child is the subject of an indicated or founded report of child abuse.

(ii) Whether a party or a member of the party's household has been identified as the perpetrator in an indicated or founded report of child abuse.

(iii) The date and circumstances of the child abuse.

(iv) The jurisdiction where the child abuse investigation took place.

(2) With respect to child protective services or general protective services under Chapter 63:

(i) Whether a party or a member of a party's household has been provided services.

(ii) The type of services provided.

(iii) The circumstances surrounding the provision of services.

(iv) The status of services.

(v) The date the services were provided.

(vi) The jurisdiction where the services were provided.

(b) Cooperation.--The following apply:

(1) The Department of Public Welfare and the county children and youth social service agency shall fully cooperate with the court and assist the court in fulfilling its duties under this section.

(2) The Department of Public Welfare and the county children and youth social service agency shall fully cooperate with the governing authority in order to implement the provisions of this section.

(3) The governing authority shall develop procedures to implement the provisions of this section.

(4) As used in this subsection, the term "governing authority" shall have the meaning given to it in 42 Pa.C.S. § 102 (relating to definitions).

(Dec. 18, 2013, P.L.1167, No.107, eff. Jan. 1, 2014)

2013 Amendment. Act 107 added section 5329.1. See section 6 of Act 107 in the appendix to this title for special provisions relating to applicability.

Cross References. Section 5329.1 is referred to in sections 5328, 6340 of this title; section 6307 of Title 42 (Judiciary and Judicial Procedure).

§ 5328. Factors to consider when awarding custody.

(a) Factors.--In ordering any form of custody, the court shall determine the best interest of the child by considering all relevant factors, giving weighted consideration to those factors which affect the safety of the child, including the following:

(1) Which party is more likely to encourage and permit frequent and continuing contact between the child and another party.

(2) The present and past abuse committed by a party or member of the party's household, whether there is a continued risk of harm to the child or an abused party and which party can better provide adequate physical safeguards and supervision of the child.

(2.1) The information set forth in section 5329.1(a) (relating to consideration of child abuse and involvement with protective services).

(3) The parental duties performed by each party on behalf of the child.

(4) The need for stability and continuity in the child's education, family life and community life.

(5) The availability of extended family.

(6) The child's sibling relationships.

(7) The well-reasoned preference of the child, based on the child's maturity and judgment.

(8) The attempts of a parent to turn the child against the other parent, except in cases of domestic violence where reasonable safety measures are necessary to protect the child from harm.

(9) Which party is more likely to maintain a loving, stable, consistent and nurturing relationship with the child adequate for the child's emotional needs.

(10) Which party is more likely to attend to the daily physical, emotional, developmental, educational and special needs of the child.

(11) The proximity of the residences of the parties.

(12) Each party's availability to care for the child or ability to make appropriate child-care arrangements.

(13) The level of conflict between the parties and the willingness and ability of the parties to cooperate with one another. A party's effort to protect a child from abuse by another party is not evidence of unwillingness or inability to cooperate with that party.

(14) The history of drug or alcohol abuse of a party or member of a party's household.

(15) The mental and physical condition of a party or member of a party's household.

(16) Any other relevant factor.

(b) Gender neutral.--In making a determination under subsection (a), no party shall receive preference based upon gender in any award granted under this chapter.

(c) Grandparents and great-grandparents.--

(1) In ordering partial physical custody or supervised physical custody to a party who has standing under section 5325(1) or (2) (relating to standing for partial physical custody and supervised physical custody), the court shall consider the following:

(i) the amount of personal contact between the child

and the party prior to the filing of the action;

(ii) whether the award interferes with any parent-child relationship; and

(iii) whether the award is in the best interest of the child.

(2) In ordering partial physical custody or supervised physical custody to a parent's parent or grandparent who has standing under section 5325(3), the court shall consider whether the award:

(i) interferes with any parent-child relationship; and

(ii) is in the best interest of the child.

(Dec. 18, 2013, P.L.1167, No.107, eff. Jan. 1, 2014)

2013 Amendment. Act 107 added subsec. (a)(2.1). See section 6 of Act 107 in the appendix to this title for special provisions relating to applicability.

Cross References. Section 5328 is referred to in sections 5323, 6340 of this title; section 6307 of Title 42 (Judiciary and Judicial Procedure).

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 414 Session of
2013

INTRODUCED BY O'NEILL, CALTAGIRONE, BAKER, V. BROWN, CARROLL,
CLYMER, COHEN, D. COSTA, DeLUCA, FLECK, GINGRICH, GRELL,
HARHART, C. HARRIS, KORTZ, MAHONEY, MAJOR, MILLARD,
R. MILLER, PICKETT, ROCK, ROZZI, STEPHENS, TALLMAN, TOEPEL,
YOUNGBLOOD, HESS, STERN, MURT, FRANKEL, HACKETT AND TOOHIL,
JANUARY 29, 2013

SENATOR CORMAN, APPROPRIATIONS, RE-REPORTED AS AMENDED, DECEMBER
9, 2013

AN ACT

1 Amending Titles 23 (Domestic Relations) and 42 (Judiciary and
2 Judicial Procedure) of the Pennsylvania Consolidated
3 Statutes, in child custody, further providing for factors to
4 consider when awarding custody; providing for consideration
5 of child abuse and involvement with child protective
6 services; in child protective services, further providing for
7 release of information in confidential reports AND FOR COUNTY <--
8 AGENCY REQUIREMENTS FOR GENERAL PROTECTIVE SERVICES; and, in <--
9 juvenile matters, further providing for inspection of court
10 files and records AND FOR LAW ENFORCEMENT RECORDS. <--

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

13 Section 1. Section 5328(a) of Title 23 of the Pennsylvania
14 Consolidated Statutes is amended by adding a paragraph to read:
15 § 5328. Factors to consider when awarding custody.

16 (a) Factors.--In ordering any form of custody, the court
17 shall determine the best interest of the child by considering
18 all relevant factors, giving weighted consideration to those
19 factors which affect the safety of the child, including the

1 following:

2 * * *

3 (2.1) The information set forth in section 5329.1(a)(1)
4 and (2) (relating to consideration of child abuse and
5 involvement with ~~child~~ protective services). <--

6 * * *

7 Section 2. Title 23 is amended by adding a section to read:
8 § 5329.1. Consideration of child abuse and involvement with
9 ~~child~~ protective services. <--

10 (a) Information sharing.--In accordance with section 6340(a)
11 (5.1) (relating to release of information in confidential
12 reports), where a party seeks any form of custody SUBJECT TO THE <--
13 EXAMINATION OF THE PARTIES, the court shall determine:

14 (1) With respect to child abuse under Chapter 63
15 (relating to child protective services) or a child who is a
16 victim of a crime under 18 Pa.C.S. (relating to crimes and
17 offenses) which would constitute abuse under Chapter 63:

18 (i) Whether the child is the subject of an indicated
19 or founded report of child abuse.

20 (ii) Whether a party or a member of the party's
21 household has been identified as the perpetrator in an
22 indicated or founded report of child abuse.

23 (iii) The date and circumstances of the child abuse.

24 (iv) The jurisdiction where the child abuse
25 investigation took place.

26 (2) With respect to CHILD PROTECTIVE SERVICES OR general <--
27 protective services under Chapter 63:

28 (i) Whether a party or a member of a party's
29 household has been provided ~~general protective~~ services. <--

30 (ii) The type of services provided.

1 (iii) The circumstances surrounding the provision of
2 services.

3 (iv) ~~Whether the services were effective~~ THE STATUS <--
4 OF SERVICES.

5 (v) The date the services were provided.

6 (vi) The jurisdiction where the services were
7 provided.

8 (b) Cooperation.--The following apply:

9 (1) The Department of Public Welfare and the county
10 children and youth social service agency shall fully
11 cooperate with the court and assist the court in fulfilling
12 its duties under this section.

13 (2) The Department of Public Welfare and the county
14 children and youth social service agency shall fully
15 cooperate with the governing authority in order to implement
16 the provisions of this section.

17 (3) The governing authority shall develop procedures to
18 implement the provisions of this section.

19 (4) As used in this subsection, the term "governing
20 authority" shall have the meaning given to it in 42 Pa.C.S. §
21 102 (relating to definitions).

22 Section 3. Section 6340(a)(5.1) of Title 23 is amended to
23 read:

24 § 6340. Release of information in confidential reports.

25 (a) General rule.--Reports specified in section 6339
26 (relating to confidentiality of reports) shall only be made
27 available to:

28 * * *

29 (5.1) A court of common pleas in connection with any
30 matter involving custody of a child[. The department shall

1 provide to the court any reports and files which the court
2 considers relevant.] as set forth in sections 5328 (relating
3 to factors to consider when awarding custody) and 5329.1
4 (relating to consideration of child abuse and involvement
5 with ~~child~~ protective services). <--

6 * * *

7 ~~Section 4. Section 6307(a) of Title 42 is amended by adding~~ <--
8 ~~a paragraph to read:~~

9 SECTION 4. SECTION 6375 OF TITLE 23 IS AMENDED BY ADDING A <--
10 SUBSECTION TO READ:

11 § 6375. COUNTY AGENCY REQUIREMENTS FOR GENERAL PROTECTIVE
12 SERVICES.

13 * * *

14 (O) AVAILABILITY OF INFORMATION.--INFORMATION RELATED TO
15 REPORTS OF A CHILD IN NEED OF GENERAL PROTECTIVE SERVICES SHALL
16 BE AVAILABLE TO INDIVIDUALS AND ENTITIES TO THE EXTENT THEY ARE <--
17 AUTHORIZED TO RECEIVE INFORMATION UNDER SECTION 6340 (RELATING
18 TO RELEASE OF INFORMATION IN CONFIDENTIAL REPORTS).

19 SECTION 5. SECTIONS 6307(A) AND 6308(A) OF TITLE 42 ARE
20 AMENDED BY ADDING PARAGRAPHS TO READ:

21 § 6307. Inspection of court files and records.

22 (a) General rule.--All files and records of the court in a
23 proceeding under this chapter are open to inspection only by:

24 * * *

25 (4.1) A court in determining custody, as provided in 23
26 Pa.C.S. §§ 5328 (relating to factors to consider when
27 awarding custody) and 5329.1 (relating to consideration of
28 child abuse and involvement with ~~child~~ protective services). <--

29 * * *

30 (6.5) THE DEPARTMENT OF PUBLIC WELFARE FOR USE IN <--

1 DETERMINING WHETHER AN INDIVIDUAL NAMED AS THE PERPETRATOR OF
2 AN INDICATED REPORT OF CHILD ABUSE SHOULD BE EXPUNGED FROM
3 THE STATEWIDE DATABASE PURSUANT TO THIS CHAPTER. <--

4 * * *

5 § 6308. LAW ENFORCEMENT RECORDS.

6 (A) GENERAL RULE.--LAW ENFORCEMENT RECORDS AND FILES
7 CONCERNING A CHILD SHALL BE KEPT SEPARATE FROM THE RECORDS AND
8 FILES OF ARRESTS OF ADULTS. UNLESS A CHARGE OF DELINQUENCY IS
9 TRANSFERRED FOR CRIMINAL PROSECUTION UNDER SECTION 6355
10 (RELATING TO TRANSFER TO CRIMINAL PROCEEDINGS), THE INTEREST OF
11 NATIONAL SECURITY REQUIRES, OR THE COURT OTHERWISE ORDERS IN THE
12 INTEREST OF THE CHILD, THE RECORDS AND FILES SHALL NOT BE OPEN
13 TO PUBLIC INSPECTION OR THEIR CONTENTS DISCLOSED TO THE PUBLIC
14 EXCEPT AS PROVIDED IN SUBSECTION (B); BUT INSPECTION OF THE
15 RECORDS AND FILES IS PERMITTED BY:

16 * * *

17 (6) THE DEPARTMENT OF PUBLIC WELFARE FOR USE IN
18 DETERMINING WHETHER AN INDIVIDUAL NAMED AS THE PERPETRATOR OF
19 AN INDICATED REPORT OF CHILD ABUSE SHOULD BE EXPUNGED FROM
20 THE STATEWIDE DATABASE PURSUANT TO THIS CHAPTER. <--

21 * * *

22 Section ~~5~~ 6. The amendment or addition of 23 Pa.C.S. §§ <--
23 5328(a)(2.1), 5329.1 and ~~6340(a)(5.1) and 42 Pa.C.S. §~~ <--
24 ~~6307(a)(4.1)~~, 6340(A)(5.1) AND 6375(O) AND 42 PA.C.S. §§ 6307(A) <--
25 (4.1) AND (6.5) AND 6308(A)(6) shall apply to:

26 (1) Any action regarding custody of a child under 23
27 Pa.C.S. Ch. 53 that is filed on or after the effective date
28 of this ~~act~~ SECTION. <--

29 (2) Any petition to modify a custody order under 23
30 Pa.C.S. Ch. 53 that is filed on or after the effective date

1 of this ~~act~~ SECTION. <--
2 Section ~~6~~ 7. This act shall take effect ~~in 60 days~~ JANUARY <--
3 1, 2014, OR IMMEDIATELY, WHICHEVER OCCURS LATER.

§ 9123. Juvenile records.

(a) Expungement of juvenile records.--

Notwithstanding the

provisions of section 9105 (relating to other criminal justice

information) and except upon cause shown, expungement of records

of juvenile delinquency cases wherever kept or retained shall

occur after 30 days' notice to the district attorney, whenever

the court upon its motion or upon the motion of a child or the

parents or guardian finds:

(1) a complaint is filed which is not substantiated or

the petition which is filed as a result of a complaint is

dismissed by the court;

(2) six months have elapsed since the final discharge of

the person from supervision under a consent decree and no

proceeding seeking adjudication or conviction is pending;

(3) five years have elapsed since the final discharge of

the person from commitment, placement, probation or any other

disposition and referral and since such final discharge, the

person has not been convicted of a felony, misdemeanor or

adjudicated delinquent and no proceeding is pending seeking

such conviction or adjudication; or

(4) the individual is 18 years of age or older, the

attorney for the Commonwealth consents to the expungement and

a court orders the expungement after giving

consideration to

the following factors:

- (i) the type of offense;
- (ii) the individual's age, history of employment, criminal activity and drug or alcohol problems;
- (iii) adverse consequences that the individual may suffer if the records are not expunged; and
- (iv) whether retention of the record is required for purposes of protection of the public safety.

(b) Notice to prosecuting attorney.--The court shall give notice of the applications for the expungement of juvenile records to the prosecuting attorney.

(c) Dependent children.--All records of children alleged to be or adjudicated dependent may be expunged upon court order after the child is 21 years of age or older. (Dec. 14, 1979, P.L.556, No.127, eff. imd.; June 11, 1982, P.L.476, No.138, eff. 180 days; Dec. 11, 1986, P.L.1517, No.164, eff. 60 days; Mar. 15, 1995, 1st Sp.Sess., P.L.978, No.7, eff. 60 days)

Cross References. Section 9123 is referred to in section 9105 of this title.

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(Cite as: 954 A.2d 603)

H

Superior Court of Pennsylvania.
COMMONWEALTH of Pennsylvania, Appellant
v.
David C. DECK, Traci M. Georgiadis, John F. Georgiadis, Jr., Appellees.

Argued March 18, 2008.
Filed July 9, 2008.

Background: Defendant's motion to preclude introduction of audio tapes was granted by the Court of Common Pleas, Cumberland County, No(s). Criminal Division, No(s). CP-21-CR-0001907-2006, CP-21-CR-0001908-2006, CP-21-CR-0001913-2006, Oler, J., in prosecution for statutory sexual assault, involuntary deviate sexual intercourse, aggravated indecent assault, indecent assault, and sexual abuse of children. The Commonwealth appealed.

Holdings: The Superior Court, Lally-Green, J., No. 884 MDA 2007, held that:

- (1) recording by victim of telephone conversation with defendant was prohibited by Wiretap Act, and
- (2) prohibition on interception of wire communications without consent of all parties had no exception for teenage assault victim.

Affirmed.

West Headnotes

[1] Criminal Law 110 1134.17(2)

110 Criminal Law
110XXIV Review
110XXIV(L) Scope of Review in General
110XXIV(L)2 Matters or Evidence Con-

sidered

110k1134.17 Evidence

110k1134.17(2) k. Evidence wrong-
fully obtained. Most Cited Cases

Criminal Law 110 1134.49(4)

110 Criminal Law
110XXIV Review
110XXIV(L) Scope of Review in General
110XXIV(L)4 Scope of Inquiry
110k1134.49 Evidence
110k1134.49(4) k. Illegally obtained
evidence. Most Cited Cases

Criminal Law 110 1144.12

110 Criminal Law
110XXIV Review
110XXIV(M) Presumptions
110k1144 Facts or Proceedings Not Shown
by Record
110k1144.12 k. Reception of evidence.
Most Cited Cases

When the Commonwealth appeals from a suppression order, the Superior Court follows a clearly defined standard of review and considers only the evidence from the defendant's witnesses together with the evidence of the prosecution that, when read in the context of the entire record, remains uncontradicted; the suppression court's findings of facts bind an appellate court if the record supports those findings, but the suppression court's conclusions of law are not binding on an appellate court, whose duty is to determine if the suppression court properly applied the law to the facts.

[2] Telecommunications 372 1428

954 A.2d 603, 2008 PA Super 150
(Cite as: 954 A.2d 603)

372 Telecommunications

372X Interception or Disclosure of Electronic Communications; Electronic Surveillance

372X(A) In General

372k1427 Constitutional and Statutory Provisions

372k1428 k. In general. Most Cited Cases

Because the Wiretap Act focuses on the protection of privacy, its provisions must be construed strictly. 18 Pa.C.S.A. § 5701 et seq.

[3] States 360 ⚡18.81

360 States

360I Political Status and Relations

360I(B) Federal Supremacy; Preemption

360k18.81 k. Telecommunications; wiretap. Most Cited Cases

Telecommunications 372 ⚡1433

372 Telecommunications

372X Interception or Disclosure of Electronic Communications; Electronic Surveillance

372X(A) In General

372k1433 k. Preemption. Most Cited Cases

Wiretap Act is modeled on Title III of the Omnibus Crime Control and Safe Streets Act of 1968, which authorizes states to adopt wiretap statutes that trigger greater, but not lesser, protection than that available under federal law. 18 U.S.C.A. § 2516(2)18 Pa.C.S.A. § 5701 et seq.

[4] Telecommunications 372 ⚡1440

372 Telecommunications

372X Interception or Disclosure of Electronic

Communications; Electronic Surveillance

372X(A) In General

372k1435 Acts Constituting Interception or Disclosure

372k1440 k. Persons concerned; consent. Most Cited Cases

Tape recording by a 15 year old sexual assault victim of her telephone conversation with defendant, her mother's 40 year old boyfriend, without defendant's knowledge or consent, was prohibited by Wiretap Act as a wire communication intercepted without consent of all parties, although defendant may not have had an expectation of privacy in a conversation he was told would be conducted over victim's speakerphone, and while he had the door to his own office open. 18 Pa.C.S.A. §§ 5702, 5703, 5704.

[5] Telecommunications 372 ⚡1437

372 Telecommunications

372X Interception or Disclosure of Electronic Communications; Electronic Surveillance

372X(A) In General

372k1435 Acts Constituting Interception or Disclosure

372k1437 k. Telephone communications. Most Cited Cases

The Wiretap Act prohibits the interception, disclosure or use of a telephone conversation as a wire communication under, even if the telephone conversation is not also an oral communication as defined in the Act. 18 Pa.C.S.A. §§ 5702, 5703.

[6] Telecommunications 372 ⚡1440

372 Telecommunications

372X Interception or Disclosure of Electronic Communications; Electronic Surveillance

372X(A) In General

372k1435 Acts Constituting Interception or

954 A.2d 603, 2008 PA Super 150

(Cite as: 954 A.2d 603)

Disclosure

372k1440 k. Persons concerned; consent. Most Cited Cases

The Wiretap Act's prohibition on the interception of wire communications without consent of all the parties had no exception for a teenage assault victim who tape recorded a telephone conversation with defendant, her mother's boyfriend, in trying to convince the authorities of her truthfulness. 18 U.S.C.A. § 2516(2) 18 Pa.C.S.A. § 5701 et seq.

[7] Statutes 361 ⚡1111

361 Statutes

361III Construction

361III(C) Clarity and Ambiguity; Multiple Meanings

361k1107 Absence of Ambiguity; Application of Clear or Unambiguous Statute or Language

361k1111 k. Plain language; plain, ordinary, common, or literal meaning. Most Cited Cases (Formerly 361k183)

Statutes 361 ⚡1138

361 Statutes

361III Construction

361III(D) Particular Elements of Language

361k1138 k. Departing from or varying language of statute. Most Cited Cases (Formerly 361k190)

Statutes 361 ⚡1163

361 Statutes

361III Construction

361III(E) Statute as a Whole; Relation of Parts to Whole and to One Another

361k1162 Exceptions, Limitations, and Conditions

361k1163 k. In general. Most Cited

Cases

(Formerly 361k228)

Superior Court does not have the authority to ignore clear statutory language, even in pursuit of a statute's spirit, or to add exceptions to statutory rules that the General Assembly has chosen not to include in an enactment. 1 Pa.C.S.A. § 1921(b).

[8] Criminal Law 110 ⚡1129(3)

110 Criminal Law

110XXIV Review

110XXIV(H) Assignment of Errors

110k1129 In General

110k1129(3) k. Specification of errors.

Most Cited Cases

Issue regarding admissibility of recording of a telephone conversation that was prohibited by the Wiretap Act, under the inevitable discovery doctrine, but which was not raised by Commonwealth in its statement of errors under the Rules of Appellate Procedure, was waived on appeal. 18 Pa.C.S.A. § 5721.1(c)(6); Rules App.Proc., Rule 1925(b), 42 Pa.C.S.A.

*605 Michelle H. Sibert, Asst. Dist. Atty., for Com., appellant.

Matthew R. Gover, Harrisburg, for Deck, appellee.

BEFORE: STEVENS, LALLY-GREEN, and FITZGERALD ^{FN*}, JJ.

FN* Former Justice specially assigned to the Superior Court.

OPINION BY LALLY-GREEN, J.:

¶ 1 Appellant, the Commonwealth of Pennsylvania, appeals from the trial court's order entered on

954 A.2d 603, 2008 PA Super 150
(Cite as: 954 A.2d 603)

April 23, 2007, granting the motion to preclude introduction of audio tapes filed by Appellee, David C. Deck ("Deck"). We affirm.

¶ 2 The relevant facts and procedural history may be summarized as follows. In July of 2006, Deck resided with his girlfriend and her minor daughter, C.P. C.P. sought to prove to her mother and the police that Deck was engaging in sexual relations with her. C.P. knew that the police used recording devices to monitor conversations, based on her participation in a previous police investigation. On July 6, 2006, C.P. telephoned Deck at his place of work. Deck was in his office with the door open when he took C.P.'s call. At the start of their conversation, C.P. told Deck that she had placed him on the speakerphone. Without Deck's knowledge or consent, C.P. recorded the conversation on a cassette tape in an answering machine. Later in the day, C.P. went to the Fairview Township Police Department and gave the tape of the telephone conversation to Officer Tyson Baker.

¶ 3 On September 1, 2006, at Criminal Action No. CP-21-CR-0001907-2006, Deck was charged with statutory sexual assault, involuntary deviate sexual intercourse, aggravated indecent assault, indecent assault, and sexual abuse of children. 18 Pa.C.S.A. §§ 3122.1, 3123(a)(7), 3125, 3126(a)(8), 6312, 306.^{FN1}

FN1. On September 1, 2006, the Commonwealth also charged John F. Georgiadis, Jr. and Traci M. Georgiadis with engaging in involuntary deviate sexual intercourse with C.P. at Criminal Action No. CP-21-CR-0001908-2006 and Criminal Action No. CP-21-CR-0001913-2006, respectively. On September 1, 2006, the Commonwealth filed a notice of trial joinder, notifying the parties that it intends to try these two cases and Deck's case together.

¶ 4 On December 20, 2006, Deck filed a motion to

preclude introduction of the audio tape. Deck asserted that the tape recording of his telephone conversation with C.P. was inadmissible at any proceeding against him because it was made in violation of the Wiretapping and Electronic Surveillance Control Act ("Wiretap Act" or "Act"), 18 Pa.C.S.A. § 5701 *et seq.*

¶ 5 Following a hearing, on April 23, 2007, the trial court granted Deck's motion and suppressed the tape recording. The trial court determined that the telephone conversation between Deck and C.P. was a wire communication under Section 5702 of the Wiretap Act, and that as such, it was protected from interception under Section 5703. *See* 18 Pa.C.S.A. §§ 5702, 5703. The trial court also determined that the exception in Section 5704(4), which allows for the interception of wire communications where all the parties to the recording have consented, did not apply because Deck's prior consent was not obtained. *See* 18 Pa.C.S.A. § 5704(4). Further, the trial court declined the Commonwealth's request to extend other exceptions set forth in Section 5704 to the circumstances of this case. This appeal followed.^{FN2}

FN2. In its notice of appeal, the Commonwealth certified that the trial court's order will terminate or substantially handicap Deck's prosecution. The Commonwealth's appeal, although interlocutory, was properly taken under Pa.R.A.P. 311(d).

On May 23, 2007, the trial court ordered the Commonwealth to file a Pa.R.A.P. 1925(b) statement within 14 days. The Commonwealth complied, filing a Rule 1925(b) statement on May 29, 2007. The trial court filed a Rule 1925(a) opinion on June 19, 2007.

¶ 6 The Commonwealth raises the following issue:

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1. Did the trial court err in suppressing an audio tape of a telephone conversation between the 40 year-old defendant and the 15 year-old victim where, the defendant did not have an expectation of privacy which society is willing to recognize as reasonable?

Commonwealth's Brief at 4.

[1] ¶ 7 In reviewing the grant of a motion to suppress, we are guided by the following standard of review:

When the Commonwealth appeals from a suppression order, we follow a clearly defined standard of review and consider only the evidence from the defendant's witnesses together with the evidence of the prosecution that, when read in the context of the entire record, remains uncontradicted. The suppression court's findings of facts bind an appellate court if the record supports those findings. The suppression court's conclusions of law, however, are not binding on an appellate court, whose duty is to determine if the suppression court properly applied the law to the facts.

Commonwealth v. Scott, 916 A.2d 695, 696 (Pa.Super.2007) (quotation omitted). Further, the construction of a statute raises a question of law. On questions of law, our standard of review is de novo, and our scope of review is plenary. *Commonwealth v. Bavusa*, 574 Pa. 620, 832 A.2d 1042, 1052 (2003).

¶ 8 In this appeal, the trial court's decision to suppress the recording of Deck's telephone conversation with C.P. was premised on the court's construction and application of the Wiretap Act's provisions. Therefore, our review is guided by the rules set forth in the Statutory Construction Act of 1972 ("SCA"). 1 Pa.C.S.A. § 1501 *et seq.* The SCA instructs that "the object of all interpretation and construction of statutes is to ascertain and effectuate the intention of the General Assembly. Every statute shall be construed, if

possible, to give effect to all its provisions." 1 Pa.C.S.A. § 1921(a). Further, "[w]hen the words of a statute are clear and free from all ambiguity, the letter of it is not to be disregarded under the pretext of pursuing its spirit." 1 Pa.C.S.A. § 1921(b). When, however, the words of the statute are not explicit, the intention of the General Assembly may be ascertained by considering other matters. 1 Pa.C.S.A. § 1921(c).

¶ 9 Under the SCA, "[w]ords and phrases shall be construed according to the rules of grammar and according to their common and approved usage[.]" 1 Pa.C.S.A. § 1903(a). If the General Assembly defines words that are used in a statute, those definitions are binding. *Commonwealth v. Kimmel*, 523 Pa. 107, 565 A.2d 426, 428 (1989). A court may presume that in drafting the statute, the General Assembly intended the entire statute to be effective. 1 Pa.C.S.A. § 1922(2). Thus, when construing one section of a statute, courts must read that section not by itself, but with reference to, and in light of, the other sections. *607 *Commonwealth v. Mayhue*, 536 Pa. 271, 639 A.2d 421, 439 (1994).

[2][3] ¶ 10 Our review is also guided by certain pronouncements the Supreme Court has made regarding the Wiretap Act's construction. Specifically, the Court has instructed that because the Act focuses on the protection of privacy, its provisions must be construed strictly. *Commonwealth v. Spangler*, 570 Pa. 226, 809 A.2d 234, 237 (2002). In addition, the Court has emphasized that the Wiretap Act is modeled on Title III ("Title III") of the Omnibus Crime Control and Safe Streets Act of 1968. Title III authorizes states to adopt wiretap statutes that trigger greater, but not lesser, protection than that available under federal law. *Id.* at 237, citing 18 U.S.C. § 2516(2) and *Commonwealth v. Birdseye*, 543 Pa. 251, 670 A.2d 1124, 1126 (1996).

[4] ¶ 11 With these principles in mind, we begin with the Wiretap Act's framework. As a general rule, in Section 5703, the Act prohibits the interception,

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disclosure or use of any wire, electronic or oral communication. 18 Pa.C.S.A. § 5703. In Section 5704, however, the Act sets forth several exceptions to Section 5703's prohibitions and allows for the interception of a wire, electronic or oral communication in designated circumstances. 18 Pa.C.S.A. § 5704. In Section 5721.1, the Act provides a statutory exclusionary rule that authorizes the suppression of interceptions that were not carried out in compliance with Section 5704's exceptions. 18 Pa.C.S.A. § 5721.1(b); *Commonwealth v. Spangler*, 809 A.2d at 238 & n. 7.

¶ 12 Turning to the Wiretap Act's specific terms, we start with Section 5703, which states:

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

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

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

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

18 Pa.C.S.A. § 5703.

¶ 13 The Act's definitions for "intercept," "oral communication," "wire communication," and "aural transfer" are as follows:

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:

* * *

"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.

"Oral communication." Any oral communication uttered by a person possessing an expectation that such communication is not subject to interception under circumstances justifying such expectation. The term does not include any electronic communication.

*608 * * *

"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 includes any electronic storage of such communication.

* * *

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

18 Pa.C.S.A. § 5702.

¶ 14 One of the exceptions in Section 5704 to Section 5703's prohibitions states in relevant part that "[i]t shall not be unlawful and no prior court approval

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shall be required under this chapter for ... a person to intercept a wire, electronic or oral communication, where all parties to the communication have given prior consent to such interception.” 18 Pa.C.S.A. § 5704(4).

¶ 15 Presently, the Commonwealth does not dispute that the telephone conversation between C.P. and Deck is a wire communication under Section 5702 of the Wiretap Act ^{FN3} or that Section 5703 prohibits the interception of wire communications. 18 Pa.C.S.A. §§ 5702, 5703. Nevertheless, the Commonwealth argues that the telephone conversation recording should not be suppressed because Deck had no reasonable expectation that his telephone conversation with C.P. was private. In other words, the Commonwealth contends that Section 5703 does not protect a telephone conversation from interception merely because it constitutes a wire communication under Section 5702. According to the Commonwealth, for a telephone conversation to be protected under Section 5703, it must also be an oral communication under Section 5702, *i.e.*, made by a person who possessed an expectation that the conversation was private and not subject to interception. *Id.*

FN3. In *Commonwealth v. DeBlase*, 357 Pa.Super. 71, 515 A.2d 564, 566 (1986), *appeal dismissed as improvidently granted*, 517 Pa. 323, 536 A.2d 339 (1988), this Court concluded that wire communications as defined in Section 5702 of the Wiretap Act include telephone conversations.

¶ 16 Based on the definitions in and language of the Wiretap Act, we disagree. Section 5702 clearly and explicitly differentiates between oral communications and wire communications, giving a distinct definition for each. 18 Pa.C.S.A. § 5702. Section 5702's definition of wire communication does not include an expectation of privacy on the part of the speaker, as does its definition of oral communication. *Id.* Section 5703 is written in the disjunctive, and

protects “wire, electronic or oral communications” from interception, disclosure or use. 18 Pa.C.S.A. § 5703 (emphasis added). *See In re Paulmier*, 594 Pa. 433, 937 A.2d 364, 372 (2007) (recognizing that the word “or” when used in a statute is disjunctive, used to connect alternative words or phrases). Section 5703 does not state that a wire communication must also be an oral communication to be protected. *Id.*

¶ 17 Moreover, we remain mindful of our Supreme Court's admonition in *Spangler* that the Wiretap Act is modeled on Title III and that the Wiretap Act may not grant less protection than that available under the federal statute. Accordingly, *609 we observe that the language of the definitions of wire communication and oral communication in the Wiretap Act and those in Title III are virtually identical, ^{FN4} and that the federal courts have held that telephone conversations are wire communications which, unlike oral communications, are protected against interception without regard to the speaker's expectation of privacy. *See, e.g., Briggs v. American Air Filter Co., Inc.*, 630 F.2d 414, 417 & n. 4 (5th Cir.1980).

FN4. Title III defines “wire communication” and “oral communication” as follows:

As used in this chapter—

(1) “wire communication” means any aural transfer made in whole or in part through the use of facilities for the transmission of communications by the aid of wire, cable, or other like connection between the point of origin and the point of reception (including the use of such connection in a switching station) furnished or operated by any person engaged in providing or operating such facilities for the transmission of interstate or foreign communications or communications affecting interstate or foreign commerce;

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(2) “oral communication” means any oral communication uttered by a person exhibiting an expectation that such communication is not subject to interception under circumstances justifying such expectation, but such term does not include any electronic communication[.]

18 U.S.C. § 2510(1), (2).

[5] ¶ 18 In light of *Spangler* and the discussion above, we conclude that Section 5703 of the Wiretap Act prohibits the interception, disclosure or use of a telephone conversation as a wire communication under Section 5702, even if the telephone conversation is not also an oral communication under Section 5702. 18 Pa.C.S.A. §§ 5702, 5703. This, in turn, leads us to conclude that Section 5703 prohibited the interception, disclosure or use of the telephone conversation between C.P. and Deck. *Id.* Deck's expectation of privacy is irrelevant.

¶ 19 The Commonwealth's remaining arguments are unavailing. First, the Commonwealth contends that Deck's consent was not required under Section 5704(4) of the Act for the recording of the telephone conversation to be lawful and, therefore, admissible. Again we disagree. The trial court's decision to suppress is compelled by the terms of Section 5704(4) itself, which clearly state that it is not unlawful to intercept a wire communication “where all parties to the communication have given prior consent to such interception.” 18 Pa.C.S.A. § 5704(4) (emphasis added).

[6][7] ¶ 20 Next, the Commonwealth argues that this Court should create an exception in the Wiretap Act for a teenage assault victim who was trying to convince the authorities of her truthfulness. We cannot do so. This Court, like the trial court, does not have the authority to ignore clear statutory language, even in

pursuit of a statute's spirit, or to add exceptions to statutory rules that the General Assembly has chosen not to include in an enactment. *See* 1 Pa.C.S.A. § 1921(b); *Lewis v. Erie Ins. Exchange*, 753 A.2d 839, 850 (Pa.Super.2000) (“Our duty to interpret statutes does not include the right to add provisions that the legislature has omitted.”)

[8] ¶ 21 Last, the Commonwealth claims that the recording is admissible under the inevitable discovery doctrine at common law or under Section 5721.1(c)(6), which states that evidence will not be excludable “if 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.” 18 Pa.C.S.A. § 5721.1(c)(6). *See* *610 *Commonwealth v. Ingram*, 814 A.2d 264, 272 (Pa.Super.2002) (explaining that the inevitable discovery doctrine provides that evidence is admissible if it would be discovered through means that are sufficiently purged of the original illegality). The Commonwealth did not, however, raise the admissibility of the recording under the inevitable discovery doctrine or Section 5721.1(c)(6), in its Rule 1925(b) statement. Therefore, under Rule 1925(b), this issue is waived. Pa.R.A.P.1925(b); *Klos v. Klos*, 934 A.2d 724, 732 (Pa.Super.2007) (“[Appellant's] first and second issues do not appear in his Pa.R.A.P.1925(b) statement, and, as such, these issues are waived due to his failure to comply strictly with Pa.R.A.P.1925(b).”).

¶ 22 Accordingly, we conclude that the trial court's decision to grant Deck's motion to suppress the tape recording was correct. Accordingly, we affirm.

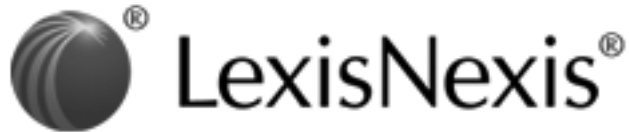
¶ 23 Order affirmed.

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COMMONWEALTH of Pennsylvania v. Victor Martin PARRELLA, Jr., Appellee

No. 641 Pittsburgh 1991

SUPERIOR COURT OF PENNSYLVANIA

416 Pa. Super. 131; 610 A.2d 1006; 1992 Pa. Super. LEXIS 1471

September 11, 1991, Argued

June 3, 1992, Filed

SUBSEQUENT HISTORY: [***1] As Corrected June 19, 1992. Second Correction June 25, 1992. Petition for Allowance of Appeal and/or Cross-Petition Denied April 14, 1994.

PRIOR HISTORY: Appeal from the Suppression Order March 01, 1991, in the Court of Common Pleas of Somerset County, Criminal, No. 210 Criminal 1990

DISPOSITION: Order AFFIRMED.

COUNSEL: David J. Flower, Dist. Atty., Somerset, for Com., appellant.

Robert D. Gleason, Johnstown, for appellee.

JUDGES: CAVANAUGH, BECK and KELLY, JJ.

OPINION BY: KELLY

OPINION

[*134] [**1007] In this Opinion we are called upon to determine whether the trial court properly ordered the suppression of tape recordings of conversations between the appellee and his deceased estranged wife in the prosecution of the appellee for criminal homicide pursuant to *18 Pa.C.S.A. § 5721*. The tapes and derivative evidence in controversy was uncovered through the unconsented recording of conversations between the appellee and his estranged

wife, which occurred in an apartment on the night of her death. The tapes were made through the use of an improvised interception system consisting of an electronic baby monitor and tape recorder that was surreptitiously installed by the appellee's girlfriend in the apartment where she resided with the appellee. We affirm.

The relevant facts for the purposes of this appeal as discerned [***2] from the stipulations of the parties and the transcript of the preliminary hearing are as follows. The appellee, Victor M. Parrella, Jr., is charged with criminal homicide in connection with the death of his estranged wife, Donna Jean Parrella. In Count III of his Application for Omnibus Pre-Trial Relief, the appellee motioned to suppress the contents of tape recordings of conversations between himself and his estranged wife, which were recorded on the night of her death, January 19-20, 1990. The tape recordings were taken by private individuals acting without color of state authority in an apartment located directly above the Mountain House Tavern in Point Borough, Somerset County. The apartment was orally leased by Shelly Lea Horner on a week by week basis where the appellee also resided.

[*135] On January 19, 1990, after having been advised by the appellee that he intended to meet with his estranged wife that evening in the apartment, Ms. Horner purchased a Fisher Price Baby Monitor and several blank tapes at a local department store. The baby monitor consisted of two parts, a [**1008] monitor which would pick up all sounds in the room where it was placed, and a

receiver, [***3] which would transmit the sound. Ms. Horner then installed the monitor in a drop ceiling in the apartment bedroom and placed the receiver next to a tape recorder on a porch adjacent to one of the apartment windows.

At approximately 11:30 p.m. on January 19, 1990, Ms. Horner turned on the receiver and the tape recorder. Ms. Horner then returned to the Mountain House Tavern below and sat with two friends, Sandra Feldbauer and William Hill. Neither the appellee nor the decedent had any knowledge that their conversations inside the apartment were being recorded.

At approximately 1:00 a.m. on January 20, 1990, Ms. Horner and Ms. Feldbauer testified that they heard a loud thumping noise emanating from the apartment. Ms. Feldbauer also testified that while she was changing the tape in the tape recorder outside the apartment, she heard the appellee say, "Why am I holding a gun to the head of someone I really want to be with?" Additionally, Raymond Wiencek, who resided in the apartment next door, testified that he had previously heard arguing coming from the Horner-Parrella apartment. Mr. Wiencek further testified that at approximately 1:00 a.m., he heard a loud noise which sounded like [***4] a gunshot and then heard the appellee repeating over and over, "Donna, are you all right?" However, the police were not notified at that time. Ms. Horner subsequently retrieved the tapes and went to Ms. Feldbauer's brother's apartment where she, Ms. Feldbauer and several others listened to the tapes. Sometime later on the morning of January 20, 1990, Ms. Horner and Ms. Feldbauer returned to the Horner-Parrella apartment to remove Ms. Horner's personal belongings. At that time, Ms. Horner [*136] discovered blood on the carpet in the apartment. The police were subsequently contacted and the tapes were turned over to them.

Shortly thereafter, the appellee was arrested and charged with criminal homicide. A preliminary hearing was held before District Justice Joseph A. Cannoni who ordered the appellee held for trial. The appellee then filed a motion to suppress the tapes and all derivative evidence alleging the tapes were recorded in violation of the Wiretapping and Electronic Surveillance Act, 18 Pa.C.S.A. § 5701 et seq. (the Act); thus, the tapes and all derivative evidence must be suppressed pursuant to 18 Pa.C.S.A. § 5721. A hearing was held before the Honorable John [***5] M. Cascio. Judge Cascio then

granted the appellee's motion to suppress the tapes and all derivative evidence. The Commonwealth filed a timely appeal wherein it has alleged that the trial court's order suppressing the tapes seriously impairs its ability to present its case and prove the charges of criminal homicide against the appellee.¹

1 When the Commonwealth has certified that the suppression of evidence substantially handicaps the prosecution, "that certification is not contestable" and "in and of itself precipitates and authorizes the appeal." *Commonwealth v. Dugger*, 506 Pa. 537, 545, 486 A.2d 382, 386 (1986); see also *Commonwealth v. DeMarco*, 396 Pa. Super. 357, 578 A.2d 942 (1990).

On appeal, the Commonwealth raises two issues for our review.

I. WHETHER THE LOWER COURT ERRED IN RULING THAT THE CONVERSATION BETWEEN THE DEFENDANT AND THE ALLEGED DECEDENT/VICTIM WAS A PROTECTED "ORAL COMMUNICATION" WITHIN THE MEANING [***6] OF THE WIRETAP AND ELECTRONIC SURVEILLANCE CONTROL ACT, 18 Pa.C.S.A. SECTION 5701, ET SEQ., THAT IS, THAT THE ORAL COMMUNICATION WAS UTTERED BY A PERSON WHO POSSESSED A REASONABLE EXPECTATION OF PRIVACY SUCH THAT THE COMMUNICATION WOULD NOT BE SUBJECT TO INTERCEPTION [*137] UNDER CIRCUMSTANCES JUSTIFYING SUCH EXPECTATION WHERE THE CONVERSATION OCCURRED UNDER CIRCUMSTANCES WHERE INDIVIDUALS NOT PARTY TO THE CONVERSATION [**1009] ARE ABLE TO HEAR THE CONVERSATION WITHOUT ELECTRONIC OR MECHANICAL DEVICES.

II. ASSUMING ARGUENDO THAT THE CONVERSATION AT ISSUE IS A

PROTECTED "ORAL
COMMUNICATION," WHETHER
SUCH AN INTERPRETATION OF THE
WIRETAP AND ELECTRONIC
SURVEILLANCE CONTROL ACT
UNCONSTITUTIONALLY INFRINGES
ON THE RIGHT OF AN APARTMENT
TENANT TO BE AWARE OF
ACTIVITIES IN HER APARTMENT AS
PART OF HER RIGHTS OF
"POSSESSING AND PROTECTING
PROPERTY" AS GUARANTEED BY
ARTICLE I, SECTION 1 OF THE
PENNSYLVANIA CONSTITUTION.

interception, disclosure, or use of wire, electronic, or oral
communication as follows.

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

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

(2) intentionally
discloses or endeavors to
disclose to any other person
the contents of any wire,
electronic or oral
communication, or
evidence derived
therefrom, knowing or
having reason to know that
the information was
obtained through the
interception of a wire,
electronic or oral
communication; or(3)
intentionally uses or
endeavors to use the
contents of any wire,
electronic or oral
communication, or
evidence derived
therefrom, knowing or
having reason to know, that
the information [***9]
was obtained through the
interception of a wire,
electronic or oral
communication.

(Commonwealth's Brief at 2).

We note at the outset that because Ms. Horner and
Ms. Feldbauer were private individuals who were not
acting under color of state authority, their non-consensual
recording of the appellee's and decedent's conversation
was not "state [***7] action," and therefore, is not
subject to suppression under the exclusionary rule of the
United States Constitution's Fourth Amendment
prohibition against unreasonable search and seizure or
under *Article I, Section 8 of the Pennsylvania*
Constitution. See *Commonwealth v. Kean*, 382 Pa.Super.
587, 556 A.2d 374, appeal denied, 525 Pa. 596, 575 A.2d
563 (1989); *Commonwealth v. Borecky*, 277 Pa.Super.
244, 419 A.2d 753 (1980).

The Commonwealth contends in its first issue that
the trial court erred in suppressing the tapes under 18
Pa.C.S.A. § 5721. The Commonwealth argues that the
fact the appellee may have had expectation that his
conversation with his estranged wife was not subject to
interception is not conclusive, as the expectation of
privacy must also be [*138] reasonable. The
Commonwealth asserts that because limited portions of
the appellee's and decedent's conversations were clearly
audible through the naked ear to people standing outside
the apartment, the parties lost any reasonable expectation
of privacy; thus, their conversations were [***8]
properly recorded. We disagree.

The focus and purpose of the Wiretapping and
Electronic Surveillance Control Act is *the protection of*
privacy. *Commonwealth v. DeMarco*, 396 Pa.Super.
357, 371, 578 A.2d 942 (1990) (emphasis in original).
Section 5703 of the Act sets forth the law concerning the

The statute defines "intercept" as the "aural acquisition or
other acquisition of the contents of any wire or oral
communication through the use of any electronic,

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mechanical or other device. 18 Pa.C.S.A. § 5702. See also *Commonwealth v. Henlen*, 522 Pa. 514, 516, 564 A.2d 905, 906 (1989); *Commonwealth v. Kean*, supra, 382 Pa.Super. at 597 n. 2, 556 A.2d 374. Accordingly, we find that Ms. Horner's and Ms. Feldbauer's use of an electronic baby monitor and receiver in conjunction with a tape recorder in [*139] order to record the conversations of the appellee and the decedent in [**1010] the apartment to be an interception pursuant to 18 Pa.C.S.A. § 5702 and 5703.

However, the Act provides exceptions to the general prohibitions on the interceptions and disclosure of wire and oral communication. 18 Pa.C.S.A. § 5704(2) permits properly authorized investigative or law enforcement officers to intercept wire or oral communications involving criminal activities. 18 Pa.C.S.A. § 5704(2)(ii) also permits the [***10] interception of oral communication by a private individual who is one of the parties to a communication, if that private individual has given their prior consent and the attorney general, district attorney, or their specifically designated deputy attorney generals, or assistant district attorneys have reviewed the facts and are satisfied that the consent was freely and voluntarily given and have given their approval before the interception occurs. See *Commonwealth v. Blystone*, 519 Pa. 450, 549 A.2d 81 (1988); *Commonwealth v. Rodriguez*, 519 Pa. 415, 548 A.2d 1211 (1988). Other than as provided in 18 Pa.C.S.A. § 5704(2)(ii), a private citizen may not intercept a wire or oral communication unless all parties to the communication have given their prior consent to such interception. *Barasch v. Bell Telephone Company of Pennsylvania*, 529 Pa. 523, 533, 605 A.2d 1198, 1203 (1992) (emphasis added); *Commonwealth v. DeBlase*, 357 Pa.Super. 71, 76, 515 A.2d 564, 566 (1986) (This Court refuses to create an exception [***11] when the private citizen who violated the Act is subsequently murdered.); 18 Pa.C.S.A. § 5704(4). Under the act, any aggrieved person may move to suppress the contents of any intercepted wire, electronic or oral communications or the evidence derived therefrom if the communications were unlawfully intercepted. *Commonwealth v. DeMarco*, supra, 578 A.2d at 948, 949; *Commonwealth v. DeBlase*, supra, 515 A.2d at 566; 18 Pa.C.S.A. § 5721.

Instantly, the Commonwealth has attempted to rely upon *Commonwealth v. Cooper*, 240 Pa.Super. 477, 362 A.2d 1041 (1976) for the proposition that because portions of [*140] the appellee's and decedent's

conversation were easily overheard outside the apartment, the appellee lost all reasonable expectation of privacy, thus enabling Ms. Horner and Ms. Feldbauer to tape record their conversations inside the apartment. We find the Commonwealth's reliance upon *Commonwealth v. Cooper*, supra, to be misplaced.

In *Commonwealth v. Cooper*, supra, [***12] a police officer, lawfully entitled to be in the adjacent hotel room, overheard appellant Cooper's conversations concerning the sale of marijuana, unaided by any mechanical or electronic amplification device. Therefore, this Court properly held that because the conversations were carried on in a tone quite audible to a person standing outside the hotel room, the conversations were knowingly exposed to the public and were not subject to the protection under the Fourth Amendment as the risk of being overheard by an eavesdropper is an inherent condition and a risk assumed whenever we speak. See *Katz v. United States*, 389 U.S. 347, 351, 88 S.Ct. 507, 511, 19 L.Ed.2d 576, 582 (1967); *Hoffa v. United States*, 385 U.S. 293, 301-03, 87 S.Ct. 408, 413-14, 17 L.Ed.2d 374, 381-82 (1966).

In the case at bar, unlike *Commonwealth v. Cooper*, supra, only limited excerpts of the appellee's and decedent's conversations were able to be overheard by parties outside the apartment without the aid of the improvised interception system. [***13] Accordingly, the appellee and decedent only lost their reasonable expectations of privacy as to the limited portions of their conversations which were overheard outside the apartment without the aid of the improvised interception system. The appellee and decedent did not lose their reasonable expectations of privacy to all of their conversations which occurred in the apartment on the January 19-20, 1990 night, merely because some portions of their conversations were able to be heard outside the apartment. If we were to adopt the Commonwealth's argument, we would be enabling any eavesdropper to immediately begin the unconsented mechanical or electronic amplification and interception of the conversations of anyone in their [*141] home once a portion of their conversation was able to be overheard outside the home with the [**1011] naked ear. Clearly, this was not the result intended by the legislature when they adopted the Act, whose primary focus and purpose was the protection of privacy. Thus, we find no merit in the Commonwealth's contention that Ms. Horner and Ms. Feldbauer were entitled to surreptitiously record all of the

conversations between the appellee and the decedent [***14] which occurred inside the apartment on the night of January 19-20, 1990, because limited portions of their conversations inside the apartment were overheard by persons outside the apartment.

Moreover, the conduct of Ms. Horner and Ms. Feldbauer clearly violated the Act as neither the appellee or the decedent had given their prior consent to the interception and tape recording of their conversation inside the apartment as required by 18 Pa.C.S.A. § 5704(4). The fact that excerpts of the appellee's and the decedent's conversations were subsequently overheard outside the apartment is immaterial because Ms. Horner and Ms. Feldbauer had set up their improvised interception equipment in the apartment before the appellee and the decedent had even begun their conversations. Thus, Ms. Horner and Ms. Feldbauer had already decided to intercept the appellee's and decedent's conversation in violation of the Act before the appellee and decedent arrived at the apartment. Accordingly, the appellee and the decedent could not have possibly lost their reasonable expectation of privacy and impliedly consented to the interception of their conversations when the interception of their conversations inside [***15] the apartment had already commenced before any portion of their conversations were overheard outside the apartment without the aid of the improvised interception system.

In its second issue on appeal, the Commonwealth contends that any interpretation of the Act which prohibits a person with a possessory interest in a premises from monitoring activities on the premises unconstitutionally infringes upon their rights to possess and protect their property, [*142] and therefore, is unconstitutional under Article I, Section 1 of the Pennsylvania Constitution.² The Commonwealth argues that under *Commonwealth v. Goldberg*, 208 Pa.Super. 513, 224 A.2d 91 (1966), a person having an interest in a property has a paramount right with regard to the use of the property. The Commonwealth asserts that when a person possessing a paramount interest consents to the use of her premises, there is an implied condition that the premises will not be used to the detriment of the paramount possessor's interest; thus, the paramount possessor may monitor the activities of subordinate possessor to ensure that the premises are not being used to her detriment. [***16] We disagree.

2 Article I, section 1:

All men are born equally free and independent, and have certain inherent and indefeasible rights, among which are those of enjoying and defending life and liberty, of acquiring, possessing and protecting property and reputation, and of pursuing their own happiness.

We find that the Commonwealth's reliance upon *Commonwealth v. Goldberg*, *supra*, to be misplaced as the case is both factually and legally distinguishable from the case before this Court. The *Goldberg* case arose under the long repealed Pennsylvania Anti-Wiretapping Statute, Act of July 16, 1957, P.L. 956 No. 411, (*repealed*). In *Goldberg*, the appellant was the named subscriber to a telephone in the marital home he shared with his wife. The appellant, suspecting his wife of infidelity, tapped his own phone in order to monitor the telephone calls between his wife and her purported paramour. The appellant was subsequently arrested and convicted of violating the [***17] Anti-Wiretapping Statute. This Court reversed the appellant's conviction holding that the purpose of the Anti-Wiretapping Statute was to protect a telephone subscriber's phone calls from being intercepted by a third person and not to protect the telephone line from being monitored by its own subscriber. Thus, the appellant, as the subscriber, possessed a paramount interest to intercept telephone conversations on the line when persons he permitted to use the telephone were doing so in detriment to the appellant's business, household [*143] or marital interests. Therefore, [**1012] the appellant, as the subscriber and possessor of a paramount interest in the telephone line, could not be convicted under the Anti-Wiretapping Statute for tapping his own line. *Commonwealth v. Goldberg*, *supra*, 208 Pa.Superior Ct. at 517, 224 A.2d at 93. However, this case was only concerned with whether the appellant violated the Anti-Wiretapping Statute and did not discuss whether the conversations intercepted by the appellant without the consent of the intercepted parties were admissible in any legal proceedings.³

3 Moreover, the principle on which the *Goldberg* court relied upon, that a telephone subscriber possesses an absolute right to record his own

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conversations and to protect the use made of his own telephone, which was first set forth in *People v. Appelbaum*, 277 App.Div. 43, 97 N.Y.S.2d 807, *aff'd* 301 N.Y. 738, 95 N.E.2d 410 (1950), is no longer the law of Pennsylvania. See *Barasch v. Bell Telephone Company of Pennsylvania*, *supra* (caller I.D. service held to be violative of 18 Pa.C.S.A. § 5704(4) as calling party has not consented to the capture of his or her phone number by the called party). See also *Commonwealth v. Jung*, 366 Pa.Super. 438, 531 A.2d 498 (1987) (highly critical of *Commonwealth v. Goldberg*, *supra* in dicta).

[***18] Subsequently, however, this exact issue has been addressed by our Supreme Court in *Commonwealth v. Papszycki*, 442 Pa. 234, 275 A.2d 28 (1971), which was decided under the repealed Anti-Wiretapping Statute and by this Court in both *Commonwealth v. DeBlase*, *supra*, and *Commonwealth v. Baldwin*, 282 Pa.Super. 82, 422 A.2d 838 (1980), which were decided under an earlier version of our current act and the repealed Anti-Wire Tapping Act, respectively. In each of these cases, both our Supreme Court and this Court have held that unless all parties have given their consent to the interception of their telephone conversations by a private individual, the evidence elicited through the illegal interception is inadmissible in any legal proceeding and must be suppressed. Furthermore, our current act requires that all parties to a communication must give their consent before any interception may occur. See *Barasch v. Bell Telephone Company of Pennsylvania*, *supra*. Finally, the Act permits any aggrieved person to move [***19] to suppress the contents of any intercept wire, electronic or oral [*144] communication, or evidence derived therefrom, taken in violation of the Act. See 18 Pa.C.S.A. § 5721.

Instantly, Ms. Horner is not on trial for violating 18 Pa.C.S.A. § 5704(4), rather it is the appellee who is on trial for murder. Thus, we are not called upon to determine whether Ms. Horner may be prosecuted for the unconsented recording of conversations in her own apartment, but rather whether the fruits of her unconsented interception of the conversations inside the apartment may be admitted into evidence against her

roommate, the appellee. Accordingly, the Commonwealth's argument that the Act unconstitutionally infringes upon Ms. Horner's rights under Article I, Section 1 of the Pennsylvania Constitution to protect her property is not in issue as she is not being prosecuted for violating the act; therefore, this interesting issue cannot be resolved until it is raised by a party who is being prosecuted under the Act for the unconsented interception of conversations in their own dwelling. But see *Commonwealth v. Murray*, 423 Pa. 37, 51, 223 A.2d 102, 109 (1966) [***20] (under Article I, Section 1 of the Pennsylvania Constitution, "[t]he right of privacy is as much property of the individual as the land to which he holds title and the clothing he wears on his back."). Here, the tapes and derived evidence sought to be utilized as evidence by the Commonwealth in its criminal homicide prosecution of the appellee were recorded by Ms. Horner and Ms. Feldbauer without the consent of either the appellee or the decedent. Due to this lack of consent, the tapes were taken in violation of 18 Pa.C.S.A. § 5704(4). The fact that one of the interceptors, Ms. Horner, resided in the orally leased premises with the appellee is immaterial as 18 Pa.C.S.A. § 5721 clearly specifies that upon motion, any wire, electronic, or oral communication intercepted in the violation of the Act must be suppressed. Thus, the trial court properly suppressed the tapes and all derivative evidence pursuant to 18 Pa.C.S.A. § 5721.

Finally, when the trial court entered the order granting the appellee's motion to suppress, the trial court suppressed only the tapes of the conversations between the [**1013] appellee [*145] and the decedent, and the testimony from any person regarding [***21] what he or she heard on the tapes. The trial court's order did not suppress at trial the testimony of any person regarding what he or she may have overheard outside the apartment without the aid of any electronic or mechanical amplification device; thus, the Commonwealth is free to present such evidence at trial.

Based upon the foregoing, the trial court's order suppressing the tapes and all derivative evidence is affirmed.

Order AFFIRMED.

Down the Rabbit's Hole: Baby Monitors, Family Movies and Wiretap Law

by
Elisabeth Pride†

Your client is in the middle of a heated divorce, and a primary issue is the custody of his nine-year-old daughter and seven-year-old son. Historically well-adjusted, in recent months the daughter has shown dismaying behavioral changes. Her grades have fallen precipitously and she has been disrupting the classroom. She has been acting out at home as well, including frequent violent and prolonged tantrums without obvious explanation. Your client has eavesdropped on the children over a baby monitor for insight into his daughter's behavior, and, alarmed by comments he believes suggest sexual abuse of his daughter by the child's mother's new fiancé, has surreptitiously videotaped interactions of the children. He would like to provide the recordings to a psychologist, and has asked you to try to introduce the recordings into evidence at trial.

How do you advise your client?

Under the Supremacy Clause of the U.S. Constitution, states are precluded from adopting eavesdropping statutes that are less restrictive in allowing interceptions of communications than the federal wiretap statute; thus state wiretap statutes may be broader and more restrictive than the federal statute and less restrictive in no respect.¹ Under the federal wiretap law, Title III of the Omnibus Crime Control and Safe Streets Act of 1968 ("the Act"),² there is no violation where the interception is by a party to the communication or one party consents to it.³ While most state wiretapping laws generally track the federal Act, con-

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¹ See *Commonwealth v. Birdseye*, 670 A.2d 1124, 1126 (Pa. 1996), *cert denied*, 518 U.S. 1019 (1996).

² 18 U.S.C. §§ 2510-13, 2515-22 (2006).

³ *Id.* §2511(2)(c)-(d).

sent standards vary.⁴ The first question is whether your client has violated the federal Act and the possible consequences thereof. Because state statutes may be more but not less restrictive, whether a state wiretap law has been violated may be a different, and vastly more difficult, question.

What follows is a technical review and critique of the wiretap laws as taken to the limits of their potential in the context of parental monitoring.⁵ While the law was never intended for the purpose of punishing parents for monitoring their children, history is full of examples of zealous prosecution under laws written for another purpose but nevertheless applicable by their technical language to the matter at hand. Consider, for example, prosecution for child pornography of children sending suggestive photographs of themselves to other children,⁶ prosecution under

⁴ Thirty-eight states and the District of Columbia follow the federal Act in requiring consent of only one participant in a communication to exempt interception thereof. Twelve states require consent of all participants, and the rest lack relevant laws, have conflicting laws, or have laws that vary in standards for different types of communications. See Washington, Reporters' Comm. for Freedom of the Press, "Can We Tape?": A Practical Guide to Taping Phone Calls and In-Person Conversations in the 50 States and D.C. (2008), available at <http://www.rcfp.org/taping/> (last visited April 8, 2010).

⁵ Courts have expressly found that the Act applies to domestic relations cases. See, e.g., *Glazner v. Glazner*, 347 F.3d 1212, 1216 (11th Cir. 2003). This article does not attempt to survey state and federal courts for individual examples of criminal or civil cases at the extremes of application of the law as described herein. Numerous commentators have explored the practical application of the Act by courts. See, e.g., Daniel R. Dinger, *Should Parents Be Allowed to Record a Child's Telephone Conversations When They Believe the Child Is in Danger?: An Examination of the Federal Wiretap Statute and the Doctrine of Vicarious Consent in the Context of a Criminal Prosecution*, 28 SEATTLE U. L. REV. 955 (2005); Shana K. Rahavy, *The Federal Wiretap Act: The Permissible Scope of Eavesdropping in the Family Home*, 2 J. HIGH TECH. L. 87 (2003); *Parental Wiretapping: Should Federal Courts Provide a Civil Remedy in a Family Law Matter?*, 48 U. KAN. L. REV. 397 (2000); Richard C. Turkington, *Protection for Invasions of Conversational and Communication Privacy by Electronic Surveillance in Family, Marriage, and Domestic Disputes Under Federal and State Wiretap and Store Communications Acts and the Common Law Privacy Intrusion Tort*, 82 NEB. L. REV. 693, 707-13 (2004).

⁶ See, e.g., *Miller v. Skumanick*, 605 F. Supp. 2d 634, 637 (M.D. Pa. 2009) *aff'd sub nom.* *Miller v. Mitchell*, 598 F.3d 139 (3d Cir. 2010) (granting temporary injunction against district attorney from prosecuting a minor on charges of child pornography for "sexting").

¹² See, e.g., *United States v. Gonzales*, 520 U.S. 1, 6 (1997), (citing *Connecticut Nat. Bank v. Germain*, 503 U.S. 249, 254 (1992)).

(iii) such person knows, or has reason to know, that such device or any component thereof has been sent through the mail or transported in interstate or foreign commerce; . . .

(c) intentionally discloses, or endeavors to disclose, to any other person the contents of any wire, oral, or electronic communication, knowing or having reason to know that the information was obtained through the interception of a wire, oral, or electronic communication in violation of this subsection; [or]

(d) intentionally uses, or endeavors to use, the contents of any wire, oral, or electronic communication, knowing or having reason to know that the information was obtained through the interception of a wire, oral, or electronic communication in violation of this subsection . . .¹³

"Oral communication" is defined by the Act as "any oral communication uttered by a person exhibiting an expectation that such communication is not subject to interception under circumstances justifying such expectation."¹⁴ "Intercept" is "the acquisition of the contents of any wire, electronic, or oral communication through the use of any electronic, mechanical, or other device," and "contents" means "*any* information concerning the substance, purport, or meaning of that communication."¹⁵ Acquisition can be aural, meaning that it need not be recorded to violate the Act; thus, eavesdropping via any device, such as a telephone extension, would fall within the Act.¹⁶

II. Potential Criminal Liability Under the Federal Act

A violation of the Act can result in up to five years imprisonment or a fine, or both,¹⁷ and any device used in an improper wiretap is subject to forfeit.¹⁸ Numerous exceptions are enumerated in the Act, pertaining primarily to law enforcement, telemarketing and telecommunication companies. None are relevant here except the following:

It shall not be unlawful under this chapter for a person not acting under color of law to intercept a wire, oral, or electronic communication where such person is a party to the communication or where one

¹³ 18 U.S.C.A. § 2511(1).

¹⁴ *Id.* § 2510 (2).

¹⁵ *Id.* § 2510 (4) & (8) (emphasis added).

¹⁶ *Id.* § 2510 (18).

¹⁷ *Id.* § 2511(4).

¹⁸ *Id.* § 2513.

of the parties to the communication has given prior consent to such interception unless such communication is intercepted for the purpose of committing any criminal or tortious act in violation of the Constitution or laws of the United States or of any State.¹⁹

No exception is set forth for interceptions by parents of communications by children, and "consent" is not defined by the Act.

Accordingly, by the plain language of the Act, any person, including a parent, using a device to eavesdrop on a child, and any audio, video, or other recordation by device of an oral communication of a child is federal crime if the child had a reasonable expectation that the communication would not be intercepted and did not provide prior consent, assuming that the device transmits by radio, such as a baby monitor, wireless intercom or cordless telephone, or has been transported in interstate or foreign commerce, like virtually any commercially available electronic device. Intentionally sharing, disclosing the contents of, or using or attempting to use the contents of a communication known to be intercepted in violation of the Act is also a federal crime, and the language ("or") indicates that these offenses are disjunctive, indicating that each violation is a separate offense and is independent of violation of other provisions.²⁰ There has been no articulation by courts of the attractive proposition that a minor child cannot, at law, have a reasonable expectation that his communications would not be subject to interception by a parent.

This means that the client could be criminally liable with a maximum penalty of five years imprisonment and a fine for each act of interception, each act of disclosure, and each attempt to "use" the intercepted communication, plus forfeiture of any equipment used to intercept, including the baby monitor and video camera, or to disclose the contents of the intercepted communication, such as a computer for conversion to DVD and a DVD player and television for playback. The Act does not contain a limiting definition of "use"; thus providing the recordings to a psychologist or an attorney for *their* use could violate the

¹⁹ *Id.* § 2511(2)(d).

²⁰ *Id.* § 2511(1). See *Reiter v. Sonotone Corp.*, 442 U.S. 330, 339 (1979) (noting that terms connected by disjunctive are ordinarily given separate meanings).

statute.²¹ Taken to the extreme, your client could be held criminally liable for a separate count for each interception including both eavesdropping and recording, each instance of conveying any information to anybody about what he observed thereby, and each instance of trying to use this information in litigation, for diagnosis and treatment of the child, or for any other purpose. Each one of these instances carries a maximum penalty of five years, so, were penalties imposed consecutively, your client could potentially spend the rest of his life in federal prison for his use of a baby monitor or video recorder to observe his own children. This, of course, is an extreme, bizarre, and unlikely scenario. It does not, however, make the technical violation of the statute less troubling, nor does it illuminate how to advise your client.

III. Potential Civil Liability Under the Federal Act

The client's jeopardy is compounded by the civil liability set out by the Act which provides, in relevant part, that "any person whose wire, oral, or electronic communication is intercepted, disclosed, or intentionally used in violation of this chapter may in a civil action recover from the person or entity, other than the United States, which engaged in that violation such relief as may be appropriate."²²

Authorized relief includes "such preliminary and other equitable or declaratory relief as may be appropriate[,] . . . a reasonable attorney's fee and other litigation costs reasonably incurred[,] punitive damages in appropriate cases[,] and the greater of either "the sum of the actual damages suffered by the plaintiff and any profits made by the violator as a result of the violation; or statutory damages of whichever is the greater of \$100 a day for each day of violation or \$10,000."²³

²¹ Note that while attorney-client privilege may provide an obstacle to prosecution for this disclosure, this evidentiary rule is irrelevant to whether or not the statute has been technically violated inasmuch as there is no exception for disclosure to legal or medical professionals set out among the enumerated exceptions.

²² *Id.* § 2520(a).

²³ *Id.* § 2520(b)-(c).

To establish a civil claim under the Federal Wiretapping Act, a plaintiff must prove that "(1) his [communications were] intercepted, (2) he had an expectation that his communications were not subject to interception, and (3) that his expectations were justified under the circumstances."²⁴ To recover punitive damages, a plaintiff "must show that defendants acted wantonly, recklessly, or maliciously."²⁵

Here, the only potential plaintiffs are your client's nine and seven-year-old children. That means that the person making the decision *whether* to press a claim against your client is not, ideally, a dispassionate prosecutor, but an angry opposing party in a nasty divorce action. If the claim is successful, the client could be liable for damages of *at least* the higher of \$100 for each "day" of violation or \$10,000, plus punitive damages and litigation costs.²⁶ In the unlikely event his young children could establish actual damages in excess of the statutory minimum liquidated damages, they would be entitled to actual damages in addition to litigation costs and any punitive damages.²⁷ Here, it is difficult to imagine what actual damages the children could suffer, not to mention a finding that surreptitiously observing one's children to assess their mental state amounts to wanton, reckless or malicious conduct. Thus, it is more likely that in this case, if the plaintiff prevailed, the award would be limited to liquidated damages and litigation costs. Since the Act does not define "day of violation," this would presumably be calculated as each twenty-four hour period in which a violation can be proven to have occurred.²⁸ Since each interception, disclosure and use of the intercepted communication is a separate violation, the children's damages would be limited by the number of individual instances of violation that could be proven on their behalf at trial.²⁹ Even so, your client's civil exposure could amount to many tens of

²⁴ *Bradford v. Robert Peltier Nissan Pontiac*, No.6:06-CV-477, 2007 WL 865685, *4 (E.D. Tex. Mar. 15, 2007), (citing *Cross v. Alabama Dept. Mental Health & Mental Retardation*, 49 F.3d 1490, 1508-09 (11th Cir.1995)).

²⁵ *Quigley v. Rosenthal*, 327 F.3d 1044, 1068 (10th Cir. 2003), quoting *Jacobson v. Rose*, 592 F.2d 515, 520 (9th Cir.1978)); see *Bess v. Bess*, 929 F.2d 1332, 1335 (8th Cir.1991).

²⁶ 18 U.S.C. 2520 (b)-(c).

²⁷ See *id.*

²⁸ *Smoot v. United Transp. Union*, 246 F.3d 633, 646 (6th Cir. 2001).

²⁹ *Id.*

thousands of dollars in liquidated damages and litigation costs alone, without regard to his own litigation costs and the possibility of punitive damages.

IV. Use at Trial

Regardless of your client's exposure to civil and criminal liability, the tapes will not be admissible at trial nor the testimony of any witness or any other evidence derived from the communication as to "any information concerning the substance, purport, or meaning of that communication."³⁰ This, of course, includes the psychologist's report and testimony to the extent it relies upon any information derived from the recordings, because the Act provides that

Whenever any wire or oral communication has been intercepted, no part of the contents of such communication and no evidence derived therefrom may be received in evidence in any trial, hearing, or other proceeding in or before any court, grand jury, department, officer, agency, regulatory body, legislative committee, or other authority of the United States, a State, or a political subdivision thereof if the disclosure of that information would be in violation of this chapter.³¹

For all his exposure for having created the tapes, they are useless to him.

V. Potential Exposure of Third Parties

Equally troubling, it is not only your client who may be jeopardized by the recordings. The civil and criminal liability of the psychologist, of *you*, and of anyone else receiving information about the recordings mirrors the liability of the client.³² The Act makes no distinction in seriousness or penalty between the initial

³⁰ 18 U.S.C. § 2510 (emphasis added).

³¹ 18 U.S.C. § 2515.

³² Counsel hoping to be insulated from prosecution by attorney-client privilege should remember that the privilege belongs to, and can be waived by, the client, and may not apply to communications in furtherance of criminal activity such as disclosure of illegally obtained recordings. *See, e.g.* *In re Grand Jury Proceedings*, 87 F.3d 377, 381 (9th Cir. 1996) (discussing crime/fraud exception to attorney client privilege). For purposes of this discussion, however, the privilege is beside the point. While it may present an obstacle to prosecution of attorneys under wiretap laws for use of illegally obtained recordings, this evidentiary rule is irrelevant to whether the law has been violated.

interception and other violations flowing from it, including actual or attempted disclosure or use of intercepted communications.³³ While it does prohibit procuring another person to intercept a communication in violation of the Act³⁴, the Act does not expressly preclude receipt or review of a disclosure of an already intercepted communication even where it is known that the interception and/or disclosure is in violation of the Act, as long as the receiver was not involved in the interception and cannot be construed to have procured it or conspired to obtain it.³⁵ At least one court, however, has interpreted "use" to include review.³⁶ Even given the requirement of intent, this construction may well be overbroad, and certainly violates public policy by impediment to your representation of your client, since it would be all but impossible to advise him without receiving his disclosure as to the "substance, purport or meaning"³⁷ of the recordings. Accordingly, by itself, your review of the recordings, or review by the psychologist or other persons, should not be implicated by the plain language of the Act, but this view is not universally accepted.

By contrast, any *use or attempted use* of the recordings or their contents, with the actual or imputed knowledge ("knowing or having reason to know")³⁸ that the information was obtained by unlawful interception of an oral communication would be a federal criminal offense.³⁹ This is very broad language, and while

³³ 18 U.S.C. § 2511.

³⁴ *Id.* § 2511 (1)(a).

³⁵ Reynolds v. Spears, 857 F. Supp. 1341, 1345-46 (W.D. Ark. 1994) *aff'd*, 93 F.3d 428 (8th Cir. 1996); Fields v. Atchison, Topeka and Santa Fe Ry. Co., 985 F. Supp. 1308 (D. Kan. 1997); Dorris v. Absher, 179 F.3d 420, 426 (6th Cir. 1999).

³⁶ Thompson v. Dulaney, 838 F. Supp. 1535, 1547 (D. Utah 1993).

³⁷ 18 U.S.C.A. § 2510(8).

³⁸ Nix v. O'Malley, 160 F.3d 343, 348 (6th Cir. 1998).

³⁹ Courts have declined to find immunity for attorneys for use or disclosure. See, e.g. *id.* (no immunity for attorneys), (citing *United States v. Wuliger*, 981 F.2d 1497, 1505 (6th Cir.1992) (declining to permit attorney to receive special jury instruction for Title III's "reason to know" standard, explaining, "[t]here is nothing in the Act which affords attorneys special treatment"), cert. denied, 510 U.S. 1191 (1994)); *Rodgers v. Wood*, 910 F.2d 444, 447 (7th Cir. 1990) (no immunity for attorneys). See also *Noel v. Hall*, 568 F.3d 743, 752 (9th Cir. 2009) (lawyer not liable because *plaintiff* was interceptor of communication claimed to be used by attorney). Commentators have noted the absence of

it would certainly include any attempt to directly use the information in a legal context and reliance on it in a psychologist's report,⁴⁰ it could conceivably, at the extreme, even include indirect reliance in formulation of a therapeutic protocol or legal strategy, for example, or by reference in settlement negotiations. Therefore, by its plain language, the Act renders review of any intercepted communication pointless and, worse, could expose the reviewer to criminal liability for even indirect "use" if it can be shown to be intentional and with knowledge the communication was improperly obtained, assuming the underlying interception violated the Act.⁴¹

From your perspective as legal counsel, review and/or use of the recordings could also be implicated by the Rules of Professional Conduct. The Model Rules provide:

A lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is criminal or fraudulent, but a lawyer may discuss the legal consequences of any proposed course of conduct with a client and may counsel or assist a client to make a good faith effort to determine the validity, scope, meaning or application of the law.⁴²

The comments to this rule go on to clarify that where the client's illegal conduct continues, even if it was not initially known to violate the law, the attorney must avoid assistance in any respect, including by advice as to how to conceal the violation, and ultimately the attorney must withdraw from representation or even more.⁴³ In this context, in the most rigid interpretation, voluntary receipt from the client of any information regarding the contents of the recordings, inasmuch as it can only be accomplished through the client's violation of the Act by the disclosure, could

privileges or immunities for attorneys disclosing unlawfully intercepted communications and the resulting criminal liability. *See, e.g.,* John C. Mayoue & Dennis G. Collard, *Third Party Blame: Novel and Expanding Claims*, 27 FAM. ADVOC. 44, 47 (Spring 2005); Mark Gruber, *When a Client Files Suit*, 27 FAM. ADVOC. 48 (Spring 2005).

⁴⁰ *See Thompson*, 838 F. Supp. at 1547-48 (acknowledging potential liability of psychological expert in custody trial for use of illegally intercepted communications).

⁴¹ *But see* *Bast v. Cohen, Dunn & Sinclair, PC*, 59 F.3d 492, 495 (4th Cir. 1995) (holding that liability of attorneys depended on actual or imputed knowledge that client "had a criminal or tortious motive in creating the tapes.")

⁴² MODEL RULES OF PROF'L CONDUCT R. 1.2 (d).

⁴³ *Id.* at R. 1.2, Comment [10].

be construed as assisting a client to commit a crime.⁴⁴ Counseling the client on concealment of his actions could likewise implicate the Rules.⁴⁵ Moreover, the client's continued violation of the Act, by continued disclosure to counsel or any other person, for example, could necessitate withdrawal from representation.⁴⁶ Of course, initial receipt of the information, and perhaps review of the recordings, may be necessary to determine the lawfulness and potential consequences of the interception, which is permissible under the Model Rules⁴⁷ and required by good practice.

Ultimately, the Act expressly provides that "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."⁴⁸ That means that not only can the recordings not be admitted at trial or used by a psychologist who will testify at trial, *no* information about their contents can be used or disclosed *at all*, and any attempt to do so could potentially subject not only your client, but you, the psychologist, and anybody else who divulges information about the videotapes, the eavesdropped conversations, or what your client learned thereby, to all of the same civil and criminal liabilities of your client.

VI. Consent

All of this, of course, depends on whether the interceptions violated the Act. This depends on two factors: whether either of your client's children can be said to have consented to the interceptions, and whether the children had a reasonable expectation that the communications would not be intercepted. As to whether the children consented, inasmuch as the interceptions were made without their knowledge, they cannot be said to have personally and affirmatively consented. Nevertheless, a question remains whether your client, as their parent, was empowered to consent on his children's behalf.

⁴⁴ *Id.* at R. 1.2 (d).

⁴⁵ *Id.* at R. 1.2 Comment [10].

⁴⁶ *Id.*

⁴⁷ *Id.* at R. 1.2(d) (good faith effort permissible to determine applicability of law).

⁴⁸ See 18 U.S.C.A. § 2511.

This concept is known as the doctrine of vicarious consent.⁴⁹ The primary authority on this issue is *Pollock v. Pollock*.⁵⁰ Like the majority of cases where this issue arises, the intercepted communication was a telephone conversation between a child and his non-custodial parent. There, the court held:

[A]s long as the guardian has a good faith, objectively reasonable basis for believing that it is necessary and in the best interest of the child to consent on behalf of his or her minor child to the taping of telephone conversations, the guardian may vicariously consent on behalf of the child to the recording. Such vicarious consent will be exempt from liability under Title III, pursuant to the consent exception contained in 18 U.S.C. § 2511(2)(d).⁵¹

The *Pollock* court aptly noted that “[w]e cannot attribute to Congress the intent to subject parents to criminal and civil penalties for recording their minor child’s phone conversations out of concern for that child’s well-being.”⁵² Nonetheless, the court stressed that “this doctrine should not be interpreted as permitting parents to tape *any* conversation involving their child simply by invoking the magic words: ‘I was doing it in his/her best interest,’” but acknowledged the necessity for allowing parents to act for the protection and welfare of their children.⁵³ Accordingly,

⁴⁹ There is a wealth of secondary authority on this doctrine. See, e.g., Debra Bogosavljevic, *Can Parents Vicariously Consent to Recording a Telephone Conversation on Behalf of a Minor Child?: An Examination of the Vicarious Consent Exception Under Title III of the Omnibus Crime Control and Safe Streets Act of 1968*, 2000 U. ILL. L. REV. 321; Daniel R. Dinger, *supra* note 5, at 956; Julieann Karkosak, *Tapping into Family Affairs: Examining the Federal Wiretapping Statute As It Applies to the Home*, *Pollock v. Pollock*, 154 F.3d 601 (6th Cir. 1998), 68 U. CIN. L. REV. 995 (2000); Laura S. Killian, *Concerned or Just Plain Nosy? The Consequences of Parental Wiretapping Under the Federal Wiretap Act in Light of Pollock v. Pollock*, 104 DICK. L. REV. 561 (2000).

⁵⁰ 154 F.3d 601 (6th Cir. 1998).

⁵¹ *Id.* at 610 (internal citations omitted).

⁵² *Id.* at 610 (quoting *Scheib v. Grant*, 22 F.3d 149, 154 (7th Cir.1994)).

⁵³ Relevant cases typically arise in the context of a custody proceeding, with one parent intercepting communications between the child and the other parent. Courts have not found that a parent’s intent to use intercepted communications in litigation is incompatible with the child’s best interests. See, e.g., *Pollock*, 154 F.3d 601. See also, e.g., *Wagner v. Wagner*, 64 F. Supp. 2d 895, 896 (D. Minn. 1999) (holding vicarious consent valid defense in civil action under 18 U.S.C.A. § 2520); *Campbell v. Price*, 2 F. Supp. 2d 1186, 1191-92 (E.D. Ark. 1998) (noting that Congress intended the consent exception to be interpreted

under *Pollock* and its progeny, whether the doctrine may be validly invoked is a question of fact.

Pollock references the power of a *guardian* to consent on a child's behalf⁵⁴, rather than to the power of a "parent," which both broadens and restricts the application in jurisdictions that follow parallel reasoning. *Black's Law Dictionary* defines "guardian" as "[o]ne who has the legal authority and duty to care for another's person or property, esp. because of the other's infancy, incapacity, or disability."⁵⁵ This would indicate that a parent must have legal custody to consent on a child's behalf, but does not address whether shared legal custody requires agreement of both parents, or whether an objection by one parent can void the consent of the other.

The definition of legal custody is a matter of state law. In Pennsylvania, for example, legal custody is defined by law as "[t]he legal right to make major decisions affecting the best interest of a minor child, including, but not limited to, medical, religious and educational decisions."⁵⁶ Although the state General Assembly has declared it the public policy of the Commonwealth to promote the sharing between parents of rights and responsibilities of childrearing, the statute does not require prior agreement of parents to every exercise of decision-making, especially where it is "in the best interest of the child."⁵⁷ Rather, it is only major decisions which must be shared.⁵⁸ Here, there is little doubt that the decision to seek psychological treatment for the child may be considered a major decision. A decision to permit the child to be filmed is probably not a major decision, nor do schools and other agencies seeking permission for this very purpose typically seek the signature of more than one parent.⁵⁹

broadly); *Thompson*, 838 F. Supp. at 1544 (holding vicarious consent is a defense to claim under the federal wiretapping statutes).

⁵⁴ *Pollock*, 154 F.3d at 610.

⁵⁵ BLACK'S LAW DICTIONARY (8th ed. 2004) (emphasis added).

⁵⁶ 23 PA. CONS. STAT. § 5302 (2001).

⁵⁷ *Id.* § 5301.

⁵⁸ *Grossman v. State Bd. of Psychology*, 825 A.2d 748, 759 (Pa. 2003).

⁵⁹ Requirement of consent of both parents is unusual. In Pennsylvania, for example, the consent of only one parent is required to waive confidentiality of psychological records of a child under fourteen. 55 PA. CODE § 5310.142 (1982). The consent of only one parent is required to employ a child under sixteen. 43 PA. STAT. ANN. § 44.2 (2002). The consent of only one parent pre-

Whether one parent can void the valid consent of the other might be answered by reference to the Act, which excepts from the statute interceptions that have been accomplished on "prior consent" of at least one party thereto.⁶⁰ That is, consent can only exempt an interception from liability under the statute if it is obtained in advance. By this reasoning, it may follow that the objection, too, would have to be raised prior to the interception to timely *negate* vicarious consent that is otherwise valid.⁶¹ In the many federal and state cases that have addressed vicarious consent, legal custody has never expressly been part of the analysis, and only four mention "legal custody" at all.⁶² In fact, the question frequently arises in the context of custody litigation, and most often the intercepted communication is between the child and the other parent, for use against the non-consenting parent. Courts have not found vicarious consent inapplicable in this context even where the other parent objects.⁶³ Accordingly, while there may be legitimate debate whether vicarious consent may be invoked by a parent without legal custody or in the face of timely

cludes conviction for luring a child into a motor vehicle. 18 PA. CONS. STAT. § 2910 (2005).

⁶⁰ 18 U.S.C. § 2511(2)(d).

⁶¹ Courts have generally treated the right to give vicarious consent as belonging to the parent in whose home the child resides when the interception is made. *See, e.g.,* Babb v. Eagleton, 616 F. Supp. 2d 1195, 1200 (N.D. Okla. 2007); Smith v. Smith, 923 So. 2d 732, 740 (La. Ct. App. 2005); D'Onofrio v. D'Onofrio, 780 A.2d 593 (N.J. Super. Ct. 2001). Some courts have reasoned that vicarious consent can override obligations to consult on major decisions where given in good faith for the child's welfare. *See, e.g.,* Robinson v. Johnson, 3:07-CV-77 RM, 2008 WL 830729 (N.D. Ind. Mar. 26, 2008). Presumably where consent properly given by one parent is revoked by the other, interceptions made prior to revocation would be lawful.

⁶² *See* Wagner, 64 F. Supp. 2d at 897 (intercepting parent had legal custody but legal custody not part of court's analysis of vicarious consent); G.J.G. v. L.K.A., No. CN93-09835, 2006 WL 2389340, at *9 (Del. Fam. Ct. Apr. 11, 2006) (legal custody shared at time of interception); D'Onofrio, 780 A.2d 593, 599 (no legal custody award at time of interception; joint legal custody awarded in affirmed decision that applied vicarious consent); West Virginia Dept. of Health & Human Resources v. David L., 453 S.E.2d 646, 654 (W.Va. 1994) (no award of legal custody noted in decision at time of interception but court declined to apply doctrine against parent with physical custody in her own home).

⁶³ *See, e.g.,* Pollock, 154 F.3d at 610; Wagner, 64 F. Supp. 2d at 896; Thompson, 838 F. Supp. at 1544; Silas v. Silas, 680 So. 2d 368, 371-72 (Ala. Civ. App. 1996).

opposition by another parent who shares legal custody, there is no authority for limiting the doctrine to parents with sole legal custody or prior consent of the other parent.

As set forth in *Pollock*, vicarious consent depends on a finding that the “guardian has a good faith, objectively reasonable basis for believing that it is necessary and in the best interest of the child to consent on behalf of his or his minor child.”⁶⁴ Here, assuming it can be proven, your client’s intent to investigate and deal with possible sexual abuse of his young daughter would seem to meet that requirement, at least as to his daughter. As experience teaches, though, no matter how compelling the circumstances, factual findings can never be predicted with complete reliability. For all that, another route exists to liberation of your client’s interception from the constraints of the federal Act.

VII. Expectation of Privacy

To be covered by the Act at all, an interception must be of a “wire, oral, or electronic communication.”⁶⁵ An “oral communication” is “any oral communication uttered by a person exhibiting an expectation that such communication is not subject to interception under circumstances justifying such expectation.”⁶⁶ That is, a primary requirement for liability under the Act is that the children exhibited a reasonable expectation that the communication would not be subject to interception. Citing the legislative history of the Act, which “shows that Congress intended this definition to parallel the ‘reasonable expectation of privacy test’ articulated by the Supreme Court in *Katz*,”⁶⁷ courts have interpreted the requirement of an expectation that a communication would not be “subject to interception” as an expectation of privacy under the Fourth Amendment.⁶⁸ This means that for your client’s recordings to violate the Act, his children would have to

⁶⁴ *Pollock*, 154 F.3d at 610.

⁶⁵ 18 U.S.C. § 2511(1)(a).

⁶⁶ *Id.* § 2510(2).

⁶⁷ *United States v. Dunbar*, 553 F.3d 48, 57 (1st Cir. 2009) (quoting *United States v. Turner*, 209 F.3d 1198, 1200 (10th Cir.2000) (quoting *Katz v. United States*, 389 U.S. 347 (1967))).

⁶⁸ *Id.* See also, e.g., *Quon v. Arch Wireless Operating Co.*, 529 F.3d 892, 906 (9th Cir. 2008); *Doe v. Smith*, 429 F.3d 706, 709 (7th Cir. 2005); *United States v. Peoples*, 250 F.3d 630, 637 (8th Cir. 2001); *Kee v. City of Rowlett*, 247

have exhibited a subjective expectation that their conversations were secret and, if so, that the expectation was one that society would consider reasonable under the circumstances.

Whether the children exhibited a subjective expectation of privacy is necessarily a question of fact. If the baby monitor was in plain view and the children were aware of its purpose, the absence of any effort to escape the range of the device would weigh against a finding that they shared a subjective expectation of privacy, at least as to the conversations monitored by that device. In fact, absent an affirmative exhibition of secrecy, such as swearing one another to secrecy and closing the door to the room, the children's interactions may be found to fall outside the definition of "oral communication" set forth in the Act, which requires *exhibition* of an expectation, rather than simple *possession* of one.⁶⁹ Even if the children did exhibit an expectation of privacy, however, the expectation must be found to be reasonable. It is tempting to conclude that society would unequivocally decline to elevate a child's subjective expectation of privacy above a parent's right and responsibility to care for and control the child, which is itself grounded in a constitutional right of privacy. This is a similar question to application of the doctrine of vicarious consent, but it is not the same.

Repeatedly, the United States Supreme Court has "recognized the fundamental right of parents to make decisions concerning the care, custody, and control of their children,"⁷⁰ but it

F.3d 206, 211 (5th Cir. 2001); *United States v. McKinnon*, 985 F.2d 525, 527 (11th Cir. 1993).

⁶⁹ 18 U.S.C. § 2510.

⁷⁰ *Troxel v. Granville*, 530 U.S. 57, 66 (2000), (citing *Stanley v. Illinois*, 405 U.S. 645, 651 (1972)) ("It is plain that the interest of a parent in the companionship, care, custody, and management of her or her children 'come[s] to this Court with a momentum for respect lacking when appeal is made to liberties which derive merely from shifting economic arrangements'") (citation omitted); *Washington v. Glucksberg*, 521 U.S. 702, 720 (1997) ("In a long line of cases, we have held that, in addition to the specific freedoms protected by the Bill of Rights, the 'liberty' specially protected by the Due Process Clause includes the right . . . to direct the education and upbringing of one's children."); *Santosky v. Kramer*, 455 U.S. 745, 753 (1982) (discussing "[t]he fundamental liberty interest of natural parents in the care, custody, and management of their child"); *Parham v. J. R.*, 442 U.S. 584, 602 (1979) ("Our jurisprudence historically has reflected Western civilization concepts of the family as a unit with broad parental authority over minor children. Our cases have con-

remains an open question how far that right goes under the wiretap statutes. In *Commonwealth v. Baldwin*,⁷¹ for example, which disavowed earlier precedent setting forth an implied "extension exception" under the state wiretap statute, a Pennsylvania father was determined to have violated the Pennsylvania wiretap law when he eavesdropped on his son's marijuana transaction from another extension of his telephone.⁷² This case may appear to undermine an argument that a child cannot *at law* have a reasonable expectation of privacy from a parent of communications made in his parent's home, but it can be distinguished. First, the appellants against whom the intercepted communications had been used at trial were not the son, but the other party to the telephone conversations and his co-defendant based on a search predicated on the intercepted communication. Because consent of both parties to the conversation was necessary to exempt it from the Pennsylvania Act, the son's expectation of privacy was not at issue, and the ability of his parent to consent on his behalf was not raised. Therefore, *Baldwin* is inapposite to the expectation of privacy of your client's child.

In interpretation of state and federal wiretap statutes, the balancing of the rights of children and parents has centered not on whether society accepts as reasonable a child's subjective expectation of privacy, but on whether a parent has the power to consent on the child's behalf. The *Pollock* court stressed that a parent's authority to vicariously consent is limited to where he has "a good faith, objectively reasonable basis for believing that it is necessary and in the best interest of the child,"⁷³ which at first glance might appear to undermine an argument that courts should not recognize a child's expectation of privacy in relation to her parents. Generally, the relevant caselaw has evolved in the context of communications between children and third par-

sistently followed that course"); *Quilloin v. Walcott*, 434 U.S. 246, 255 (1978) ("We have recognized on numerous occasions that the relationship between parent and child is constitutionally protected"); *Wisconsin v. Yoder*, 406 U.S. 205, 232 (1972) ("The history and culture of Western civilization reflect a strong tradition of parental concern for the nurture and upbringing of their children. This primary role of the parents in the upbringing of their children is now established beyond debate as an enduring American tradition").

⁷¹ 422 A.2d 838 (Pa. Super. Ct. 1980).

⁷² *Id.* at 843.

⁷³ *Pollock*, 154 F.3d at 610.

ties whose expectation of privacy is also at issue. However, in considering the authority of school officials to strip-search a 13-year-old girl for an ibuprofen tablet, Justice Clarence Thomas observed

There can be no doubt that a parent would have had the authority to conduct the search at issue in this case. Parents have "immunity from the strictures of the Fourth Amendment" when it comes to searches of a child or that child's belongings.

As acknowledged by this Court, this principle is based on the "societal understanding of superior and inferior" with respect to the "parent and child" relationship. In light of this relationship, the Court has indicated that a parent can authorize a third-party search of a child by consenting to such a search, even if the child denies [her] consent. Certainly, a search by the parent himself is no different, regardless of whether or not a child would prefer to be left alone.⁷⁴

It stands to reason that a society in which a parent's right to strip search a child surmounts the child's subjective expectation of bodily privacy will not recognize as reasonable a child's expectation of privacy from a parent as to communications, which the parent finds prudent for the child's welfare to monitor by whatever means including electronic interception. This, of course, is a much more satisfying result than the potential long-term imprisonment of a parent for listening in on his own child's conversations, but so far the principle not been articulated by the federal courts.

⁷⁴ *Safford Unified School Dist. No. 1 v. Redding*, 129 S. Ct. 2633, 2656 (2009) (Thomas, J., dissenting) (internal citations omitted), (citing *New Jersey v. T.L.O.*, 469 U.S. 325, 337 (1985)) (A parent's authority is "not subject to the limits of the Fourth Amendment"); *Georgia v. Randolph*, 547 U.S. 103, 114 (2006)(implying parent's right to overrule refusal of child to consent to search); *Griffin v. Wisconsin*, 483 U.S. 868, 876 (1987) ("[P]arental custodial authority" does not require "judicial approval for [a] search of a minor child's room"); WAYNE R. LAFAYE, *SEARCH AND SEIZURE* § 8.3(d), at 160 (4th ed. 2004) ("[A] father, 'as the head of the household' with 'the responsibility and the authority for the discipline, training and control of his children,' has a superior interest in the family residence to that of his minor son, so that the father's consent to search would be effective notwithstanding the son's contemporaneous on-the-scene objection.")(citations omitted); *Id.*, § 8.4(b) ("[W]hile 'even a minor child, living in the bosom of his family, may think of a room as 'his,' the overall dominance will be in his parents.'")(citations omitted).

VIII. State Laws

Whether your client has violated state wiretap laws is a similar but necessarily distinct question. Generally speaking, the state wiretap laws are modeled on the federal Act and substantially mirror its language, but may be more restrictive in many respects to an individual's ability to lawfully intercept the communications of another individual, whether or not they have a familial relationship, and may impose different penalties if the law has been violated. Where the federal Act requires the consent of one party to a communication to exempt from the statute an interception thereof, numerous states require the consent of all parties.⁷⁵ As to your client, as parent to both participants in the conversation, the analysis may not change in a state that applies the doctrine of vicarious consent, as long as the interception was believed to be in the best interests of *both* children. However, in the majority of cases involving interception by parents of the communications of children, the communication is between one child and another individual whose consent cannot be vicariously provided by the child's parent. In these cases, eavesdropping by device on a conversation between a child and her other parent, playmate or nanny may violate a state law that requires two-party consent regardless of the parent's "good faith, objectively reasonable basis for believing that it is necessary and in the best interest of the child."⁷⁶ The law may be violated even in a one-party consent state, or where both parties are children of the interceptor, if the state will not apply vicarious consent.

States that have considered the question have mostly approved vicarious consent with regard to state wiretapping statutes.⁷⁷ They generally note the constitutional interest in the care and control of one's children and the intent that their own wire-

⁷⁵ See note 4, *supra*.

⁷⁶ *Pollock*, 154 F.3d at 610.

⁷⁷ See, e.g., *Thompson*, 838 F. Supp. at ; *Stinson v. Larson*, 893 So. 2d 462, 469 (Ala. Civ. App. 2004); *G.J.G.*, 2006 WL 2389340, at *8; *State v. Spencer*, 737 N.W.2d 124, 134 (Iowa 2007); *Smith*, 923 So. 2d at 740; *D'Onofrio*, 780 A.2d at 597; *People v. Clark*, 855 N.Y.S.2d 809, 813 (2008); *Kroh v. Kroh*, 567 S.E.2d 760 (N.C. Ct. App. 2002); *Alameda v. State*, 235 S.W.3d 218, 223 (Tex. Crim. App. 2007); *State v. Duchow*, No. 2005AP2175-CR, 2007 WL 968795, at *1 (Wis. Ct. App. 2007), *rev'd on other grounds* *State v. Duchow*, 749 N.W.2d 913 (Wis. 2007); see also *West. Va. Dep't of Health & Human Res.*, 453 S.E.2d at

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tapping statutes were meant to track the federal statute. Only two dissenters have emerged. In Georgia, the court declined to adopt the doctrine,⁷⁸ but the Georgia statute was subsequently amended to contain it.⁷⁹ Consequently, Michigan stands alone in refusing to apply the vicarious consent doctrine in *Williams v. Williams*.⁸⁰ That decision has been distinguished on the grounds that, since Michigan is a *two-party* consent state, vicarious consent of the child to interception of a conversation with the non-custodial parent was insufficient to except it from Michigan's wiretap statute.⁸¹ Thus *Williams* can be distinguished in states with one-party consent requirements, or where, like here, vicarious consent would apply to all parties to the conversation. That may not help, however, in states that have not considered the question at all.

In addition to the uncertainty whether state courts will apply vicarious consent or accept a child's subjective expectation of privacy, state wiretapping statutes may also contain idiosyncrasies that further complicate advice to your client. For example, while the federal Act defines an "oral communication" as an utterance by someone "exhibiting" an expectation of privacy,⁸² which is generally understood to mean "to show outwardly,"⁸³ the definition of "oral communication" under the Pennsylvania law requires only *possession* of an expectation, which is a much more subjective determination. Perhaps more troubling still, while the federal Act proscribes intentional disclosure or use or intentional attempted disclosure or use of any information about an oral communication where the actor knows or has reason to know the information was obtained in violation of the Act,⁸⁴ Pennsylvania's provisions criminalizing actual or attempted disclosure or use of intercepted communications, *are not limited to unlawful interceptions*, nor are lawful interceptions otherwise exempted

648 (approving doctrine but refusing to apply it where tape recording was made in the home of the non-consenting custodial parent).

⁷⁸ *Bishop v. State*, 526 S.E.2d 917, 920 (Ga. Ct. App. 1999).

⁷⁹ GA. CODE ANN. § 16-11-66 (2000).

⁸⁰ 581 N.W.2d 777, 779-80 (Mich. Ct. App. 1998).

⁸¹ See *Spencer*, 737 N.W.2d at 133.

⁸² 18 U.S.C. § 2510(2).

⁸³ THE AMERICAN HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE (4th ed. Houghton Mifflin Company, 2004) (defining "exhibit").

⁸⁴ 18 U.S.C. § 2511(1).

from liability. Like the federal Act, the Pennsylvania Wiretapping and Electronic Surveillance Control Act⁸⁵ does not distinguish in sanctions between an interception and its disclosure and/or use, each of which would be a third degree felony carrying a maximum prison sentence of seven years in Pennsylvania.⁸⁶ By the plain language of the Pennsylvania Act, even if your client has not violated the law by monitoring and videotaping his children, disclosure of any information about these *lawful* interceptions or what he learned thereby, or any attempt to use them for any purpose, may still constitute a felony notwithstanding your client's good faith intent.

This, of course, sounds like a preposterous result, but it is the technical reading of the Pennsylvania Act, which the state's highest court has expressly held to require strict construction.⁸⁷ Nevertheless, in statutory construction a Pennsylvania court must assume that legislators did not intend "a result that is absurd . . . or unreasonable"⁸⁸ and did not intend to violate the Constitution,⁸⁹ and a federal court is bound to the same principles.⁹⁰ Here, since your client intercepted his children's communications entirely without government participation, there can have been no violation of the children's Fourth Amendment rights against unreasonable search and seizure. Your client, conversely, has a well established right to care for and control his children,⁹¹ which is inarguably infringed by a statute proscribing him from monitoring and conveying information about his children's communications in acquittal of his responsibility to act for their welfare and protection, and in fact the children also have an undeniable interest in preservation of their parent's liberties to do so. Particularly where, as here, no participant in an intercepted communication has a competing interest, nor is it possible to imagine a state interest in preventing parents from surreptitiously listening

⁸⁵ 18 PA. CONST. STAT. §§5701-5782.

⁸⁶ 18 PA. CONST. STAT. § 106.

⁸⁷ *Kopko v. Miller*, 892 A.2d 766, 780 (Pa. 2006) (quoting *Commonwealth v. Spangler*, 809 A.2d 234, 237 (2002) ("Because of this privacy concern, the provisions of the Wiretap Act are strictly construed.")).

⁸⁸ 1 PA. CONST. STAT. § 1922(1).

⁸⁹ *Id.* at § 1922(3).

⁹⁰ *United States v. X-Citement Video, Inc.*, 513 U.S. 64, 69-70 (1994) (citing *Public Citizen v. Dept. of Justice*, 491 U.S. 440, 453-455 (1989)).

⁹¹ *See supra* notes 70, 74 .

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to or observing their own children, interpretation of the Act to proscribe acts taken in exercise of the client's fundamental right to "make decisions concerning the care, custody, and control" of the child, would run afoul of the Due Process Clause of the Fourteenth Amendment.⁹²

Fortunately, it is not necessary to interpret state or federal wiretap laws in a way that raises this difficult constitutional question, and perhaps it is impermissible as well. Courts have at least two alternatives: to universally recognize a parent's right to consent on a child's behalf to interception of the child's communications⁹³ and, more comprehensively, to articulate a principle that a child cannot possess a reasonable expectation of privacy as to interceptions by a parent.

IX. Conclusion

Most practitioners of custody and divorce law can attest that the hypothetical on which this analysis is grounded is entirely conceivable and many may have encountered similar conundrums. Importantly, though, the conduct potentially proscribed by these laws can be ubiquitous. In fact, by the rigid interpretation set forth here, it is safe to say that most parents have probably violated federal and state wiretap laws time and time again. Absent application of the principles of vicarious consent and/or findings that children's subjective expectation of privacy as to their parents cannot at law be reasonable, state and federal wiretap laws could subject a parent to felony sanctions for conduct including, but not limited to, the following:

- Eavesdropping on a child with a baby monitor, intercom or "nanny-cam";
- Eavesdropping from another extension on a child's telephone conversation to gather information about development or risk taking behavior;
- Video or audiotaping any child too young to consent;

⁹² *Troxel*, 530 U.S. at 66.

⁹³ This, of course, may not guard against legislative landmines like provisions in the Pennsylvania statute that ostensibly criminalize disclosure and use of interceptions that are themselves lawful.

- Video or audiotaping any child, at any time, who is unable to consent because of physical, mental or psychological impairment;
- Videotaping family activities to document children's development or family events for any purpose, including posterity or family entertainment, without prior consent of all parties to any communication so recorded;
- Sharing any of these family recordings; and
- Discussing the contents of any communication of the child intercepted by telephone extension, baby monitor or video recorder with doctors, lawyers, priests, psychologists, or even the other parent, even when the recordings were made with the consent of the child.

Obviously legislatures, in passing the wiretap laws, had no intention of intruding so completely on the sanctity of the family relationship. Lawmakers cannot have intended to prevent parents from taking steps to monitor the activities of the children in their care, even where the children themselves actively conceal this information, nor from acting on the information they have obtained by sharing it with appropriate third persons reasonably deemed by parents to be necessary to the goal of protecting the best interests of their children. The legislature cannot have intended to make it illegal for parents to make recordings of their children at play without express prior consent. Congress and state legislatures, in passing these laws, never intended to subject a parent to felony sanctions for secretly documenting the behavior of a child for illustration to a mental health professional. If this had been the intent of lawmakers, these laws could not survive constitutional scrutiny. However, by the law of statutory interpretation, since there exists an interpretation of the wiretap laws that does not implicate the Constitution nor compel an absurd and unintended result, the questions need not be reached.

So, how do you advise your client? Under the federal law, as long as he can show that he had a good faith belief that the interceptions were in the best interests of at least one of the children, he is insulated from criminal and civil liability, and may freely use the recordings and information obtained by interception. His liability under state laws is much murkier: In Pennsylvania, for example, by the plain language of the wiretap law of that state, he has already committed multiple felonies by eaves-

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dropping on his children and making the recordings, by telling you about them, and even by simply *asking* you introduce them at trial. Worse, he has no use for them that does not expose you and any reviewing psychologist to criminal and civil liability as well. They cannot be admitted at trial or used for assessment or treatment of the child, and your representation of the client may itself be in jeopardy.

Realistically, while it is likely the recordings would be excluded from evidence in a state court, together with any report or testimony of the psychologist reliant on them, it seems exceedingly unlikely a prosecutor would reach so far as to prosecute a parent for eavesdropping upon and secretly videotaping his own children, and it seems equally unlikely a civil jury would be willing to assign blame. Unfortunately, though, as long as wiretap laws fail to expressly exempt interception by parents of their children's communications and courts fail to uniformly adopt principles to otherwise insulate parents for this kind of routine act of parenting, enforcement of wiretap laws against parents may remain as unpredictable as falling down a rabbit hole.

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TITLE 18 - CRIMES AND CRIMINAL PROCEDURE

PART I - CRIMES

**CHAPTER 119 - WIRE AND ELECTRONIC COMMUNICATIONS INTERCEPTION
AND INTERCEPTION OF ORAL COMMUNICATIONS**

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Sec. 2510. Definitions

As used in this chapter -

- (1) "wire communication" means any aural transfer made in whole or in part through the use of facilities for the transmission of communications by the aid of wire, cable, or other like connection between the point of origin and the point of reception (including the use of such connection in a switching station) furnished or operated by any person engaged in providing or operating such facilities for the transmission of interstate or foreign communications or communications affecting interstate or foreign commerce;
- (2) "oral communication" means any oral communication uttered by a person exhibiting an expectation that such communication is not subject to interception under circumstances justifying such expectation, but such term does not include any electronic communication;
- (3) "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States;
- (4) "intercept" means the aural or other acquisition of the contents of any wire, electronic, or oral communication through the use of any electronic, mechanical, or other device.
- (5) "electronic, mechanical, or other device" means any device or apparatus which can be used to intercept a wire, oral, or electronic communication other than -
 - (a) any telephone or telegraph instrument, equipment or facility, or any component thereof, (i) furnished to the subscriber or user by a provider of wire or electronic communication service in the ordinary course of its business and being used by the subscriber or user 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 (ii) being used by a provider of wire or electronic communication service in the ordinary course of its business, or by an investigative or law enforcement officer in the ordinary course of his duties;
 - (b) a hearing aid or similar device being used to correct subnormal hearing to not better than normal;
- (6) "person" means any employee, or agent of the United States or any State or political subdivision thereof, and any individual, partnership, association, joint stock company, trust, or corporation;
- (7) "Investigative or law enforcement officer" means any officer of the United States or of a State or

political subdivision thereof, who is empowered by law to conduct investigations of or to make arrests for offenses enumerated in this chapter, and any attorney authorized by law to prosecute or participate in the prosecution of such offenses;

(8) "contents", when used with respect to any wire, oral, or electronic communication, includes any information concerning the substance, purport, or meaning of that communication;

(9) "Judge of competent jurisdiction" means -

(a) a judge of a United States district court or a United States court of appeals; and

(b) a judge of any court of general criminal jurisdiction of a State who is authorized by a statute of that State to enter orders authorizing interceptions of wire, oral, or electronic communications;

(10) "communication common carrier" has the meaning given that term in section 3 of the Communications Act of 1934;

(11) "aggrieved person" means a person who was a party to any intercepted wire, oral, or electronic communication or a person against whom the interception was directed;

(12) "electronic communication" means 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 photooptical system that affects interstate or foreign commerce, but does not include -

(A) any wire or oral communication;

(B) any communication made through a tone-only paging device;

(C) any communication from a tracking device (as defined in section 3117 of this title); or

(D) electronic funds transfer information stored by a financial institution in a communications system used for the electronic storage and transfer of funds;

(13) "user" means any person or entity who -

(A) uses an electronic communication service; and

(B) is duly authorized by the provider of such service to engage in such use;

(14) "electronic communications system" means any wire, radio, electromagnetic, photooptical or photoelectronic facilities for the transmission of wire or electronic communications, and any computer facilities or related electronic equipment for the electronic storage of such communications;

(15) "electronic communication service" means any service which provides to users thereof the ability to send or receive wire or electronic communications;

(16) "readily accessible to the general public" means, with respect to a radio communication, that such communication is not -

(A) scrambled or encrypted;

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

(C) carried on a subcarrier or other signal subsidiary to a radio transmission;

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

(E) transmitted on frequencies allocated under part 25, subpart D, E, or F of part 74, or part 94 of the Rules of the Federal Communications Commission, unless, in the case of a communication transmitted on a frequency allocated under part 74 that is not exclusively allocated to broadcast auxiliary services, the communication is a two-way voice communication by radio;

(17) "electronic storage" means -

(A) any temporary, intermediate storage of a wire or electronic communication incidental to the electronic transmission thereof; and

(B) any storage of such communication by an electronic communication service for purposes of backup protection of such communication;

(18) "aural transfer" means a transfer containing the human voice at any point between and including the point of origin and the point of reception;

(19) "foreign intelligence information", for purposes of section 2517(6) of this title, means -

(A) information, whether or not concerning a United States person, that relates to the ability of the United States to protect against -

(i) actual or potential attack or other grave hostile acts of a foreign power or an agent of a foreign power;

(ii) sabotage or international terrorism by a foreign power or an agent of a foreign power; or

(iii) clandestine intelligence activities by an intelligence service or network of a foreign power or by an agent of a foreign power; or

(B) information, whether or not concerning a United States person, with respect to a foreign power or foreign territory that relates to -

- (i) the national defense or the security of the United States; or
- (ii) the conduct of the foreign affairs of the United States;
- (20) "protected computer" has the meaning set forth in section 1030; and
- (21) "computer trespasser" -
 - (A) means a person who accesses a protected computer without authorization and thus has no reasonable expectation of privacy in any communication transmitted to, through, or from the protected computer; and
 - (B) does not include a person known by the owner or operator of the protected computer to have an existing contractual relationship with the owner or operator of the protected computer for access to all or part of the protected computer.

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Sec. 2511. Interception and disclosure of wire, oral, or electronic communications prohibited

- (1) Except as otherwise specifically provided in this chapter any person who -
- (a) intentionally intercepts, endeavors to intercept, or procures any other person to intercept or endeavor to intercept, any wire, oral, or electronic communication;
 - (b) intentionally uses, endeavors to use, or procures any other person to use or endeavor to use any electronic, mechanical, or other device to intercept any oral communication when -
 - (i) such device is affixed to, or otherwise transmits a signal through, a wire, cable, or other like connection used in wire communication; or
 - (ii) such device transmits communications by radio, or interferes with the transmission of such communication; or
 - (iii) such person knows, or has reason to know, that such device or any component thereof has been sent through the mail or transported in interstate or foreign commerce; or
 - (iv) such use or endeavor to use (A) takes place on the premises of any business or other commercial establishment the operations of which affect interstate or foreign commerce; or
 - (B) obtains or is for the purpose of obtaining information relating to the operations of any business or other commercial establishment the operations of which affect interstate or foreign commerce; or
 - (v) such person acts in the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States;
 - (c) intentionally discloses, or endeavors to disclose, to any other person the contents of any wire, oral, or electronic communication, knowing or having reason to know that the information was obtained through the interception of a wire, oral, or electronic communication in violation of this subsection;
 - (d) intentionally uses, or endeavors to use, the contents of any wire, oral, or electronic communication, knowing or having reason to know that the information was obtained through the interception of a wire, oral, or electronic communication in violation of this subsection; or
 - (e)(i) intentionally discloses, or endeavors to disclose, to any other person the contents of any wire, oral, or electronic communication, intercepted by means authorized by sections 2511(2)(a)(ii), 2511(2)(b)-(c), 2511(2)(e), 2516, and 2518 of this chapter, (ii) knowing or having reason to know that the information was obtained through the interception of such a communication in connection with a criminal investigation, (iii) having obtained or received the information in connection with a criminal investigation, and (iv) with intent to improperly obstruct, impede, or interfere with a duly authorized criminal investigation, shall be punished as provided in subsection (4) or shall be subject to suit as provided in subsection (5).
- (2)(a)(i) It shall not be unlawful under this chapter for an operator of a switchboard, or an officer, employee, or agent of a provider of wire or electronic communication service, whose facilities are used in the transmission of a wire or electronic communication, to intercept, disclose, or use that communication in the normal course of his employment while engaged in any activity which is a necessary incident to the rendition of his service or to the protection of the rights or property of the provider of that service, except that a provider of wire communication service to the public shall not utilize service observing or random monitoring except for mechanical or service quality control checks.
- (ii) Notwithstanding any other law, providers of wire or electronic communication service, their officers, employees, and agents, landlords, custodians, or other persons, are authorized to provide information, facilities, or technical assistance to persons authorized by law to intercept wire, oral, or electronic communications or to conduct electronic surveillance, as defined in section 101 of the Foreign Intelligence Surveillance Act of 1978, if such provider, its officers, employees, or agents, landlord, custodian, or other specified person, has been provided with
- (A) a court order directing such assistance or a court order pursuant to section 704 of the Foreign Intelligence Surveillance Act of 1978 signed by the authorizing judge, or
 - (B) a certification in writing by a person specified in section 2518(7) of this title or the Attorney General of the United States that no warrant or court order is required by law, that all statutory requirements have been met, and that the specified assistance is required, setting forth the period of time during which the provision of the information, facilities, or technical assistance is authorized and specifying the information, facilities, or technical assistance required. No provider of wire or electronic communication service, officer, employee, or agent thereof, or landlord, custodian, or other specified person shall disclose the existence of any interception or surveillance or the device used to accomplish the interception or surveillance with respect to which the person has been furnished a court order or certification under this chapter, except as may otherwise be required by legal process and then only after prior notification to the Attorney General or to the

principal prosecuting attorney of a State or any political subdivision of a State, as may be appropriate. Any such disclosure, shall render such person liable for the civil damages provided for in section 2520. No cause of action shall lie in any court against any provider of wire or electronic communication service, its officers, employees, or agents, landlord, custodian, or other specified person for providing information, facilities, or assistance in accordance with the terms of a court order, statutory authorization, or certification under this chapter.

(iii) If a certification under subparagraph (ii)(B) for assistance to obtain foreign intelligence information is based on statutory authority, the certification shall identify the specific statutory provision and shall certify that the statutory requirements have been met.

(b) It shall not be unlawful under this chapter for an officer, employee, or agent of the Federal Communications Commission, in the normal course of his employment and in discharge of the monitoring responsibilities exercised by the Commission in the enforcement of chapter 5 of title 47 of the United States Code, to intercept a wire or electronic communication, or oral communication transmitted by radio, or to disclose or use the information thereby obtained.

(c) It shall not be unlawful under this chapter for a person acting under color of law to intercept a wire, oral, or electronic communication, where such person is a party to the communication or one of the parties to the communication has given prior consent to such interception.

(d) It shall not be unlawful under this chapter for a person not acting under color of law to intercept a wire, oral, or electronic communication where such person is a party to the communication or where one of the parties to the communication has given prior consent to such interception unless such communication is intercepted for the purpose of committing any criminal or tortious act in violation of the Constitution or laws of the United States or of any State.

(e) Notwithstanding any other provision of this title or section 705 or 706 of the Communications Act of 1934, it shall not be unlawful for an officer, employee, or agent of the United States in the normal course of his official duty to conduct electronic surveillance, as defined in section 101 of the Foreign Intelligence Surveillance Act of 1978, as authorized by that Act.

(f) Nothing contained in this chapter or chapter 121 or 206 of this title, or section 705 of the Communications Act of 1934, shall be deemed to affect the acquisition by the United States Government of foreign intelligence information from international or foreign communications, or foreign intelligence activities conducted in accordance with otherwise applicable Federal law involving a foreign electronic communications system, utilizing a means other than electronic surveillance as defined in section 101 of the Foreign Intelligence Surveillance Act of 1978, and procedures in this chapter or chapter 121 and the Foreign Intelligence Surveillance Act of 1978 shall be the exclusive means by which electronic surveillance, as defined in section 101 of such Act, and the interception of domestic wire, oral, and electronic communications may be conducted.

(g) It shall not be unlawful under this chapter or chapter 121 of this title for any person -

(i) to intercept or access an electronic communication made through an electronic communication system that is configured so that such electronic communication is readily accessible to the general public;

(ii) to intercept any radio communication which is transmitted -

(I) by any station for the use of the general public, or that relates to ships, aircraft, vehicles, or persons in distress;

(II) by any governmental, law enforcement, civil defense, private land mobile, or public safety communications system, including police and fire, readily accessible to the general public;

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

(IV) by any marine or aeronautical communications system;

(iii) to engage in any conduct which -

(I) is prohibited by section 633 of the Communications Act of 1934; or

(II) is excepted from the application of section 705(a) of the Communications Act of 1934 by section 705(b) of that Act;

(iv) to intercept any wire or electronic communication the transmission of which is causing harmful interference to any lawfully operating station or consumer electronic equipment, to the extent necessary to identify the source of such interference; or

(v) for other users of the same frequency to intercept any radio communication made through a system that utilizes frequencies monitored by individuals engaged in the provision or the use of such system, if such communication is not scrambled or encrypted.

(h) It shall not be unlawful under this chapter -

(i) to use a pen register or a trap and trace device (as those terms are defined for the purposes of chapter 206 (relating to pen registers and trap and trace devices) of this title); or

(ii) for a provider of electronic communication service to record the fact that a wire or electronic communication was initiated or completed in order to protect such provider, another provider furnishing service toward the completion of the wire or electronic communication, or a user of that service, from fraudulent, unlawful or abusive use of such service.

(i) It shall not be unlawful under this chapter for a person acting under color of law to intercept the wire or electronic communications of a computer trespasser transmitted to, through, or from the protected computer, if -

(I) the owner or operator of the protected computer authorizes the interception of the computer trespasser's communications on the protected computer;

- (II) the person acting under color of law is lawfully engaged in an investigation;
- (III) the person acting under color of law has reasonable grounds to believe that the contents of the computer trespasser's communications will be relevant to the investigation; and
- (IV) such interception does not acquire communications other than those transmitted to or from the computer trespasser.

(3)(a) Except as provided in paragraph (b) of this subsection, a person or entity providing an electronic communication service to the public shall not intentionally divulge the contents of any communication (other than one to such person or entity, or an agent thereof) while in transmission on that service to any person or entity other than an addressee or intended recipient of such communication or an agent of such addressee or intended recipient.

(b) A person or entity providing electronic communication service to the public may divulge the contents of any such communication -

- (i) as otherwise authorized in section 2511(2)(a) or 2517 of this title;
- (ii) with the lawful consent of the originator or any addressee or intended recipient of such communication;
- (iii) to a person employed or authorized, or whose facilities are used, to forward such 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.

(4)(a) Except as provided in paragraph (b) of this subsection or in subsection (5), whoever violates subsection (1) of this section shall be fined under this title or imprisoned not more than five years, or both.

(b) Conduct otherwise an offense under this subsection that consists of or relates to the interception of a satellite transmission that is not encrypted or scrambled and that is transmitted -

- (i) to a broadcasting station for purposes of retransmission to the general public; or
- (ii) as an audio subcarrier intended for redistribution to facilities open to the public, but not including data transmissions or telephone calls, is not an offense under this subsection unless the conduct is for the purposes of direct or indirect commercial advantage or private financial gain.

(5)(a)(i) If the communication is -

(A) a private satellite video communication that is not scrambled or encrypted and the conduct in violation of this chapter is the private viewing of that communication and is not for a tortious or illegal purpose or for purposes of direct or indirect commercial advantage or private commercial gain; or

(B) a radio communication that is transmitted on frequencies allocated under subpart D of part 74 of the rules of the Federal Communications Commission that is not scrambled or encrypted and the conduct in violation of this chapter is not for a tortious or illegal purpose or for purposes of direct or indirect commercial advantage or private commercial gain, then the person who engages in such conduct shall be subject to suit by the Federal Government in a court of competent jurisdiction.

(ii) In an action under this subsection -

(A) If the violation of this chapter is a first offense for the person under paragraph (a) of subsection (4) and such person has not been found liable in a civil action under section 2520 of this title, the Federal Government shall be entitled to appropriate injunctive relief; and

(B) If the violation of this chapter is a second or subsequent offense under paragraph (a) of subsection (4) or such person has been found liable in any prior civil action under section 2520, the person shall be subject to a mandatory \$500 civil fine.

(b) The court may use any means within its authority to enforce an injunction issued under paragraph (ii)(A), and shall impose a civil fine of not less than \$500 for each violation of such an injunction.

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Sec. 2512. Manufacture, distribution, possession, and advertising of wire, oral, or electronic communication intercepting devices prohibited

(1) Except as otherwise specifically provided in this chapter, any person who intentionally -

(a) sends through the mail, or sends or carries in interstate or foreign commerce, any electronic, mechanical, or other device, knowing or having reason to know that the design of such device renders it primarily useful for the purpose of the surreptitious interception of wire, oral, or electronic communications;

(b) manufactures, assembles, possesses, or sells any electronic, mechanical, or other device, knowing or having reason to know that the design of such device renders it primarily useful for the purpose of the surreptitious interception of wire, oral, or electronic communications, and that such device or any component thereof has been or will be sent through the mail or transported in interstate or foreign commerce; or

(c) places in any newspaper, magazine, handbill, or other publication or disseminates by electronic means any advertisement of -

(i) any electronic, mechanical, or other device knowing or having reason to know that the design of such device renders it primarily useful for the purpose of the surreptitious interception of wire, oral, or electronic communications; or

(ii) any other electronic, mechanical, or other device, where such advertisement promotes the use of such device for the purpose of the surreptitious interception of wire, oral, or electronic communications, knowing the content of the advertisement and knowing or having reason to know

that such advertisement will be sent through the mail or transported in interstate or foreign commerce, shall be fined under this title or imprisoned not more than five years, or both.

(2) It shall not be unlawful under this section for -

- (a) 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 that wire or electronic communication service, or
- (b) an officer, agent, or employee of, or a person under contract with, the United States, a State, or a political subdivision thereof, in the normal course of the activities of the United States, a State, or a political subdivision thereof, to send through the mail, send or carry in interstate or foreign commerce, or manufacture, assemble, possess, or sell any electronic, mechanical, or other device knowing or having reason to know that the design of such device renders it primarily useful for the purpose of the surreptitious interception of wire, oral, or electronic communications.

(3) It shall not be unlawful under this section to advertise for sale a device described in subsection (1) of this section if the advertisement is mailed, sent, or carried in interstate or foreign commerce solely to a domestic provider of wire or electronic communication service or to an agency of the United States, a State, or a political subdivision thereof which is duly authorized to use such device.

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Sec. 2513. Confiscation of wire, oral, or electronic communication intercepting devices

Any electronic, mechanical, or other device used, sent, carried, manufactured, assembled, possessed, sold, or advertised in violation of section 2511 or section 2512 of this chapter may be seized and forfeited to the United States. All provisions of law relating to (1) the seizure, summary and judicial forfeiture, and condemnation of vessels, vehicles, merchandise, and baggage for violations of the customs laws contained in title 19 of the United States Code, (2) the disposition of such vessels, vehicles, merchandise, and baggage or the proceeds from the sale thereof, (3) the remission or mitigation of such forfeiture, (4) the compromise of claims, and (5) the award of compensation to informers in respect of such forfeitures, shall apply to seizures and forfeitures incurred, or alleged to have been incurred, under the provisions of this section, insofar as applicable and not inconsistent with the provisions of this section; except that such duties as are imposed upon the collector of customs or any other person with respect to the seizure and forfeiture of vessels, vehicles, merchandise, and baggage under the provisions of the customs laws contained in title 19 of the United States Code shall be performed with respect to seizure and forfeiture of electronic, mechanical, or other intercepting devices under this section by such officers, agents, or other persons as may be authorized or designated for that purpose by the Attorney General.

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Sec. 2514. Repealed.

Sec. 2515. Prohibition of use as evidence of intercepted wire or oral communications

Whenever any wire or oral communication has been intercepted, no part of the contents of such communication and no evidence derived therefrom may be received in evidence in any trial, hearing, or other proceeding in or before any court, grand jury, department, officer, agency, regulatory body, legislative committee, or other authority of the United States, a State, or a political subdivision thereof if the disclosure of that information would be in violation of this chapter.

Sec. 2516. Authorization for interception of wire, oral, or electronic communications

(1) The Attorney General, Deputy Attorney General, Associate Attorney General, or any Assistant Attorney General, any acting Assistant Attorney General, or any Deputy Assistant Attorney General or acting Deputy Assistant Attorney General in the Criminal Division or National Security Division specially designated by the Attorney General, may authorize an application to a Federal judge of competent jurisdiction for, and such judge may grant in conformity with section 2518 of this chapter an order authorizing or approving the interception of wire or oral communications by the Federal Bureau of Investigation, or a Federal agency having responsibility for the investigation of the offense as to which the application is made, when such interception may provide or has provided evidence of -

- (a) any offense punishable by death or by imprisonment for more than one year under sections 2122 and 2274 through 2277 of title 42 of the United States Code (relating to the enforcement of the Atomic Energy Act of 1954), section 2284 of title 42 of the United States Code (relating to sabotage of nuclear facilities or fuel), or under the following chapters of this title: chapter 10 (relating to biological weapons) chapter 37 (relating to espionage), chapter 55 (relating to kidnapping), chapter 90 (relating to protection of trade secrets), chapter 105 (relating to sabotage), chapter 115 (relating to treason), chapter 102 (relating to riots), chapter 65 (relating to malicious mischief), chapter 111 (relating to destruction of vessels), or chapter 81 (relating to piracy);
- (b) a violation of section 186 or section 501(c) of title 29, United States Code (dealing with restrictions on payments and loans to labor organizations), or any offense which involves murder, kidnapping, robbery, or extortion, and which is punishable under this title;
- (c) any offense which is punishable under the following sections of this title: section 37 (relating to violence at international airports), section 43 (relating to animal enterprise terrorism), section 81 (arson within special maritime and territorial jurisdiction), section 201 (bribery of public officials and witnesses), section 215 (relating to bribery of bank officials), section 224 (bribery in sporting contests), subsection (d), (e), (f), (g), (h), or (i) of section 844 (unlawful use of explosives), section 1032 (relating to concealment of assets), section 1084 (transmission of wagering information), section 751 (relating to escape), section 832 (relating to nuclear and weapons of mass destruction threats), section 842 (relating to explosive materials), section 930 (relating to possession of weapons in Federal facilities), section 1014 (relating to loans and credit applications generally; renewals and discounts), section 1114 (relating to officers and employees of the

United States), section 1116 (relating to protection of foreign officials), sections 1503, 1512, and 1513 (influencing or injuring an officer, juror, or witness generally), section 1510 (obstruction of criminal investigations), section 1511 (obstruction of State or local law enforcement), section 1591 (sex trafficking of children by force, fraud, or coercion), section 1751 (Presidential and Presidential staff assassination, kidnapping, and assault), section 1951 (interference with commerce by threats or violence), section 1952

(interstate and foreign travel or transportation in aid of racketeering enterprises), section 1958 (relating to use of interstate commerce facilities in the commission of murder for hire), section 1959 (relating to violent crimes in aid of racketeering activity), section 1954 (offer, acceptance, or solicitation to influence operations of employee benefit plan), section 1955 (prohibition of business enterprises of gambling), section 1956 (laundering of monetary instruments), section 1957

(relating to engaging in monetary transactions in property derived from specified unlawful activity), section 659 (theft from interstate shipment), section 664 (embezzlement from pension and welfare funds), section 1343 (fraud by wire, radio, or television), section 1344 (relating to bank fraud), section 1992 (relating to terrorist attacks against mass transportation), sections 2251 and 2252 (sexual exploitation of children), section 2251A (selling or buying of children), section 2252A (relating to material constituting or containing child pornography), section 1466A (relating to child obscenity), section 2260 (production of sexually explicit depictions of a minor for importation into the United States), sections 2421, 2422, 2423, and 2425 (relating to transportation for illegal sexual activity and related crimes), sections 2312, 2313, 2314, and 2315 (interstate transportation of stolen property), section 2321 (relating to trafficking in certain motor vehicles or motor vehicle parts), section 2340A (relating to torture), section 1203 (relating to hostage taking), section 1029 (relating to fraud and related activity in connection with access devices), section 3146 (relating to penalty for failure to appear), section 3521(b)(3) (relating to witness relocation and assistance), section 32 (relating to destruction of aircraft or aircraft facilities), section 38 (relating to aircraft parts fraud), section 1963 (violations with respect to racketeer influenced and corrupt organizations), section 115 (relating to threatening or retaliating against a Federal official), section 1341 (relating to mail fraud), a felony violation of section 1030 (relating to computer fraud and abuse), section 351 (violations with respect to congressional, Cabinet, or Supreme Court assassinations, kidnapping, and assault), section 831 (relating to prohibited transactions involving nuclear materials), section 33 (relating to destruction of motor vehicles or motor vehicle facilities), section 175 (relating to biological weapons), section 175c (relating to variola virus) section 956 (conspiracy to harm persons or property overseas), section a felony violation of section 1028 (relating to production of false identification documentation), section 1425 (relating to the procurement of citizenship or nationalization unlawfully), section 1426

(relating to the reproduction of naturalization or citizenship papers), section 1427 (relating to the sale of naturalization or citizenship papers), section 1541 (relating to passport issuance without authority), section 1542 (relating to false statements in passport applications), section 1543 (relating to forgery or false use of passports), section 1544 (relating to misuse of passports), or section 1546 (relating to fraud and misuse of visas, permits, and other documents);

(d) any offense involving counterfeiting punishable under section 471, 472, or 473 of this title;

(e) any offense involving fraud connected with a case under title 11 or the manufacture, importation, receiving, concealment, buying, selling, or otherwise dealing in narcotic drugs, marihuana, or other dangerous drugs, punishable under any law of the United States;

(f) any offense including extortionate credit transactions under sections 892, 893, or 894 of this title;

(g) a violation of section 5322 of title 31, United States Code (dealing with the reporting of currency transactions), or section 5324 of title 31, United States Code (relating to structuring transactions to evade reporting requirement prohibited);

(h) any felony violation of sections 2511 and 2512 (relating to interception and disclosure of certain communications and to certain intercepting devices) of this title;

(i) any felony violation of chapter 71 (relating to obscenity) of this title;

(j) any violation of section 60123(b) (relating to destruction of a natural gas pipeline,) section 46502 (relating to aircraft piracy), the second sentence of section 46504 (relating to assault on a flight crew with dangerous weapon), or section 46505(b)(3) or (c) (relating to explosive or incendiary devices, or endangerment of human life, by means of weapons on aircraft) of title 49;

(k) any criminal violation of section 2778 of title 22 (relating to the Arms Export Control Act);

(l) the location of any fugitive from justice from an offense described in this section;

(m) a violation of section 274, 277, or 278 of the Immigration and Nationality Act (8 U.S.C. 1324, 1327, or 1328) (relating to the smuggling of aliens);

(n) any felony violation of sections 922 and 924 of title 18, United States Code (relating to firearms);

(o) any violation of section 5861 of the Internal Revenue Code of 1986 (relating to firearms);

(p) a felony violation of section 1028 (relating to production of false identification documents), section 1542 (relating to false statements in passport applications), section 1546

(relating to fraud and misuse of visas, permits, and other documents, section 1028A (relating to aggravated identity theft))

of this title or a violation of section 274, 277, or 278 of the Immigration and Nationality Act (relating to the smuggling of aliens); or

(q) any criminal violation of section 229 (relating to chemical weapons) or section 2332, 2332a, 2332b, 2332d, 2332f, 2332g, 2332h 2339, 2339A, 2339B, 2339C, or 2339D of this title (relating to terrorism);

(r) any criminal violation of section 1 (relating to illegal restraints of trade or commerce), 2 (relating to illegal monopolizing of trade or commerce), or 3 (relating to illegal restraints of trade or commerce in territories or the District of Columbia) of the Sherman Act (15 U.S.C. 1, 2, 3); or

(s) any conspiracy to commit any offense described in any subparagraph of this paragraph.

(2) The principal prosecuting attorney of any State, or the principal prosecuting attorney of any political subdivision thereof, if such attorney is authorized by a statute of that State to make application to a State court judge of competent jurisdiction for an order authorizing or approving the interception of wire, oral, or electronic communications, may apply to such judge for, and such judge may grant in conformity with section 2518 of this chapter and with the applicable State statute an order authorizing, or approving the interception of wire, oral, or electronic communications by investigative or law enforcement officers having responsibility for the investigation of the offense as to which the application is made, when such interception may provide or has provided evidence of the commission of the offense of murder, kidnapping, gambling, robbery, bribery, extortion, or dealing in narcotic drugs, marihuana or other dangerous drugs, or other crime dangerous to life, limb, or property, and punishable by imprisonment for more than one year, designated in any applicable State statute authorizing such interception, or any conspiracy to commit any of the foregoing offenses.

(3) Any attorney for the Government (as such term is defined for the purposes of the Federal Rules of Criminal Procedure) may authorize an application to a Federal judge of competent jurisdiction for, and such judge may grant, in conformity with section 2518 of this title, an order authorizing or approving the interception of electronic communications by an investigative or law enforcement officer having responsibility for the investigation of the offense as to which the application is made, when such interception may provide or has provided evidence of any Federal felony.

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Sec. 2517. Authorization for disclosure and use of intercepted wire, oral, or electronic communications

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

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

(3) Any person who has received, by any means authorized by this chapter, any information concerning a wire, oral, or electronic communication, or evidence derived therefrom intercepted in accordance with the provisions of this chapter may disclose the contents of that communication or such derivative evidence while giving testimony under oath or affirmation in any proceeding held under the authority of the United States or of any State or political subdivision thereof.

(4) No otherwise privileged wire, oral, or electronic communication intercepted in accordance with, or in violation of, the provisions of this chapter shall lose its privileged character.

(5) When an investigative or law enforcement officer, while engaged in intercepting wire, oral, or electronic communications in the manner authorized herein, intercepts wire, oral, or electronic communications relating to offenses other than those specified in the order of authorization or approval, the contents thereof, and evidence derived therefrom, may be disclosed or used as provided in subsections (1) and (2) of this section. Such contents and any evidence derived therefrom may be used under subsection (3) of this section when authorized or approved by a judge of competent jurisdiction where such judge finds on subsequent application that the contents were otherwise intercepted in accordance with the provisions of this chapter. Such application shall be made as soon as practicable.

(6) Any investigative or law enforcement officer, or attorney for the Government, who by any means authorized by this chapter, has obtained knowledge of the contents of any wire, oral, or electronic communication, or evidence derived therefrom, may disclose such contents to any other Federal law enforcement, intelligence, protective, immigration, national defense, or national security official to the extent that such contents include foreign intelligence or counterintelligence (as defined in section 3 of the National Security Act of 1947 (50 U.S.C. 401a)), or foreign intelligence information (as defined in subsection (19) of section 2510 of this title), to assist the official who is to receive that information in the performance of his official duties. Any Federal official who receives information pursuant to this provision may use that information only as necessary in the conduct of that person's official duties subject to any limitations on the unauthorized disclosure of such information.

(7) Any investigative or law enforcement officer, or other Federal official in carrying out official duties as such Federal official, who by any means authorized by this chapter, has obtained knowledge of the contents of any wire, oral, or electronic communication, or evidence derived therefrom, may disclose such contents or derivative evidence to a foreign investigative or law enforcement officer to the extent that such disclosure is appropriate to the proper performance of the official duties of the officer making or receiving the disclosure, and foreign investigative or law enforcement officers may use or disclose such contents or derivative evidence to the extent such use or disclosure is appropriate to the proper performance of their official duties.

(8) Any investigative or law enforcement officer, or other Federal official in carrying out official duties as such Federal official, who by any means authorized by this chapter, has obtained knowledge of the contents of any wire, oral, or electronic communication, or evidence derived therefrom, may disclose such contents or derivative evidence to any appropriate Federal, State, local, or foreign government official to the extent that such contents or derivative evidence reveals a threat of actual or potential attack or other grave hostile acts of a foreign power or an agent of a foreign power, domestic or international sabotage, domestic or international terrorism, or clandestine intelligence gathering activities by an intelligence service or network of a foreign power or by an agent of a foreign power, within the United States or elsewhere, for the purpose of preventing or responding to such a threat. Any official who receives information pursuant to this provision may use that information only as necessary in the conduct of that person's official duties subject to any limitations on the unauthorized disclosure of such information, and any State, local, or foreign official who receives information pursuant to this provision may use that information only consistent with such guidelines as the Attorney General and Director of Central Intelligence

shall jointly issue.

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Sec. 2518. Procedure for interception of wire, oral, or electronic communications

(1) Each application for an order authorizing or approving the interception of a wire, oral, or electronic communication under this chapter shall be made in writing upon oath or affirmation to a judge of competent jurisdiction and shall state the applicant's authority to make such application. Each application shall include the following information:

- (a) the identity of the investigative or law enforcement officer making the application, and the officer authorizing the application;
- (b) a full and complete statement of the facts and circumstances relied upon by the applicant, to justify his belief that an order should be issued, including (i) details as to the particular offense that has been, is being, or is about to be committed, (ii) except as provided in subsection (11), a particular description of the nature and location of the facilities from which or the place where the communication is to be intercepted, (iii) a particular description of the type of communications sought to be intercepted, (iv) the identity of the person, if known, committing the offense and whose communications are to be intercepted;
- (c) a full and complete statement as to whether or not other investigative procedures have been tried and failed or why they reasonably appear to be unlikely to succeed if tried or to be too dangerous;
- (d) a statement of the period of time for which the interception is required to be maintained. If the nature of the investigation is such that the authorization for interception should not automatically terminate when the described type of communication has been first obtained, a particular description of facts establishing probable cause to believe that additional communications of the same type will occur thereafter;
- (e) a full and complete statement of the facts concerning all previous applications known to the individual authorizing and making the application, made to any judge for authorization to intercept, or for approval of interceptions of, wire, oral, or electronic communications involving any of the same persons, facilities or places specified in the application, and the action taken by the judge on each such application; and
- (f) where the application is for the extension of an order, a statement setting forth the results thus far obtained from the interception, or a reasonable explanation of the failure to obtain such results.

(2) The judge may require the applicant to furnish additional testimony or documentary evidence in support of the application.

(3) Upon such application the judge may enter an ex parte order, as requested or as modified, authorizing or approving interception of wire, oral, or electronic communications within the territorial jurisdiction of the court in which the judge is sitting (and outside that jurisdiction but within the United States in the case of a mobile interception device authorized by a Federal court within such jurisdiction), if the judge determines on the basis of the facts submitted by the applicant that -

- (a) there is probable cause for belief that an individual is committing, has committed, or is about to commit a particular offense enumerated in section 2516 of this chapter;
- (b) there is probable cause for belief that particular communications concerning that offense will be obtained through such interception;
- (c) normal investigative procedures have been tried and have failed or reasonably appear to be unlikely to succeed if tried or to be too dangerous;
- (d) except as provided in subsection (11), there is probable cause for belief that the facilities from which, or the place where, the wire, oral, or electronic communications are to be intercepted are being used, or are about to be used, in connection with the commission of such offense, or are leased to, listed in the name of, or commonly used by such person.

(4) Each order authorizing or approving the interception of any wire, oral, or electronic communication under this chapter shall specify -

- (a) the identity of the person, if known, whose communications are to be intercepted;
- (b) the nature and location of the communications facilities as to which, or the place where, authority to intercept is granted;
- (c) a particular description of the type of communication sought to be intercepted, and a statement of the particular offense to which it relates;
- (d) the identity of the agency authorized to intercept the communications, and of the person authorizing the application; and
- (e) the period of time during which such interception is authorized, including a statement as to whether or not the interception shall automatically terminate when the described communication has been first obtained. An order authorizing the interception of a wire, oral, or electronic communication under this chapter shall, upon request of the applicant, direct that a provider of wire or electronic communication service, landlord, custodian or other person 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, landlord, custodian, or person is according the person whose communications are to be intercepted. Any provider of wire or electronic communication service, landlord, custodian or other person furnishing such facilities or technical assistance shall be compensated therefor by the applicant for reasonable expenses incurred in providing such facilities or assistance. Pursuant to section 2522 of this chapter, an order may also be issued to enforce the assistance capability and capacity requirements under the Communications Assistance for Law Enforcement Act.

(5) No order entered under this section may authorize or approve the interception of any wire, oral, or electronic communication for any period longer than is necessary to achieve the objective of the authorization, nor in any event longer than thirty days. Such thirty-day period begins on the earlier of the day on which the investigative or law enforcement officer first begins to conduct an interception under the order or ten days after the order is entered. Extensions of an order may be granted, but only upon application for an extension made in accordance with subsection (1) of this section and the court making the findings required by subsection (3) of this section. The period of extension shall be no longer than the authorizing judge deems necessary to achieve the purposes for which it was granted and in no event for longer than thirty days. Every order and extension thereof shall contain a provision that the authorization to intercept shall be executed as soon as practicable, shall be conducted in such a way as to minimize the interception of communications not otherwise subject to interception under this chapter, and must terminate upon attainment of the authorized objective, or in any event in thirty days. In the event the intercepted communication is in a code or foreign language, and an expert in that foreign language or code is not reasonably available during the interception period, minimization may be accomplished as soon as practicable after such interception. An interception under this chapter may be conducted in whole or in part by Government personnel, or by an individual operating under a contract with the Government, acting under the supervision of an investigative or law enforcement officer authorized to conduct the interception.

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

(7) Notwithstanding any other provision of this chapter, any investigative or law enforcement officer, specially designated by the Attorney General, the Deputy Attorney General, the Associate Attorney General, or by the principal prosecuting attorney of any State or subdivision thereof acting pursuant to a statute of that State, who reasonably determines that -

(a) an emergency situation exists that involves -

- (i) immediate danger of death or serious physical injury to any person,
- (ii) conspiratorial activities threatening the national security interest, or
- (iii) conspiratorial activities characteristic of organized crime, that requires a wire, oral, or electronic communication to be intercepted before an order authorizing such interception can, with due diligence, be obtained, and

(b) there are grounds upon which an order could be entered under this chapter to authorize such interception, may intercept such wire, oral, or electronic communication if an application for an order approving the interception is made in accordance with this section within forty-eight hours after the interception has occurred, or begins to occur. In the absence of an order, such interception shall immediately terminate when the communication sought is obtained 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, oral, or electronic communication intercepted shall be treated as having been obtained in violation of this chapter, and an inventory shall be served as provided for in subsection (d) of this section on the person named in the application.

(8)(a) The contents of any wire, oral, or electronic communication intercepted by any means authorized by this chapter shall, if possible, be recorded on tape or wire or other comparable device. The recording of the contents of any wire, oral, or electronic communication under this subsection shall be done in such a way as will protect the recording from editing or other alterations. Immediately upon the expiration of the period of the order, or extensions thereof, such recordings shall be made available to the judge issuing such order and sealed under his directions. Custody of the recordings shall be wherever the judge orders. They shall not be destroyed except upon an order of the issuing or denying judge and in any event shall be kept for ten years. Duplicate recordings may be made for use or disclosure pursuant to the provisions of subsections (1) and (2) of section 2517 of this chapter for investigations. The presence of the seal provided for by this subsection, or a satisfactory explanation for the absence thereof, shall be a prerequisite for the use or disclosure of the contents of any wire, oral, or electronic communication or evidence derived therefrom under subsection (3) of section 2517.

(b) Applications made and orders granted under this chapter shall be sealed by the judge. Custody of the applications and orders shall be wherever the judge directs. Such applications and orders shall be disclosed only upon a showing of good cause before a judge of competent jurisdiction and shall not be destroyed except on order of the issuing or denying judge, and in any event shall be kept for ten years.

(c) Any violation of the provisions of this subsection may be punished as contempt of the issuing or denying judge.

(d) Within a reasonable time but not later than ninety days after the filing of an application for an order of approval under section 2518(7)(b) which is denied or the termination of the period of an order or extensions thereof, the issuing or denying judge shall cause to be served, on the persons named in the order or the application, and such other parties to intercepted communications as the judge may determine in his discretion that is in the interest of justice, an inventory which shall include notice of -

- (1) the fact of the entry of the order or the application;
- (2) the date of the entry and the period of authorized, approved or disapproved interception, or the denial of the application; and
- (3) the fact that during the period wire, oral, or electronic communications were or were not intercepted. The judge, upon the filing of a motion, may in his discretion make available to such person or his counsel for inspection such portions of the intercepted communications, applications and orders as the judge determines to be in the interest of justice. On an ex parte showing of good cause to a judge of competent jurisdiction the serving of the inventory required by this subsection may be postponed.

(9) The contents of any wire, oral, or electronic communication intercepted pursuant to this chapter or evidence derived therefrom shall not be received in evidence or otherwise disclosed in any trial, hearing, or other proceeding in a Federal or State court unless each party, not less than ten days before the trial, hearing, or proceeding, has been furnished with a copy of the court order, and accompanying application, under which the interception was authorized or approved. This ten-day period may be waived by the judge if he finds that it was not possible to furnish the party with the above information ten days before the trial, hearing, or proceeding and that the party will not be prejudiced by the delay in receiving such information.

(10)(a) Any aggrieved person in any trial, hearing, or proceeding in or before any court, department, officer, agency, regulatory body, or other authority of the United States, a State, or a political subdivision thereof, may move to suppress the contents of any wire or oral communication intercepted pursuant to this chapter, or evidence derived therefrom, on the grounds that -

- (i) the communication was unlawfully intercepted;
- (ii) the order of authorization or approval under which it was intercepted is insufficient on its face; or
- (iii) the interception was not made in conformity with the order of authorization or approval. Such motion shall be made before the trial, hearing, or proceeding unless there was no opportunity to make such motion or the person was not aware of the grounds of the motion. If the motion is granted, the contents of the intercepted wire or oral communication, or evidence derived therefrom, shall be treated as having been obtained in violation of this chapter. The judge, upon the filing of such motion by the aggrieved person, may in his discretion make available to the aggrieved person or his counsel for inspection such portions of the intercepted communication or evidence derived therefrom as the judge determines to be in the interests of justice.

(b) In addition to any other right to appeal, the United States shall have the right to appeal from an order granting a motion to suppress made under paragraph (a) of this subsection, or the denial of an application for an order of approval, if the United States attorney shall certify to the judge or other official granting such motion or denying such application that the appeal is not taken for purposes of delay. Such appeal shall be taken within thirty days after the date the order was entered and shall be diligently prosecuted.

(c) The remedies and sanctions described in this chapter with respect to the interception of electronic communications are the only judicial remedies and sanctions for nonconstitutional violations of this chapter involving such communications.

(11) The requirements of subsections (1)(b)(ii) and (3)(d) of this section relating to the specification of the facilities from which, or the place where, the communication is to be intercepted do not apply if -

- (a) in the case of an application with respect to the interception of an oral communication -
 - (i) the application is by a Federal investigative or law enforcement officer and is approved by the Attorney General, the Deputy Attorney General, the Associate Attorney General, an Assistant Attorney General, or an acting Assistant Attorney General;
 - (ii) the application contains a full and complete statement as to why such specification is not practical and identifies the person committing the offense and whose communications are to be intercepted; and
 - (iii) the judge finds that such specification is not practical; and
- (b) in the case of an application with respect to a wire or electronic communication -
 - (i) the application is by a Federal investigative or law enforcement officer and is approved by the Attorney General, the Deputy Attorney General, the Associate Attorney General, an Assistant Attorney General, or an acting Assistant Attorney General;
 - (ii) the application identifies the person believed to be committing the offense and whose communications are to be intercepted and the applicant makes a showing that there is probable cause to believe that the person's actions could have the effect of thwarting interception from a specified facility;
 - (iii) the judge finds that such showing has been adequately made; and
 - (iv) the order authorizing or approving the interception is limited to interception only for such time as it is reasonable to presume that the person identified in the application is or was reasonably proximate to the instrument through which such communication will be or was transmitted.

(12) An interception of a communication under an order with respect to which the requirements of subsections (1)(b)(ii) and

(3)(d) of this section do not apply by reason of subsection (11)(a) shall not begin until the place where the communication is to be intercepted is ascertained by the person implementing the interception order. A provider of wire or electronic communications service that has received an order as provided for in subsection (11)(b) may move the court to modify or quash the order on the ground that its assistance with respect to the interception cannot be performed in a timely or reasonable fashion. The court, upon notice to the government, shall decide such a motion expeditiously.

Display Notes>>

Sec. 2519. Reports concerning intercepted wire, oral, or electronic communications

(1) In January of each year, any judge who has issued an order (or an extension thereof) under section 2518 that expired during the preceding year, or who has denied approval of an interception during that year, shall report to the Administrative Office of the United States Courts -

- (a) the fact that an order or extension was applied for;
- (b) the kind of order or extension applied for (including whether or not the order was an order with respect

to which the requirements of sections 2518(1)(b)(ii) and 2518(3)(d) of this title did not apply by reason of section 2518(11) of this title;

(c) the fact that the order or extension was granted as applied for, was modified, or was denied;

(d) the period of interceptions authorized by the order, and the number and duration of any extensions of the order;

(e) the offense specified in the order or application, or extension of an order;

(f) the identity of the applying investigative or law enforcement officer and agency making the application and the person authorizing the application; and

(g) the nature of the facilities from which or the place where communications were to be intercepted.

(2) In March of each year the Attorney General, an Assistant Attorney General specially designated by the Attorney General, or the principal prosecuting attorney of a State, or the principal prosecuting attorney for any political subdivision of a State, shall report to the Administrative Office of the United States Courts -

(a) the information required by paragraphs (a) through (g) of subsection (1) of this section with respect to each application for an order or extension made during the preceding calendar year;

(b) a general description of the interceptions made under such order or extension, including (i) the approximate nature and frequency of incriminating communications intercepted, (ii) the approximate nature and frequency of other communications intercepted, (iii) the approximate number of persons whose communications were intercepted, (iv) the number of orders in which encryption was encountered and whether such encryption prevented law enforcement from obtaining the plain text of communications intercepted pursuant to such order, and (v) the approximate nature, amount, and cost of the manpower and other resources used in the interceptions;

(c) the number of arrests resulting from interceptions made under such order or extension, and the offenses for which arrests were made;

(d) the number of trials resulting from such interceptions;

(e) the number of motions to suppress made with respect to such interceptions, and the number granted or denied;

(f) the number of convictions resulting from such interceptions and the offenses for which the convictions were obtained and a general assessment of the importance of the interceptions; and

(g) the information required by paragraphs (b) through (f) of this subsection with respect to orders or extensions obtained in a preceding calendar year.

(3) In June of each year the Director of the Administrative Office of the United States Courts shall transmit to the Congress a full and complete report concerning the number of applications for orders authorizing or approving the interception of wire, oral, or electronic communications pursuant to this chapter and the number of orders and extensions granted or denied pursuant to this chapter during the preceding calendar year. Such report shall include a summary and analysis of the data required to be filed with the Administrative Office by subsections (1) and (2) of this section. The Director of the Administrative Office of the United States Courts is authorized to issue binding regulations dealing with the content and form of the reports required to be filed by subsections

(1) and (2) of this section.

Display Notes>>

Sec. 2520. Recovery of civil damages authorized

(a) In General. - Except as provided in section 2511(2)(a)(ii), any person whose wire, oral, or electronic communication is intercepted, disclosed, or intentionally used in violation of this chapter may in a civil action recover from the person or entity, other than the United States, which engaged in that violation such relief as may be appropriate.

(b) Relief. - In an action under this section, appropriate relief includes -

(1) such preliminary and other equitable or declaratory relief as may be appropriate;

(2) damages under subsection (c) and punitive damages in appropriate cases; and

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

(c) Computation of Damages. - (1) In an action under this section, if the conduct in violation of this chapter is the private viewing of a private satellite video communication that is not scrambled or encrypted or if the communication is a radio communication that is transmitted on frequencies allocated under subpart D of part 74 of the rules of the Federal Communications Commission that is not scrambled or encrypted and the conduct is not for a tortious or illegal purpose or for purposes of direct or indirect commercial advantage or private commercial gain, then the court shall assess damages as follows:

(A) If the person who engaged in that conduct has not previously been enjoined under section 2511(5) and has not been found liable in a prior civil action under this section, the court shall assess the greater of the sum of actual damages suffered by the plaintiff, or statutory damages of not less than \$50 and not more than \$500.

(B) If, on one prior occasion, the person who engaged in that conduct has been enjoined under section 2511(5) or has been found liable in a civil action under this section, the court shall assess the greater of the sum of actual damages suffered by the plaintiff, or statutory damages of not less than \$100 and not more than \$1000.

(2) In any other action under this section, the court may assess as damages whichever is the greater of -

(A) the sum of the actual damages suffered by the plaintiff and any profits made by the violator as a result

of the violation; or

(B) statutory damages of whichever is the greater of \$100 a day for each day of violation or \$10,000.

(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 2518(7) of this title; or

(3) a good faith determination that section 2511(3) or 2511(2)(i) of this title permitted the conduct complained of; is a complete defense against any civil or criminal action brought under this chapter or any other law.

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

(f) Administrative Discipline. - If a court or appropriate department or agency determines that the United States or any of its departments or agencies has violated any provision of this chapter, and the court or appropriate department or agency finds that the circumstances surrounding the violation raise serious questions about whether or not an officer or employee of the United States acted willfully or intentionally with respect to the violation, the department or agency shall, upon receipt of a true and correct copy of the decision and findings of the court or appropriate department or agency promptly initiate a proceeding to determine whether disciplinary action against the officer or employee is warranted. If the head of the department or agency involved determines that disciplinary action is not warranted, he or she shall notify the Inspector General with jurisdiction over the department or agency concerned and shall provide the Inspector General with the reasons for such determination.

(g) Improper Disclosure Is Violation. - Any willful disclosure or use by an investigative or law enforcement officer or governmental entity of information beyond the extent permitted by section 2517 is a violation of this chapter for purposes of section 2520(a).

Display Notes>>

Sec. 2521. Injunction against illegal interception

Whenever it shall appear that any person is engaged or is about to engage in any act which constitutes or will constitute a felony violation of this chapter, the Attorney General may initiate a civil action in a district court of the United States to enjoin such violation. The court shall proceed as soon as practicable to the hearing and determination of such an action, and may, at any time before final determination, enter such a restraining order or prohibition, or take such other action, as is warranted to prevent a continuing and substantial injury to the United States or to any person or class of persons for whose protection the action is brought. A proceeding under this section is governed by the Federal Rules of Civil Procedure, except that, if an indictment has been returned against the respondent, discovery is governed by the Federal Rules of Criminal Procedure.

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Sec. 2522. Enforcement of the Communications Assistance for Law Enforcement Act

(a) Enforcement by Court Issuing Surveillance Order. - If a court authorizing an interception under this chapter, a State statute, or the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.) or authorizing use of a pen register or a trap and trace device under chapter 206 or a State statute finds that a telecommunications carrier has failed to comply with the requirements of the Communications Assistance for Law Enforcement Act, the court may, in accordance with section 108 of such Act, direct that the carrier comply forthwith and may direct that a provider of support services to the carrier or the manufacturer of the carrier's transmission or switching equipment furnish forthwith modifications necessary for the carrier to comply.

(b) Enforcement Upon Application by Attorney General. - The Attorney General may, in a civil action in the appropriate United States district court, obtain an order, in accordance with section 108 of the Communications Assistance for Law Enforcement Act, directing that a telecommunications carrier, a manufacturer of telecommunications transmission or switching equipment, or a provider of telecommunications support services comply with such Act.

(c) Civil Penalty. -

(1) In general. - A court issuing an order under this section against a telecommunications carrier, a manufacturer of telecommunications transmission or switching equipment, or a provider of telecommunications support services may impose a civil penalty of up to \$10,000 per day for each day in violation after the issuance of the order or after such future date as the court may specify.

(2) Considerations. - In determining whether to impose a civil penalty and in determining its amount, the court shall take into account -

(A) the nature, circumstances, and extent of the violation;

(B) the violator's ability to pay, the violator's good faith efforts to comply in a timely manner, any effect on the violator's ability to continue to do business, the degree of culpability, and the length of any delay in undertaking efforts to comply; and

(C) such other matters as justice may require.

(d) Definitions. - As used in this section, the terms defined in section 102 of the Communications Assistance for Law Enforcement Act have the meanings provided, respectively, in such section.



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18 U.S.C.

United States Code, 2010 Edition

Title 18 - CRIMES AND CRIMINAL PROCEDURE

PART I - CRIMES

CHAPTER 121 - STORED WIRE AND ELECTRONIC COMMUNICATIONS AND TRANSACTIONAL RECORDS ACCESS

From the U.S. Government Printing Office, www.gpo.gov*Electronic
communications
privacy
act.
II***CHAPTER 121—STORED WIRE AND ELECTRONIC COMMUNICATIONS
AND TRANSACTIONAL RECORDS ACCESS**

Sec.

- 2701. Unlawful access to stored communications.
- 2702. Voluntary disclosure of customer communications or records.
- 2703. Required disclosure of customer communications or records.
- 2704. Backup preservation.
- 2705. Delayed notice.
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- 2710. Wrongful disclosure of video tape rental or sale records.
- 2711. Definitions for chapter.
- 2712. Civil actions against the United States.

AMENDMENTS

2002—Pub. L. 107–273, div. B, title IV, §4005(b), Nov. 2, 2002, 116 Stat. 1812, made technical correction to directory language of Pub. L. 107–56, title II, §223(c)(2), Oct. 26, 2001, 115 Stat. 295, effective Oct. 26, 2001. See 2001 Amendment note below.

2001—Pub. L. 107–56, title II, §§223(c)(2), 224, Oct. 26, 2001, 115 Stat. 295, as amended by Pub. L. 107–273, div. B, title IV, §4005(b), Nov. 2, 2002, 116 Stat. 1812, temporarily added item 2712.

Pub. L. 107–56, title II, §§212(a)(2), (b)(2), 224, Oct. 26, 2001, 115 Stat. 285, 295, temporarily substituted “Voluntary disclosure of customer communications or records” for “Disclosure of contents” in item 2702 and “Required disclosure of customer communications or records” for “Requirements for governmental access” in item 2703.

1988—Pub. L. 100–690, title VII, §7067, Nov. 18, 1988, 102 Stat. 4405, which directed amendment of item 2710 by inserting “for chapter” after “Definitions” was executed by making the insertion in item 2711 to reflect the probable intent of Congress and the intervening redesignation of item 2710 as 2711 by Pub. L. 100–618, see below.

Pub. L. 100–618, §2(b), Nov. 5, 1988, 102 Stat. 3197, added item 2710 and redesignated former item 2710 as 2711.

§2701. Unlawful access to stored communications

(a) Offense.—Except as provided in subsection (c) of this section whoever—

- (1) intentionally accesses without authorization a facility through which an electronic communication service is provided; or
- (2) intentionally exceeds an authorization to access that facility;

and thereby obtains, alters, or prevents authorized access to a wire or electronic communication while it is in electronic storage in such system shall be punished as provided in subsection (b) of this section.

(b) Punishment.—The punishment for an offense under subsection (a) of this section is—

(1) if the offense is committed for purposes of commercial advantage, malicious destruction or damage, or private commercial gain, or in furtherance of any criminal or tortious act in violation of the Constitution or laws of the United States or any State—

(A) a fine under this title or imprisonment for not more than 5 years, or both, in the case of a first offense under this subparagraph; and

(B) a fine under this title or imprisonment for not more than 10 years, or both, for any subsequent offense under this subparagraph; and

(2) in any other case—

(A) a fine under this title or imprisonment for not more than 1 year or both, in the case of a first offense under this paragraph; and

(B) a fine under this title or imprisonment for not more than 5 years, or both, in the case of an offense under this subparagraph that occurs after a conviction of another offense under this section.

(c) Exceptions.—Subsection (a) of this section does not apply with respect to conduct authorized—

(1) by the person or entity providing a wire or electronic communications service;

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

(3) in section 2703, 2704 or 2518 of this title.

(Added Pub. L. 99–508, title II, §201[(a)], Oct. 21, 1986, 100 Stat. 1860; amended Pub. L. 103–322, title XXXIII, §330016(1)(K), (U), Sept. 13, 1994, 108 Stat. 2147, 2148; Pub. L. 104–294, title VI, §601(a)(3), Oct. 11, 1996, 110 Stat. 3498; Pub. L. 107–296, title II, §225(j)(2), Nov. 25, 2002, 116 Stat. 2158.)

AMENDMENTS

2002—Subsec. (b)(1). Pub. L. 107–296, §225(j)(2)(A), in introductory provisions, inserted “, or in furtherance of any criminal or tortious act in violation of the Constitution or laws of the United States or any State” after “commercial gain”.

Subsec. (b)(1)(A). Pub. L. 107–296, §225(j)(2)(B), substituted “5 years” for “one year”.

Subsec. (b)(1)(B). Pub. L. 107–296, §225(j)(2)(C), substituted “10 years” for “two years”.

Subsec. (b)(2). Pub. L. 107–296, §225(j)(2)(D), added par. (2) and struck out former par. (2) which read as follows: “a fine under this title or imprisonment for not more than six months, or both, in any other case.”

1996—Subsec. (b)(1)(A), (2). Pub. L. 104–294 substituted “fine under this title” for “fine of under this title”.

1994—Subsec. (b)(1)(A). Pub. L. 103–322, §330016(1)(U), substituted “under this title” for “not more than \$250,000”.

Subsec. (b)(2). Pub. L. 103–322, §330016(1)(K), substituted “under this title” for “not more than \$5,000”.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective 60 days after Nov. 25, 2002, see section 4 of Pub. L. 107–296, set out as an Effective Date note under section 101 of Title 6, Domestic Security.

EFFECTIVE DATE

Section 202 of title II of Pub. L. 99–508 provided that: “This title and the amendments made by this title [enacting this chapter] shall take effect ninety days after the date of the enactment of this Act [Oct. 21, 1986] and shall, in the case of conduct pursuant to a court order or extension, apply only with respect to court orders or extensions made after this title takes effect.”

SHORT TITLE OF 1988 AMENDMENT

Pub. L. 100–618, §1, Nov. 5, 1988, 102 Stat. 3195, provided that: “This Act [enacting section 2710 of this title and renumbering former section 2710 as 2711 of this title] may be cited as the ‘Video Privacy Protection Act of 1988’.”

§2702. Voluntary disclosure of customer communications or records

(a) Prohibitions.—Except as provided in subsection (b) or (c)—

(1) a person or entity providing an electronic communication service to the public shall not knowingly divulge to any person or entity the contents of a communication while in electronic storage by that service; and

(2) a person or entity providing remote computing service to the public shall not knowingly divulge to any person or entity the contents of any communication which is carried or maintained on that service—

(A) on behalf of, and received by means of electronic transmission from (or created by means of computer processing of communications received by means of electronic transmission from), a subscriber or customer of such service;

(B) solely for the purpose of providing storage or computer processing services to such subscriber or customer, if the provider is not authorized to access the contents of any such communications for purposes of providing any services other than storage or computer processing; and

(3) a provider of remote computing service or electronic communication service to the public shall not knowingly divulge a record or other information pertaining to a subscriber to or customer of such service (not including the contents of communications covered by paragraph (1) or (2)) to any governmental entity.

(b) Exceptions for disclosure of communications.—A provider described in subsection (a) may divulge the contents of a communication—

(1) to an addressee or intended recipient of such communication or an agent of such addressee or intended recipient;

(2) as otherwise authorized in section 2517, 2511(2)(a), or 2703 of this title;

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

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

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

(6) to the National Center for Missing and Exploited Children, in connection with a report submitted thereto under section 2258A;

(7) to a law enforcement agency—

(A) if the contents—

(i) were inadvertently obtained by the service provider; and

(ii) appear to pertain to the commission of a crime; or

[(B) Repealed. Pub. L. 108–21, title V, §508(b)(1)(A), Apr. 30, 2003, 117 Stat. 684]

(8) to a governmental entity, if the provider, in good faith, believes that an emergency involving danger of death or serious physical injury to any person requires disclosure without delay of communications relating to the emergency.

(c) Exceptions for Disclosure of Customer Records.—A provider described in subsection (a) may divulge a record or other information pertaining to a subscriber to or customer of such service (not including the contents of communications covered by subsection (a)(1) or (a)(2))—

(1) as otherwise authorized in section 2703;

(2) with the lawful consent of the customer or subscriber;

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

(4) to a governmental entity, if the provider, in good faith, believes that an emergency involving danger of death or serious physical injury to any person requires disclosure without delay of

information relating to the emergency;

(5) to the National Center for Missing and Exploited Children, in connection with a report submitted thereto under section 2258A; or

(6) to any person other than a governmental entity.

(d) Reporting of Emergency Disclosures.—On an annual basis, the Attorney General shall submit to the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate a report containing—

(1) the number of accounts from which the Department of Justice has received voluntary disclosures under subsection (b)(8); and

(2) a summary of the basis for disclosure in those instances where—

(A) voluntary disclosures under subsection (b)(8) were made to the Department of Justice; and

(B) the investigation pertaining to those disclosures was closed without the filing of criminal charges.

(Added Pub. L. 99–508, title II, §201[(a)], Oct. 21, 1986, 100 Stat. 1860; amended Pub. L. 100–690, title VII, §7037, Nov. 18, 1988, 102 Stat. 4399; Pub. L. 105–314, title VI, §604(b), Oct. 30, 1998, 112 Stat. 2984; Pub. L. 107–56, title II, §212(a)(1), Oct. 26, 2001, 115 Stat. 284; Pub. L. 107–296, title II, §225(d)(1), Nov. 25, 2002, 116 Stat. 2157; Pub. L. 108–21, title V, §508(b), Apr. 30, 2003, 117 Stat. 684; Pub. L. 109–177, title I, §107(a), (b)(1), (c), Mar. 9, 2006, 120 Stat. 202, 203; Pub. L. 110–401, title V, §501(b)(2), Oct. 13, 2008, 122 Stat. 4251.)

AMENDMENTS

2008—Subsecs. (b)(6), (c)(5). Pub. L. 110–401 substituted “section 2258A” for “section 227 of the Victims of Child Abuse Act of 1990 (42 U.S.C. 13032)”.

2006—Subsec. (a). Pub. L. 109–177, §107(c), inserted “or (c)” after “Except as provided in subsection (b)”. Subsec. (b)(8). Pub. L. 109–177, §107(b)(1)(A), struck out “Federal, State, or local” before “governmental entity”.

Subsec. (c)(4). Pub. L. 109–177, §107(b)(1)(B), added par. (4) and struck out former par. (4) which read as follows: “to a governmental entity, if the provider reasonably believes that an emergency involving immediate danger of death or serious physical injury to any person justifies disclosure of the information;”.

Subsec. (d). Pub. L. 109–177, §107(a), added subsec. (d).

2003—Subsec. (b)(5). Pub. L. 108–21, §508(b)(1)(C), which directed amendment of par. (5) by striking “or” at the end, could not be executed because “or” did not appear at the end. See 2002 Amendment note below.

Subsec. (b)(6). Pub. L. 108–21, §508(b)(1)(D), added par. (6). Former par. (6) redesignated (7).

Subsec. (b)(6)(B). Pub. L. 108–21, §508(b)(1)(A), struck out subpar. (B) which read as follows: “if required by section 227 of the Crime Control Act of 1990; or”.

Subsec. (b)(7), (8). Pub. L. 108–21, §508(b)(1)(B), redesignated pars. (6) and (7) as (7) and (8), respectively.

Subsec. (c)(5), (6). Pub. L. 108–21, §508(b)(2), added par. (5) and redesignated former par. (5) as (6).

2002—Subsec. (b)(5). Pub. L. 107–296, §225(d)(1)(A), struck out “or” at end.

Subsec. (b)(6)(A). Pub. L. 107–296, §225(d)(1)(B), inserted “or” at end.

Subsec. (b)(6)(C). Pub. L. 107–296, §225(d)(1)(C), struck out subpar. (C) which read as follows: “if the provider reasonably believes that an emergency involving immediate danger of death or serious physical injury to any person requires disclosure of the information without delay.”

Subsec. (b)(7). Pub. L. 107–296, §225(d)(1)(D), added par. (7).

2001—Pub. L. 107–56, §212(a)(1)(A), substituted “Voluntary disclosure of customer communications or records” for “Disclosure of contents” in section catchline.

Subsec. (a)(3). Pub. L. 107–56, §212(a)(1)(B), added par. (3).

Subsec. (b). Pub. L. 107–56, §212(a)(1)(C), substituted “Exceptions for disclosure of communications” for “Exceptions” in heading and “A provider described in subsection (a)” for “A person or entity” in introductory provisions.

Subsec. (b)(6)(C). Pub. L. 107–56, §212(a)(1)(D), added subpar. (C).

Subsec. (c). Pub. L. 107–56, §212(a)(1)(E), added subsec. (c).

1998—Subsec. (b)(6). Pub. L. 105–314 amended par. (6) generally. Prior to amendment, par. (6) read as

follows: “to a law enforcement agency, if such contents—

“(A) were inadvertently obtained by the service provider; and

“(B) appear to pertain to the commission of a crime.”

1988—Subsec. (b)(2). Pub. L. 100–690 substituted “2517” for “2516”.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective 60 days after Nov. 25, 2002, see section 4 of Pub. L. 107–296, set out as an Effective Date note under section 101 of Title 6, Domestic Security.

§2703. Required disclosure of customer communications or records

(a) Contents of Wire or Electronic Communications in Electronic Storage.—A governmental entity may require the disclosure by a provider of electronic communication service of the contents of a wire or electronic communication, that is in electronic storage in an electronic communications system for one hundred and eighty days or less, only pursuant to a warrant issued using the procedures described in the Federal Rules of Criminal Procedure (or, in the case of a State court, issued using State warrant procedures) by a court of competent jurisdiction. A governmental entity may require the disclosure by a provider of electronic communications services of the contents of a wire or electronic communication that has been in electronic storage in an electronic communications system for more than one hundred and eighty days by the means available under subsection (b) of this section.

(b) Contents of Wire or Electronic Communications in a Remote Computing Service.—(1) A governmental entity may require a provider of remote computing service to disclose the contents of any wire or electronic communication to which this paragraph is made applicable by paragraph (2) of this subsection—

(A) without required notice to the subscriber or customer, if the governmental entity obtains a warrant issued using the procedures described in the Federal Rules of Criminal Procedure (or, in the case of a State court, issued using State warrant procedures) by a court of competent jurisdiction; or

(B) with prior notice from the governmental entity to the subscriber or customer if the governmental entity—

(i) uses an administrative subpoena authorized by a Federal or State statute or a Federal or State grand jury or trial subpoena; or

(ii) obtains a court order for such disclosure under subsection (d) of this section;

except that delayed notice may be given pursuant to section 2705 of this title.

(2) Paragraph (1) is applicable with respect to any wire or electronic communication that is held or maintained on that service—

(A) on behalf of, and received by means of electronic transmission from (or created by means of computer processing of communications received by means of electronic transmission from), a subscriber or customer of such remote computing service; and

(B) solely for the purpose of providing storage or computer processing services to such subscriber or customer, if the provider is not authorized to access the contents of any such communications for purposes of providing any services other than storage or computer processing.

(c) Records Concerning Electronic Communication Service or Remote Computing Service.—(1) A governmental entity may require a provider of electronic communication service or remote computing service to disclose a record or other information pertaining to a subscriber to or customer of such service (not including the contents of communications) only when the governmental entity—

(A) obtains a warrant issued using the procedures described in the Federal Rules of Criminal Procedure (or, in the case of a State court, issued using State warrant procedures) by a court of competent jurisdiction;

(B) obtains a court order for such disclosure under subsection (d) of this section;

- (C) has the consent of the subscriber or customer to such disclosure;
- (D) submits a formal written request relevant to a law enforcement investigation concerning telemarketing fraud for the name, address, and place of business of a subscriber or customer of such provider, which subscriber or customer is engaged in telemarketing (as such term is defined in section 2325 of this title); or
- (E) seeks information under paragraph (2).

(2) A provider of electronic communication service or remote computing service shall disclose to a governmental entity the—

- (A) name;
- (B) address;
- (C) local and long distance telephone connection records, or records of session times and durations;
- (D) length of service (including start date) and types of service utilized;
- (E) telephone or instrument number or other subscriber number or identity, including any temporarily assigned network address; and
- (F) means and source of payment for such service (including any credit card or bank account number),

of a subscriber to or customer of such service when the governmental entity uses an administrative subpoena authorized by a Federal or State statute or a Federal or State grand jury or trial subpoena or any means available under paragraph (1).

(3) A governmental entity receiving records or information under this subsection is not required to provide notice to a subscriber or customer.

(d) Requirements for Court Order.—A court order for disclosure under subsection (b) or (c) may be issued by any court that is a court of competent jurisdiction and shall issue only if the governmental entity offers 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 an ongoing criminal investigation. In the case of a State governmental authority, such a court order shall not issue if prohibited by the law of such State. A court issuing an order pursuant to this section, on a motion made promptly by the service provider, may quash or modify such order, if the information or records requested are unusually voluminous in nature or compliance with such order otherwise would cause an undue burden on such provider.

(e) No Cause of Action Against a Provider Disclosing Information Under This Chapter.—No cause of action shall lie in any court 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, statutory authorization, or certification under this chapter.

(f) Requirement To Preserve Evidence.—

(1) In general.—A provider of wire or electronic communication services or a remote computing service, upon the request of a governmental entity, shall take all necessary steps to preserve records and other evidence in its possession pending the issuance of a court order or other process.

(2) Period of retention.—Records referred to in paragraph (1) shall be retained for a period of 90 days, which shall be extended for an additional 90-day period upon a renewed request by the governmental entity.

(g) Presence of Officer Not Required.—Notwithstanding section 3105 of this title, the presence of an officer shall not be required for service or execution of a search warrant issued in accordance with this chapter requiring disclosure by a provider of electronic communications service or remote computing service of the contents of communications or records or other information pertaining to a subscriber to or customer of such service.

(Added Pub. L. 99–508, title II, §201[(a)], Oct. 21, 1986, 100 Stat. 1861; amended Pub. L. 100–690, title VII, §§7038, 7039, Nov. 18, 1988, 102 Stat. 4399; Pub. L. 103–322, title XXXIII, §330003(b),

Sept. 13, 1994, 108 Stat. 2140; Pub. L. 103–414, title II, §207(a), Oct. 25, 1994, 108 Stat. 4292; Pub. L. 104–132, title VIII, §804, Apr. 24, 1996, 110 Stat. 1305; Pub. L. 104–293, title VI, §601(b), Oct. 11, 1996, 110 Stat. 3469; Pub. L. 104–294, title VI, §605(f), Oct. 11, 1996, 110 Stat. 3510; Pub. L. 105–184, §8, June 23, 1998, 112 Stat. 522; Pub. L. 107–56, title II, §§209(2), 210, 212(b)(1), 220(a)(1), (b), Oct. 26, 2001, 115 Stat. 283, 285, 291, 292; Pub. L. 107–273, div. B, title IV, §4005(a)(2), div. C, title I, §11010, Nov. 2, 2002, 116 Stat. 1812, 1822; Pub. L. 107–296, title II, §225(h)(1), Nov. 25, 2002, 116 Stat. 2158; Pub. L. 109–162, title XI, §1171(a)(1), Jan. 5, 2006, 119 Stat. 3123; Pub. L. 111–79, §2(1), Oct. 19, 2009, 123 Stat. 2086.)

REFERENCES IN TEXT

The Federal Rules of Criminal Procedure, referred to in subsecs. (a), (b)(1)(A), and (c)(1)(B)(i), are set out in the Appendix to this title.

AMENDMENTS

2009—Subsecs. (a), (b)(1)(A), (c)(1)(A). Pub. L. 111–79, which directed substitution of “(or, in the case of a State court, issued using State warrant procedures) by a court of competent jurisdiction” for “by a court with jurisdiction over the offense under investigation or an equivalent State warrant”, was executed by making the substitution for “by a court with jurisdiction over the offense under investigation or equivalent State warrant” to reflect the probable intent of Congress.

2006—Subsec. (c)(1)(C). Pub. L. 109–162 struck out “or” at end.

2002—Subsec. (c)(1)(E). Pub. L. 107–273, §4005(a)(2), realigned margins.

Subsec. (e). Pub. L. 107–296 inserted “, statutory authorization” after “subpoena”.

Subsec. (g). Pub. L. 107–273, §11010, added subsec. (g).

2001—Pub. L. 107–56, §212(b)(1)(A), substituted “Required disclosure of customer communications or records” for “Requirements for governmental access” in section catchline.

Subsec. (a). Pub. L. 107–56, §§209(2)(A), (B), 220(a)(1), substituted “Contents of Wire or Electronic” for “Contents of Electronic” in heading and “contents of a wire or electronic” for “contents of an electronic” in two places and “using the procedures described in the Federal Rules of Criminal Procedure by a court with jurisdiction over the offense under investigation” for “under the Federal Rules of Criminal Procedure” in text.

Subsec. (b). Pub. L. 107–56, §209(2)(A), substituted “Contents of Wire or Electronic” for “Contents of Electronic” in heading.

Subsec. (b)(1). Pub. L. 107–56, §§209(2)(C), 220(a)(1), substituted “any wire or electronic communication” for “any electronic communication” in introductory provisions and “using the procedures described in the Federal Rules of Criminal Procedure by a court with jurisdiction over the offense under investigation” for “under the Federal Rules of Criminal Procedure” in subpar. (A).

Subsec. (b)(2). Pub. L. 107–56, §209(2)(C), substituted “any wire or electronic communication” for “any electronic communication” in introductory provisions.

Subsec. (c)(1). Pub. L. 107–56, §§212(b)(1)(C), 220(a)(1), designated subpar. (A) and introductory provisions of subpar. (B) as par. (1), substituted “A governmental entity may require a provider of electronic communication service or remote computing service to” for “(A) Except as provided in subparagraph (B), a provider of electronic communication service or remote computing service may” and a closing parenthesis for provisions which began with “covered by subsection (a) or (b) of this section) to any person other than a governmental entity.” in former subpar. (A) and ended with “(B) A provider of electronic communication service or remote computing service shall disclose a record or other information pertaining to a subscriber to or customer of such service (not including the contents of communications covered by subsection (a) or (b) of this section) to a governmental entity”, redesignated clauses (i) to (iv) of former subpar. (B) as subpars. (A) to (D), respectively, substituted “using the procedures described in the Federal Rules of Criminal Procedure by a court with jurisdiction over the offense under investigation” for “under the Federal Rules of Criminal Procedure” in subpar. (A) and “; or” for period at end of subpar. (D), added subpar. (E), and redesignated former subpar. (C) as par. (2).

Subsec. (c)(2). Pub. L. 107–56, §210, amended par. (2), as redesignated by section 212 of Pub. L. 107–56, by substituting “entity the—” for “entity the name, address, local and long distance telephone toll billing records, telephone number or other subscriber number or identity, and length of service of a subscriber” in introductory provisions, inserting subpars. (A) to (F), striking out “and the types of services the subscriber or customer utilized,” before “when the governmental entity uses an administrative subpoena”, inserting “of a subscriber” at beginning of concluding provisions and designating “to or customer of such service when the governmental entity uses an administrative subpoena authorized by a Federal or State statute or a Federal or State grand jury or trial subpoena or any means available under paragraph (1).” as remainder of concluding

provisions.

Pub. L. 107-56, §212(b)(1)(C)(iii), (D), redesignated subpar. (C) of par. (1) as par. (2) and temporarily substituted "paragraph (1)" for "subparagraph (B)".

Pub. L. 107-56, §212(b)(1)(B), redesignated par. (2) as (3).

Subsec. (c)(3), Pub. L. 107-56, §212(b)(1)(B), redesignated par. (2) as (3).

Subsec. (d), Pub. L. 107-56, §220(b), struck out "described in section 3127(2)(A)" after "court of competent jurisdiction".

1998—Subsec. (c)(1)(B)(iv), Pub. L. 105-184 added cl. (iv).

1996—Subsec. (c)(1)(C), Pub. L. 104-293 inserted "local and long distance" after "address,".

Subsec. (d), Pub. L. 104-294 substituted "in section 3127(2)(A)" for "in section 3126(2)(A)".

Subsec. (f), Pub. L. 104-132 added subsec. (f).

1994—Subsec. (c)(1)(B), Pub. L. 103-414, §207(a)(1)(A), redesignated cls. (ii) to (iv) as (i) to (iii), respectively, and struck out former cl. (i) which read as follows: "uses an administrative subpoena authorized by a Federal or State statute, or a Federal or State grand jury or trial subpoena;".

Subsec. (c)(1)(C), Pub. L. 103-414, §207(a)(1)(B), added subpar. (C).

Subsec. (d), Pub. L. 103-414, §207(a)(2), amended first sentence generally. Prior to amendment, first sentence read as follows: "A court order for disclosure under subsection (b) or (c) of this section may be issued by any court that is a court of competent jurisdiction set forth in section 3127(2)(A) of this title and shall issue only if the governmental entity shows that there is reason to believe the contents of a wire or electronic communication, or the records or other information sought, are relevant to a legitimate law enforcement inquiry."

Pub. L. 103-322 substituted "section 3127(2)(A)" for "section 3126(2)(A)".

1988—Subsecs. (b)(1)(B)(i), (c)(1)(B)(i), Pub. L. 100-690, §7038, inserted "or trial" after "grand jury".

Subsec. (d), Pub. L. 100-690, §7039, inserted "may be issued by any court that is a court of competent jurisdiction set forth in section 3126(2)(A) of this title and" before "shall issue".

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107-296 effective 60 days after Nov. 25, 2002, see section 4 of Pub. L. 107-296, set out as an Effective Date note under section 101 of Title 6, Domestic Security.

§2704. Backup preservation

(a) Backup Preservation.—(1) A governmental entity acting under section 2703(b)(2) may include in its subpoena or court order a requirement that the service provider to whom the request is directed create a backup copy of the contents of the electronic communications sought in order to preserve those communications. Without notifying the subscriber or customer of such subpoena or court order, such service provider shall create such backup copy as soon as practicable consistent with its regular business practices and shall confirm to the governmental entity that such backup copy has been made. Such backup copy shall be created within two business days after receipt by the service provider of the subpoena or court order.

(2) Notice to the subscriber or customer shall be made by the governmental entity within three days after receipt of such confirmation, unless such notice is delayed pursuant to section 2705(a).

(3) The service provider shall not destroy such backup copy until the later of—

(A) the delivery of the information; or

(B) the resolution of any proceedings (including appeals of any proceeding) concerning the government's subpoena or court order.

(4) The service provider shall release such backup copy to the requesting governmental entity no sooner than fourteen days after the governmental entity's notice to the subscriber or customer if such service provider—

(A) has not received notice from the subscriber or customer that the subscriber or customer has challenged the governmental entity's request; and

(B) has not initiated proceedings to challenge the request of the governmental entity.

(5) A governmental entity may seek to require the creation of a backup copy under subsection (a)

(1) of this section if in its sole discretion such entity determines that there is reason to believe that notification under section 2703 of this title of the existence of the subpoena or court order may result in destruction of or tampering with evidence. This determination is not subject to challenge by the subscriber or customer or service provider.

(b) Customer Challenges.—(1) Within fourteen days after notice by the governmental entity to the subscriber or customer under subsection (a)(2) of this section, such subscriber or customer may file a motion to quash such subpoena or vacate such court order, with copies served upon the governmental entity and with written notice of such challenge to the service provider. A motion to vacate a court order shall be filed in the court which issued such order. A motion to quash a subpoena shall be filed in the appropriate United States district court or State court. Such motion or application shall contain an affidavit or sworn statement—

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

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

(2) Service shall be made under this section upon a governmental entity 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. For the purposes of this section, the term “delivery” has the meaning given that term in the Federal Rules of Civil Procedure.

(3) If the court finds that the customer has complied with paragraphs (1) and (2) of this subsection, the court shall order the governmental entity to file a sworn response, which may be filed in camera if the governmental entity 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 response, 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 governmental entity's response.

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

(Added Pub. L. 99–508, title II, §201[(a)], Oct. 21, 1986, 100 Stat. 1863.)

REFERENCES IN TEXT

The Federal Rules of Civil Procedure, referred to in subsec. (b)(2), are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

§2705. Delayed notice

(a) Delay of Notification.—(1) A governmental entity acting under section 2703(b) of this title may—

(A) where a court order is sought, include in the application a request, which the court shall grant, for an order delaying the notification required under section 2703(b) of this title for a period not to exceed ninety days, if the court determines that there is reason to believe that notification of the existence of the court order may have an adverse result described in paragraph (2) of this subsection; or

(B) where an administrative subpoena authorized by a Federal or State statute or a Federal or State grand jury subpoena is obtained, delay the notification required under section 2703(b) of this title for a period not to exceed ninety days upon the execution of a written certification of a supervisory official that there is reason to believe that notification of the existence of the subpoena may have an adverse result described in paragraph (2) of this subsection.

(2) An adverse result for the purposes of paragraph (1) of this subsection is—

- (A) endangering the life or physical safety of an individual;
- (B) flight from prosecution;
- (C) destruction of or tampering with evidence;
- (D) intimidation of potential witnesses; or
- (E) otherwise seriously jeopardizing an investigation or unduly delaying a trial.

(3) The governmental entity shall maintain a true copy of certification under paragraph (1)(B).

(4) Extensions of the delay of notification provided in section 2703 of up to ninety days each may be granted by the court upon application, or by certification by a governmental entity, but only in accordance with subsection (b) of this section.

(5) Upon expiration of the period of delay of notification under paragraph (1) or (4) of this subsection, the governmental entity shall serve upon, or deliver by registered or first-class mail to, the customer or subscriber a copy of the process or request together with notice that—

- (A) states with reasonable specificity the nature of the law enforcement inquiry; and
- (B) informs such customer or subscriber—
 - (i) that information maintained for such customer or subscriber by the service provider named in such process or request was supplied to or requested by that governmental authority and the date on which the supplying or request took place;
 - (ii) that notification of such customer or subscriber was delayed;
 - (iii) what governmental entity or court made the certification or determination pursuant to which that delay was made; and
 - (iv) which provision of this chapter allowed such delay.

(6) As used in this subsection, the term “supervisory official” means the investigative agent in charge or assistant investigative agent in charge or an equivalent of an investigating agency's headquarters or regional office, or the chief prosecuting attorney or the first assistant prosecuting attorney or an equivalent of a prosecuting attorney's headquarters or regional office.

(b) Preclusion of Notice to Subject of Governmental Access.—A governmental entity acting under section 2703, when it is not required to notify the subscriber or customer under section 2703(b)(1), or to the extent that it may delay such notice pursuant to subsection (a) of this section, may apply to a court for an order commanding a provider of electronic communications service or remote computing service to whom a warrant, subpoena, or court order is directed, for such period as the court deems appropriate, not to notify any other person of the existence of the warrant, subpoena, or court order. The court shall enter such an order if it determines that there is reason to believe that notification of the existence of the warrant, subpoena, or court order will result in—

- (1) endangering the life or physical safety of an individual;
- (2) flight from prosecution;
- (3) destruction of or tampering with evidence;
- (4) intimidation of potential witnesses; or
- (5) otherwise seriously jeopardizing an investigation or unduly delaying a trial.

(Added Pub. L. 99-508, title II, §201[(a)], Oct. 21, 1986, 100 Stat. 1864.)

§2706. Cost reimbursement

(a) Payment.—Except as otherwise provided in subsection (c), a governmental entity obtaining the

contents of communications, records, or other information under section 2702, 2703, or 2704 of this title shall pay to the person or entity assembling or providing such information a fee for reimbursement for such costs as are reasonably necessary and which have been directly incurred in searching for, assembling, reproducing, or otherwise providing such information. Such reimbursable costs shall include any costs due to necessary disruption of normal operations of any electronic communication service or remote computing service in which such information may be stored.

(b) Amount.—The amount of the fee provided by subsection (a) shall be as mutually agreed by the governmental entity and the person or entity providing the information, or, in the absence of agreement, shall be as determined by the court which issued the order for production of such information (or the court before which a criminal prosecution relating to such information would be brought, if no court order was issued for production of the information).

(c) Exception.—The requirement of subsection (a) of this section does not apply with respect to records or other information maintained by a communications common carrier that relate to telephone toll records and telephone listings obtained under section 2703 of this title. The court may, however, order a payment as described in subsection (a) if the court determines the information required is unusually voluminous in nature or otherwise caused an undue burden on the provider.

(Added Pub. L. 99-508, title II, §201[(a)], Oct. 21, 1986, 100 Stat. 1866; amended Pub. L. 100-690, title VII, §7061, Nov. 18, 1988, 102 Stat. 4404.)

AMENDMENTS

1988—Subsec. (c). Pub. L. 100-690 inserted heading.

§2707. Civil action

(a) Cause of Action.—Except as provided in section 2703(e), any provider of electronic communication service, subscriber, or other person aggrieved by any violation of this chapter in which the conduct constituting the violation is engaged in with a knowing or intentional state of mind may, in a civil action, recover from the person or entity, other than the United States, which engaged in that violation such relief as may be appropriate.

(b) Relief.—In a civil action under this section, appropriate relief includes—

- (1) such preliminary and other equitable or declaratory relief as may be appropriate;
- (2) damages under subsection (c); and
- (3) a reasonable attorney's fee and other litigation costs reasonably incurred.

(c) Damages.—The court may assess as damages in a civil action under this section the sum of the actual damages suffered by the plaintiff and any profits made by the violator as a result of the violation, but in no case shall a person entitled to recover receive less than the sum of \$1,000. If the violation is willful or intentional, the court may assess punitive damages. In the case of a successful action to enforce liability under this section, the court may assess the costs of the action, together with reasonable attorney fees determined by the court.

(d) Administrative Discipline.—If a court or appropriate department or agency determines that the United States or any of its departments or agencies has violated any provision of this chapter, and the court or appropriate department or agency finds that the circumstances surrounding the violation raise serious questions about whether or not an officer or employee of the United States acted willfully or intentionally with respect to the violation, the department or agency shall, upon receipt of a true and correct copy of the decision and findings of the court or appropriate department or agency promptly initiate a proceeding to determine whether disciplinary action against the officer or employee is warranted. If the head of the department or agency involved determines that disciplinary action is not warranted, he or she shall notify the Inspector General with jurisdiction over the department or agency concerned and shall provide the Inspector General with the reasons for such determination.

(e) Defense.—A good faith reliance on—

- (1) a court warrant or order, a grand jury subpoena, a legislative authorization, or a statutory authorization (including a request of a governmental entity under section 2703(f) of this title);

- (2) a request of an investigative or law enforcement officer under section 2518(7) of this title; or
- (3) a good faith determination that section 2511(3) of this title permitted the conduct complained of;

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

(f) **Limitation.**—A civil action under this section may not be commenced later than two years after the date upon which the claimant first discovered or had a reasonable opportunity to discover the violation.

(g) **Improper Disclosure.**—Any willful disclosure of a “record”, as that term is defined in section 552a(a) of title 5, United States Code, obtained by an investigative or law enforcement officer, or a governmental entity, pursuant to section 2703 of this title, or from a device installed pursuant to section 3123 or 3125 of this title, that is not a disclosure made in the proper performance of the official functions of the officer or governmental entity making the disclosure, is a violation of this chapter. This provision shall not apply to information previously lawfully disclosed (prior to the commencement of any civil or administrative proceeding under this chapter) to the public by a Federal, State, or local governmental entity or by the plaintiff in a civil action under this chapter.

(Added Pub. L. 99–508, title II, §201[(a)], Oct. 21, 1986, 100 Stat. 1866; amended Pub. L. 104–293, title VI, §601(c), Oct. 11, 1996, 110 Stat. 3469; Pub. L. 107–56, title II, §§223(b), title VIII, §815, Oct. 26, 2001, 115 Stat. 293, 384; Pub. L. 107–273, div. B, title IV, §4005(f)(2), Nov. 2, 2002, 116 Stat. 1813.)

AMENDMENTS

2002—Subsec. (e)(1). Pub. L. 107–273 made technical correction to directory language of Pub. L. 107–56, §815. See 2001 Amendment note below.

2001—Subsec. (a). Pub. L. 107–56, §223(b)(1), inserted “, other than the United States,” after “person or entity”.

Subsec. (d). Pub. L. 107–56, §223(b)(2), added subsec. (d) and struck out heading and text of former subsec. (d). Text read as follows: “If a court determines that any agency or department of the United States has violated this chapter and the court finds that the circumstances surrounding the violation raise the question whether or not an officer or employee of the agency or department acted willfully or intentionally with respect to the violation, the agency or department concerned shall promptly initiate a proceeding to determine whether or not disciplinary action is warranted against the officer or employee.”

Subsec. (e)(1). Pub. L. 107–56, §815, as amended by Pub. L. 107–273, inserted “(including a request of a governmental entity under section 2703(f) of this title)” after “or a statutory authorization”.

Subsec. (g). Pub. L. 107–56, §223(b)(3), added subsec. (g).

1996—Subsec. (a). Pub. L. 104–293, §601(c)(1), substituted “other person” for “customer”.

Subsec. (c). Pub. L. 104–293, §601(c)(2), inserted at end “If the violation is willful or intentional, the court may assess punitive damages. In the case of a successful action to enforce liability under this section, the court may assess the costs of the action, together with reasonable attorney fees determined by the court.”

Subsecs. (d) to (f). Pub. L. 104–293, §601(c)(3), (4), added subsec. (d) and redesignated former subsecs. (d) and (e) as (e) and (f), respectively.

EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107–273, div. B, title IV, §4005(f)(2), Nov. 2, 2002, 116 Stat. 1813, provided that the amendment made by section 4005(f)(2) is effective Oct. 26, 2001.

§2708. Exclusivity of remedies

The remedies and sanctions described in this chapter are the only judicial remedies and sanctions for nonconstitutional violations of this chapter.

(Added Pub. L. 99–508, title II, §201[(a)], Oct. 21, 1986, 100 Stat. 1867.)

§2709. Counterintelligence access to telephone toll and transactional records

(a) Duty to Provide.—A wire or electronic communication service provider shall comply with a request for subscriber information and toll billing records information, or electronic communication transactional records in its custody or possession made by the Director of the Federal Bureau of Investigation under subsection (b) of this section.

(b) Required Certification.—The Director of the Federal Bureau of Investigation, or his designee in a position not lower than Deputy Assistant Director at Bureau headquarters or a Special Agent in Charge in a Bureau field office designated by the Director, may—

(1) request the name, address, length of service, and local and long distance toll billing records of a person or entity if the Director (or his designee) certifies in writing to the wire or electronic communication service provider to which the request is made that the name, address, length of service, and toll billing records sought are relevant to an authorized investigation to protect against international terrorism or clandestine intelligence activities, provided that such an investigation of a United States person is not conducted solely on the basis of activities protected by the first amendment to the Constitution of the United States; and

(2) request the name, address, and length of service of a person or entity if the Director (or his designee) certifies in writing to the wire or electronic communication service provider to which the request is made that the information sought is relevant to an authorized investigation to protect against international terrorism or clandestine intelligence activities, provided that such an investigation of a United States person is not conducted solely upon the basis of activities protected by the first amendment to the Constitution of the United States.

(c) Prohibition of Certain Disclosure.—

(1) If the Director of the Federal Bureau of Investigation, or his designee in a position not lower than Deputy Assistant Director at Bureau headquarters or a Special Agent in Charge in a Bureau field office designated by the Director, certifies that otherwise there may result a danger to the national security of the United States, interference with a criminal, counterterrorism, or counterintelligence investigation, interference with diplomatic relations, or danger to the life or physical safety of any person, no wire or electronic communications service provider, or officer, employee, or agent thereof, shall disclose to any person (other than those to whom such disclosure is necessary to comply with the request or an attorney to obtain legal advice or legal assistance with respect to the request) that the Federal Bureau of Investigation has sought or obtained access to information or records under this section.

(2) The request shall notify the person or entity to whom the request is directed of the nondisclosure requirement under paragraph (1).

(3) Any recipient disclosing to those persons necessary to comply with the request or to an attorney to obtain legal advice or legal assistance with respect to the request shall inform such person of any applicable nondisclosure requirement. Any person who receives a disclosure under this subsection shall be subject to the same prohibitions on disclosure under paragraph (1).

(4) At the request of the Director of the Federal Bureau of Investigation or the designee of the Director, any person making or intending to make a disclosure under this section shall identify to the Director or such designee the person to whom such disclosure will be made or to whom such disclosure was made prior to the request, except that nothing in this section shall require a person to inform the Director or such designee of the identity of an attorney to whom disclosure was made or will be made to obtain legal advice or legal assistance with respect to the request under subsection (a).

(d) Dissemination by Bureau.—The Federal Bureau of Investigation may disseminate information and records obtained under this section only as provided in guidelines approved by the Attorney General for foreign intelligence collection and foreign counterintelligence investigations conducted by the Federal Bureau of Investigation, and, with respect to dissemination to an agency of the United States, only if such information is clearly relevant to the authorized responsibilities of such agency.

(e) Requirement That Certain Congressional Bodies Be Informed.—On a semiannual basis the Director of the Federal Bureau of Investigation shall fully inform the Permanent Select Committee on

Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate, and the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate, concerning all requests made under subsection (b) of this section.

(f) Libraries.—A library (as that term is defined in section 213(1) of the Library Services and Technology Act (20 U.S.C. 9122(1)), the services of which include access to the Internet, books, journals, magazines, newspapers, or other similar forms of communication in print or digitally by patrons for their use, review, examination, or circulation, is not a wire or electronic communication service provider for purposes of this section, unless the library is providing the services defined in section 2510(15) (“electronic communication service”) of this title.

(Added Pub. L. 99–508, title II, §201[(a)], Oct. 21, 1986, 100 Stat. 1867; amended Pub. L. 103–142, Nov. 17, 1993, 107 Stat. 1491; Pub. L. 104–293, title VI, §601(a), Oct. 11, 1996, 110 Stat. 3469; Pub. L. 107–56, title V, §505(a), Oct. 26, 2001, 115 Stat. 365; Pub. L. 109–177, title I, §116(a), Mar. 9, 2006, 120 Stat. 213; Pub. L. 109–178, §§4(b), 5, Mar. 9, 2006, 120 Stat. 280, 281.)

AMENDMENTS

2006—Subsec. (c). Pub. L. 109–177 reenacted heading without change and amended text generally. Prior to amendment, text read as follows: “No wire or electronic communication service provider, or officer, employee, or agent thereof, shall disclose to any person that the Federal Bureau of Investigation has sought or obtained access to information or records under this section.”

Subsec. (c)(4). Pub. L. 109–178, §4(b), amended par. (4) generally. Prior to amendment, par. (4) read as follows: “At the request of the Director of the Federal Bureau of Investigation or the designee of the Director, any person making or intending to make a disclosure under this section shall identify to the Director or such designee the person to whom such disclosure will be made or to whom such disclosure was made prior to the request, but in no circumstance shall a person be required to inform the Director or such designee that the person intends to consult an attorney to obtain legal advice or legal assistance.”

Subsec. (f). Pub. L. 109–178, §5, added subsec. (f).

2001—Subsec. (b). Pub. L. 107–56, §505(a)(1), inserted “at Bureau headquarters or a Special Agent in Charge in a Bureau field office designated by the Director” after “Deputy Assistant Director” in introductory provisions.

Subsec. (b)(1). Pub. L. 107–56, §505(a)(2), struck out “in a position not lower than Deputy Assistant Director” after “(or his designee)” and substituted “made that the name, address, length of service, and toll billing records sought are relevant to an authorized investigation to protect against international terrorism or clandestine intelligence activities, provided that such an investigation of a United States person is not conducted solely on the basis of activities protected by the first amendment to the Constitution of the United States; and” for “made that—

“(A) the name, address, length of service, and toll billing records sought are relevant to an authorized foreign counterintelligence investigation; and

“(B) there are specific and articulable facts giving reason to believe that the person or entity to whom the information sought pertains is a foreign power or an agent of a foreign power as defined in section 101 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801); and”.

Subsec. (b)(2). Pub. L. 107–56, §505(a)(3), struck out “in a position not lower than Deputy Assistant Director” after “(or his designee)” and substituted “made that the information sought is relevant to an authorized investigation to protect against international terrorism or clandestine intelligence activities, provided that such an investigation of a United States person is not conducted solely upon the basis of activities protected by the first amendment to the Constitution of the United States.” for “made that—

“(A) the information sought is relevant to an authorized foreign counterintelligence investigation; and

“(B) there are specific and articulable facts giving reason to believe that communication facilities registered in the name of the person or entity have been used, through the services of such provider, in communication with—

“(i) an individual who is engaging or has engaged in international terrorism as defined in section 101(c) of the Foreign Intelligence Surveillance Act or clandestine intelligence activities that involve or may involve a violation of the criminal statutes of the United States; or

“(ii) a foreign power or an agent of a foreign power under circumstances giving reason to believe that the communication concerned international terrorism as defined in section 101(c) of the Foreign Intelligence Surveillance Act or clandestine intelligence activities that involve or may involve a violation of the criminal statutes of the United States.”

1996—Subsec. (b)(1). Pub. L. 104–293 inserted “local and long distance” before “toll billing records”.

1993—Subsec. (b). Pub. L. 103–142, §1, amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: “Required Certification.—The Director of the Federal Bureau of Investigation (or an individual within the Federal Bureau of Investigation designated for this purpose by the Director) may request any such information and records if the Director (or the Director's designee) certifies in writing to the wire or electronic communication service provider to which the request is made that—

“(1) the information sought is relevant to an authorized foreign counterintelligence investigation; and

“(2) there are specific and articulable facts giving reason to believe that the person or entity to whom the information sought pertains is a foreign power or an agent of a foreign power as defined in section 101 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801).”

Subsec. (e). Pub. L. 103–142, §2, inserted “, and the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate,” after “Senate”.

§2710. Wrongful disclosure of video tape rental or sale records

(a) Definitions.—For purposes of this section—

(1) the term “consumer” means any renter, purchaser, or subscriber of goods or services from a video tape service provider;

(2) the term “ordinary course of business” means only debt collection activities, order fulfillment, request processing, and the transfer of ownership;

(3) the term “personally identifiable information” includes information which identifies a person as having requested or obtained specific video materials or services from a video tape service provider; and

(4) the term “video tape service provider” means any person, engaged in the business, in or affecting interstate or foreign commerce, of rental, sale, or delivery of prerecorded video cassette tapes or similar audio visual materials, or any person or other entity to whom a disclosure is made under subparagraph (D) or (E) of subsection (b)(2), but only with respect to the information contained in the disclosure.

(b) Video Tape Rental and Sale Records.—(1) A video tape service provider who knowingly discloses, to any person, personally identifiable information concerning any consumer of such provider shall be liable to the aggrieved person for the relief provided in subsection (d).

(2) A video tape service provider may disclose personally identifiable information concerning any consumer—

(A) to the consumer;

(B) to any person with the informed, written consent of the consumer given at the time the disclosure is sought;

(C) to a law enforcement agency pursuant to a warrant issued under the Federal Rules of Criminal Procedure, an equivalent State warrant, a grand jury subpoena, or a court order;

(D) to any person if the disclosure is solely of the names and addresses of consumers and if—

(i) the video tape service provider has provided the consumer with the opportunity, in a clear and conspicuous manner, to prohibit such disclosure; and

(ii) the disclosure does not identify the title, description, or subject matter of any video tapes or other audio visual material; however, the subject matter of such materials may be disclosed if the disclosure is for the exclusive use of marketing goods and services directly to the consumer;

(E) to any person if the disclosure is incident to the ordinary course of business of the video tape service provider; or

(F) pursuant to a court order, in a civil proceeding upon a showing of compelling need for the information that cannot be accommodated by any other means, if—

(i) the consumer is given reasonable notice, by the person seeking the disclosure, of the court proceeding relevant to the issuance of the court order; and

(ii) the consumer is afforded the opportunity to appear and contest the claim of the person seeking the disclosure.

If an order is granted pursuant to subparagraph (C) or (F), the court shall impose appropriate safeguards against unauthorized disclosure.

(3) Court orders authorizing disclosure under subparagraph (C) shall issue only with prior notice to the consumer and only if the law enforcement agency shows that there is probable cause to believe that the records or other information sought are relevant to a legitimate law enforcement inquiry. In the case of a State government authority, such a court order shall not issue if prohibited by the law of such State. A court issuing an order pursuant to this section, on a motion made promptly by the video tape service provider, may quash or modify such order if the information or records requested are unreasonably voluminous in nature or if compliance with such order otherwise would cause an unreasonable burden on such provider.

(c) Civil Action.—(1) Any person aggrieved by any act of a person in violation of this section may bring a civil action in a United States district court.

(2) The court may award—

- (A) actual damages but not less than liquidated damages in an amount of \$2,500;
- (B) punitive damages;
- (C) reasonable attorneys' fees and other litigation costs reasonably incurred; and
- (D) such other preliminary and equitable relief as the court determines to be appropriate.

(3) No action may be brought under this subsection unless such action is begun within 2 years from the date of the act complained of or the date of discovery.

(4) No liability shall result from lawful disclosure permitted by this section.

(d) Personally Identifiable Information.—Personally identifiable information obtained in any manner other than as provided in this section shall not be received in evidence in any trial, hearing, arbitration, or other proceeding in or before any court, grand jury, department, officer, agency, regulatory body, legislative committee, or other authority of the United States, a State, or a political subdivision of a State.

(e) Destruction of Old Records.—A person subject to this section shall destroy personally identifiable information as soon as practicable, but no later than one year from the date the information is no longer necessary for the purpose for which it was collected and there are no pending requests or orders for access to such information under subsection (b)(2) or (c)(2) or pursuant to a court order.

(f) Preemption.—The provisions of this section preempt only the provisions of State or local law that require disclosure prohibited by this section.

(Added Pub. L. 100–618, §2(a)(2), Nov. 5, 1988, 102 Stat. 3195.)

REFERENCES IN TEXT

The Federal Rules of Criminal Procedure, referred to in subsec. (b)(2)(C), are set out in the Appendix to this title.

PRIOR PROVISIONS

A prior section 2710 was renumbered section 2711 of this title.

§2711. Definitions for chapter

As used in this chapter—

- (1) the terms defined in section 2510 of this title have, respectively, the definitions given such terms in that section;
- (2) the term “remote computing service” means the provision to the public of computer storage or processing services by means of an electronic communications system;
- (3) the term “court of competent jurisdiction” includes—
 - (A) any district court of the United States (including a magistrate judge of such a court) or any United States court of appeals that—
 - (i) has jurisdiction over the offense being investigated;

(ii) is in or for a district in which the provider of a wire or electronic communication service is located or in which the wire or electronic communications, records, or other information are stored; or

(iii) is acting on a request for foreign assistance pursuant to section 3512 of this title; or

(B) a court of general criminal jurisdiction of a State authorized by the law of that State to issue search warrants; and

(4) the term “governmental entity” means a department or agency of the United States or any State or political subdivision thereof.

(Added Pub. L. 99–508, title II, §201[(a)], Oct. 21, 1986, 100 Stat. 1868, §2710; renumbered §2711, Pub. L. 100–618, §2(a)(1), Nov. 5, 1988, 102 Stat. 3195; amended Pub. L. 107–56, title II, §220(a)(2), Oct. 26, 2001, 115 Stat. 292; Pub. L. 109–177, title I, §107(b)(2), Mar. 9, 2006, 120 Stat. 202; Pub. L. 111–79, §2(2), Oct. 19, 2009, 123 Stat. 2086.)

AMENDMENTS

2009—Par. (3). Pub. L. 111–79 substituted “includes—” and subpars. (A) and (B) for “has the meaning assigned by section 3127, and includes any Federal court within that definition, without geographic limitation; and”.

2006—Par. (4). Pub. L. 109–177 added par. (4).

2001—Par. (3). Pub. L. 107–56 added par. (3).

1988—Pub. L. 100–618 renumbered section 2710 of this title as this section.

§2712. Civil actions against the United States

(a) In General.—Any person who is aggrieved by any willful violation of this chapter or of chapter 119 of this title or of sections 106(a), 305(a), or 405(a) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.) may commence an action in United States District Court against the United States to recover money damages. In any such action, if a person who is aggrieved successfully establishes such a violation of this chapter or of chapter 119 of this title or of the above specific provisions of title 50, the Court may assess as damages—

- (1) actual damages, but not less than \$10,000, whichever amount is greater; and
- (2) litigation costs, reasonably incurred.

(b) Procedures.—(1) Any action against the United States under this section may be commenced only after a claim is presented to the appropriate department or agency under the procedures of the Federal Tort Claims Act, as set forth in title 28, United States Code.

(2) Any action against the United States under this section shall be forever barred unless it is presented in writing to the appropriate Federal agency within 2 years after such claim accrues or unless action is begun within 6 months after the date of mailing, by certified or registered mail, of notice of final denial of the claim by the agency to which it was presented. The claim shall accrue on the date upon which the claimant first has a reasonable opportunity to discover the violation.

(3) Any action under this section shall be tried to the court without a jury.

(4) Notwithstanding any other provision of law, the procedures set forth in section 106(f), 305(g), or 405(f) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.) shall be the exclusive means by which materials governed by those sections may be reviewed.

(5) An amount equal to any award against the United States under this section shall be reimbursed by the department or agency concerned to the fund described in section 1304 of title 31, United States Code, out of any appropriation, fund, or other account (excluding any part of such appropriation, fund, or account that is available for the enforcement of any Federal law) that is available for the operating expenses of the department or agency concerned.

(c) Administrative Discipline.—If a court or appropriate department or agency determines that the United States or any of its departments or agencies has violated any provision of this chapter, and the

court or appropriate department or agency finds that the circumstances surrounding the violation raise serious questions about whether or not an officer or employee of the United States acted willfully or intentionally with respect to the violation, the department or agency shall, upon receipt of a true and correct copy of the decision and findings of the court or appropriate department or agency promptly initiate a proceeding to determine whether disciplinary action against the officer or employee is warranted. If the head of the department or agency involved determines that disciplinary action is not warranted, he or she shall notify the Inspector General with jurisdiction over the department or agency concerned and shall provide the Inspector General with the reasons for such determination.

(d) **Exclusive Remedy.**—Any action against the United States under this subsection shall be the exclusive remedy against the United States for any claims within the purview of this section.

(e) **Stay of Proceedings.**—(1) Upon the motion of the United States, the court shall stay any action commenced under this section if the court determines that civil discovery will adversely affect the ability of the Government to conduct a related investigation or the prosecution of a related criminal case. Such a stay shall toll the limitations periods of paragraph (2) of subsection (b).

(2) In this subsection, the terms “related criminal case” and “related investigation” mean an actual prosecution or investigation in progress at the time at which the request for the stay or any subsequent motion to lift the stay is made. In determining whether an investigation or a criminal case is related to an action commenced under this section, the court shall consider the degree of similarity between the parties, witnesses, facts, and circumstances involved in the 2 proceedings, without requiring that any one or more factors be identical.

(3) In requesting a stay under paragraph (1), the Government may, in appropriate cases, submit evidence ex parte in order to avoid disclosing any matter that may adversely affect a related investigation or a related criminal case. If the Government makes such an ex parte submission, the plaintiff shall be given an opportunity to make a submission to the court, not ex parte, and the court may, in its discretion, request further information from either party.

(Added Pub. L. 107–56, title II, §223(c)(1), Oct. 26, 2001, 115 Stat. 294.)

REFERENCES IN TEXT

Sections 106, 305, and 405 of the Foreign Intelligence Surveillance Act of 1978, referred to in subsecs. (a) and (b)(4), are classified to sections 1806, 1825, and 1845, respectively, of Title 50, War and National Defense.

The Federal Tort Claims Act, referred to in subsec. (b)(1), is title IV of act Aug. 2, 1946, ch. 753, 60 Stat. 842, which was classified principally to chapter 20 (§§921, 922, 931–934, 941–946) of former Title 28, Judicial Code and Judiciary. Title IV of act Aug. 2, 1946, was substantially repealed and reenacted as sections 1346(b) and 2671 et seq. of Title 28, Judiciary and Judicial Procedure, by act June 25, 1948, ch. 646, 62 Stat. 992, the first section of which enacted Title 28. The Federal Tort Claims Act is also commonly used to refer to chapter 171 of Title 28, Judiciary and Judicial Procedure. For complete classification of title IV to the Code, see Tables. For distribution of former sections of Title 28 into the revised Title 28, see Table at the beginning of Title 28.

Purdon's Pennsylvania Statutes and Consolidated Statutes

Title 18 Pa.C.S.A. Crimes and Offenses (Refs & Annos)

Part II. Definition of Specific Offenses

Article G. Miscellaneous Offenses

Chapter 76. Computer Offenses

Subchapter A. General Provisions

18 Pa.C.S.A. § 7601

§ 7601. Definitions

Effective: February 14, 2003

Currentness

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

"Access." To intercept, instruct, communicate with, store data in, retrieve data from or otherwise make use of any resources of a computer, computer system, computer network or database.

"Computer." An electronic, magnetic, optical, hydraulic, organic or other high-speed data processing device or system which performs logic, arithmetic or memory functions and includes all input, output, processing, storage, software or communication facilities which are connected or related to the device in a system or network.

"Computer data." A representation of information, knowledge, facts, concepts or instructions which is being prepared or has been prepared and is intended to be processed, is being processed or has been processed in a computer or computer network and may be in any form, whether readable only by a computer or only by a human or by either, including, but not limited to, computer printouts, magnetic storage media, punched card or stored internally in the memory of the computer.

"Computer network." The interconnection of two or more computers through the usage of satellite, microwave, line or other communication medium.

"Computer operation." Arithmetic, logical, monitoring, storage or retrieval functions and any combination thereof, including, but not limited to, communication with, storage of data to or retrieval of data from any device or human hand manipulation of electronic or magnetic impulses. In reference to a particular computer, the term also includes any function for which that computer was generally designed.

"Computer program." An ordered set of instructions or statements and related data that, when automatically executed in actual or modified form in a computer system, causes it to perform specified functions.

"Computer software." A set of computer programs, procedures or associated documentation concerned with the operation of a computer system.

"Computer system." A set of related, connected or unconnected computer equipment, devices and software.

"Computer virus." A computer program copied to, created on or installed to a computer, computer network, computer program, computer software or computer system without the informed consent of the owner of the computer, computer network, computer

program, computer software or computer system that may replicate itself and that causes or can cause unauthorized activities within or by the computer, computer network, computer program, computer software or computer system.

"Database." A representation of information, knowledge, facts, concepts or instructions which are being prepared or processed or have been prepared or processed in a formalized manner and are intended for use in a computer, computer system or computer network, including, but not limited to, computer printouts, magnetic storage media, punched cards or data stored internally in the memory of the computer.

"Denial-of-service attack." An explicit attempt to prevent legitimate users of a service from using that service, including, but not limited to:

- (1) flooding a network, thereby preventing legitimate network traffic;
- (2) disrupting connections between two computers, thereby preventing access to a service;
- (3) preventing a particular person from accessing a service; or
- (4) disrupting service to a specific computer system or person.

"Deprive." To withhold property of another permanently or for so extended a period as to appropriate a major portion of its economic value, or with intent to restore only upon payment of reward or other compensation, or to dispose of the property so as to make it unlikely that the owner will recover it.

"Economic value." The market value of property or an instrument which creates, releases, discharges or otherwise affects a valuable legal right, privilege or obligation at the time and place of the crime or, if such cannot be satisfactorily ascertained, the cost of replacement of the property or instrument within a reasonable time after the crime.

"Electronic mail service provider." A person who is an intermediary in sending or receiving electronic mail or who provides to end- users of electronic mail services the ability to send or receive electronic mail.

"Electronic mail transmission information." Information used to identify the origin or destination of a transmission or to aid in its routing, including information recorded as part of electronic mail whether or not such information is displayed initially to the user upon receipt of electronic mail, that purports to represent the information used to identify the origin or destination of a transmission or to aid in its routing.

"Established business relationship." A prior or existing relationship formed by a voluntary two-way communication initiated by a person or entity and a recipient with or without an exchange of consideration, on the basis of an inquiry, application purchase or transaction by the recipient regarding products or services offered by such persons or entity. In regard to an inquiry, the person or entity shall obtain the consent of a recipient beyond the initial inquiry. An established business relationship does not exist if the recipient requests to be removed from the distribution lists of an initiator.

"Fax." The transmission of the facsimile of a document through a connection with a telephone or computer network.

"Financial instrument." Includes, but is not limited to, any check, draft, warrant, money order, note, certificate of deposit, letter of credit, bill of exchange, credit or debit card, transaction authorization mechanism, marketable security or any computer system representation thereof.

"Internet service provider." A person who furnishes a service that enables users to access content, information, electronic mail or other services offered over the Internet.

"Person." Any individual, corporation, partnership, association, organization or entity capable of holding a legal or beneficial interest in property.

"Property." Includes, but is not limited to, financial instruments, computer software and programs in either machine or human readable form, and anything of value, tangible or intangible.

"Telecommunication device." Any type of instrument, device, machine or equipment which is capable of transmitting, acquiring, decrypting or receiving any telephonic, electronic, data, Internet access, audio, video, microwave or radio transmissions, signals, communications or services, including the receipt, acquisition, transmission or decryption of all such communications, transmissions, signals or services over any cable television, telephone, satellite, microwave, radio or wireless distribution system or facility, or any part, accessory or component thereof, including any computer circuit, security module, smart card, software, computer chip, electronic mechanism or other component, accessory or part which is capable of facilitating the transmission, decryption, acquisition or reception of all such communications transmissions, signals or services.

"Wireless advertisement." The initiation of a telephone call or a message capable of providing text, graphic or image messages by a commercial mobile service provider, unlicensed wireless services provider or common carrier wireless exchange access service provider for the purpose of marketing goods or services. The term does not include a call or message to a person with that person's prior express invitation or permission or to a person with whom the caller has an established business relationship.

"World Wide Web." Includes, but is not limited to, a computer server-based file archive accessible over the Internet, using a hypertext transfer protocol, file transfer protocol or other similar protocols.

Credits

2002, Dec. 16, P.L. 1953, No. 226, § 3, effective in 60 days.

Notes of Decisions (1)

18 Pa.C.S.A. § 7601, PA ST 18 Pa.C.S.A. § 7601
Current through Regular Session Act 2014-5

§ 7602. Jurisdiction, PA ST 18 Pa.C.S.A. § 7602

**Purdon's Pennsylvania Statutes and Consolidated Statutes
Title 18 Pa.C.S.A. Crimes and Offenses (Refs & Annos)
Part II. Definition of Specific Offenses
Article G. Miscellaneous Offenses
Chapter 76. Computer Offenses
Subchapter A. General Provisions**

18 Pa.C.S.A. § 7602

§ 7602. Jurisdiction

**Effective: February 14, 2003
Currentness**

An offense under this chapter may be deemed to have been committed either at the place where conduct constituting an element of the offense occurred or at the place where the result which is an element of the offense occurred within this Commonwealth in accordance with section 102 (relating to territorial applicability). It shall be no defense to a violation of this chapter that some of the acts constituting the offense occurred outside of this Commonwealth.

Credits

2002, Dec. 16, P.L. 1953, No. 226, § 3, effective in 60 days.

**18 Pa.C.S.A. § 7602, PA ST 18 Pa.C.S.A. § 7602
Current through Regular Session Act 2014-5**

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§ 7603. Restitution, PA ST 18 Pa.C.S.A. § 7603

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Subchapter A. General Provisions

18 Pa.C.S.A. § 7603

§ 7603. Restitution

Effective: February 14, 2003
Currentness

Upon conviction of an offense under section 7611 (relating to unlawful use of computer and other computer crimes), 7612 (relating to disruption of service) or 7616 (relating to distribution of computer virus), the sentence shall include an order for restitution to the victim for:

- (1) the cost of repairing or replacing the affected computer, computer system, computer network, computer software, computer program, computer database, World Wide Web site or telecommunication device;
- (2) lost profits for the period that the computer, computer system, computer network, computer software, computer program, computer database, World Wide Web site or telecommunication device is not usable; or
- (3) the cost of replacing or restoring the data lost or damaged as a result of a violation of section 7611, 7612 or 7616.

Credits

2002, Dec. 16, P.L. 1953, No. 226, § 3, effective in 60 days.

18 Pa.C.S.A. § 7603, PA ST 18 Pa.C.S.A. § 7603
Current through Regular Session Act 2014-5

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Subchapter A. General Provisions

18 Pa.C.S.A. § 7604

§ 7604. Concurrent jurisdiction



Effective: February 14, 2003
Currentness

The Attorney General shall have concurrent prosecutorial jurisdiction with the county district attorney for violations of this chapter. No person charged with a violation of this section by the Attorney General shall have standing to challenge the authority of the Attorney General to prosecute the case, and, if any such challenge is made, the challenge shall be dismissed and no relief shall be available in the courts of this Commonwealth to the person making the challenge.

Credits

2002, Dec. 16, P.L. 1953, No. 226, § 3, effective in 60 days.

18 Pa.C.S.A. § 7604, PA ST 18 Pa.C.S.A. § 7604
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§ 7605. Defense, PA ST 18 Pa.C.S.A. § 7605

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Part II. Definition of Specific Offenses
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Chapter 76. Computer Offenses
Subchapter A. General Provisions

18 Pa.C.S.A. § 7605

§ 7605. Defense

Effective: February 14, 2003
Currentness

It is a defense to an action brought pursuant to Subchapter B (relating to hacking and similar offenses) that the actor:

- (1) was entitled by law or contract to engage in the conduct constituting the offense; or
- (2) reasonably believed that he had the authorization or permission of the owner, lessee, licensee, authorized holder, authorized possessor or agent of the computer, computer network, computer software, computer system, database or telecommunication device or that the owner or authorized holder would have authorized or provided permission to engage in the conduct constituting the offense. As used in this section, the term "authorization" includes express or implied consent, including by trade usage, course of dealing, course of performance or commercial programming practices.

Credits

2002, Dec. 16, P.L. 1953, No. 226, § 3, effective in 60 days.

18 Pa.C.S.A. § 7605, PA ST 18 Pa.C.S.A. § 7605
Current through Regular Session Act 2014-5

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Subchapter A. General Provisions

18 Pa.C.S.A. § 7606

§ 7606. Construction

Effective: February 14, 2003
Currentness

Nothing in Subchapter B (relating to hacking and similar offenses) shall be construed to interfere with or prohibit terms or conditions in a contract or license related to a computer, computer network, computer software, computer system, database or telecommunication device or software or hardware designed to allow a computer, computer network, computer software, computer system, database or telecommunications device to operate in the ordinary course of a lawful business or that is designed to allow an owner or authorized holder of information to protect data information or rights in it.

Credits

2002, Dec. 16, P.L. 1953, No. 226, § 3, effective in 60 days.

18 Pa.C.S.A. § 7606, PA ST 18 Pa.C.S.A. § 7606
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§ 7611. Unlawful use of computer and other computer crimes, PA ST 18 Pa.C.S.A. § 7611

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Part II. Definition of Specific Offenses

Article G. Miscellaneous Offenses

Chapter 76. **Computer** Offenses

Subchapter B. Hacking and Similar Offenses (Refs & Annos)

18 Pa.C.S.A. § 7611

§ 7611. Unlawful use of computer and other computer crimes

Effective: February 14, 2003

Currentness

(a) Offense defined.--A person commits the offense of **unlawful use of a computer** if he:

(1) accesses or exceeds authorization to access, alters, damages or destroys any **computer, computer system, computer network, computer software, computer program, computer database, World Wide Web site or telecommunication device** or any part thereof with the intent to interrupt the normal functioning of a person or to devise or execute any scheme or artifice to defraud or deceive or control property or services by means of false or fraudulent pretenses, representations or promises;

(2) intentionally and without authorization accesses or exceeds authorization to access, alters, interferes with the operation of, damages or destroys any **computer, computer system, computer network, computer software, computer program, computer database, World Wide Web site or telecommunication device** or any part thereof; or

(3) intentionally or knowingly and without authorization gives or publishes a password, identifying code, personal identification number or other confidential information about a **computer, computer system, computer network, computer database, World Wide Web site or telecommunication device**.

(b) Grading.--An offense under this section shall constitute a felony of the third degree.

(c) Prosecution not prohibited.--Prosecution for an offense under this section shall not prohibit prosecution under any other section of this title.

Credits

2002, Dec. 16, P.L. 1953, No. 226, § 3, effective in 60 days.

Editors' Notes

RESEARCH REFERENCES

Encyclopedias

§ 7611. Unlawful use of computer and other computer crimes, PA ST 18 Pa.C.S.A. § 7611

Summary Pa. Jur. 2d Criminal Law § 37:12, **Computer Offenses.**

Summary Pa. Jur. 2d Criminal Law § 37:14, **Computer Offenses--Defenses.**

Summary Pa. Jur. 2d Criminal Law § 27:124, **Unlawful Use of a Computer.**

Treatises and Practice Aids

14 West's Pennsylvania Practice § 1:653, **Computer Offenses--Unlawful Use of a Computer.**

14 West's Pennsylvania Practice § 1:662, **Computer Offenses--Statutory Defense.**

Relevant Notes of Decisions (11)

View all 11

Notes of Decisions listed below contain your search terms.

Computer

County inmate's use of prison telephone system to call people at numbers he had fraudulently caused to be placed on another inmate's account and which he then accessed by using that inmate's personal telephone identification number, which was linked by computer to other inmate's account, constituted **unlawful use of a computer**. Com. v. Delapaz, 796 A.2d 364, Super.2002. Telecommunications ☞ 1348

Voice mailbox (VMB) is a "computer" for purposes of statute criminalizing **unlawful use of computer**; VMB is created by computer software, and messages are stored on computer disks. Com. v. Gerulis, 616 A.2d 686, 420 Pa.Super. 266, Super.1992, appeal denied 633 A.2d 150, 535 Pa. 645. Telecommunications ☞ 1348

Sufficiency of evidence

Evidence was sufficient to support police officer's conviction for **unlawful use of a computer**; officer admitted that, despite her awareness that computer system in patrol car was only to be used for official police business, she accessed the system for purposes of typing a false threat message, and while she claimed that she never meant to send the threatening message, the evidence adduced at trial indicated that the message could not have been sent accidentally. Com. v. McFadden, 850 A.2d 1290, Super.2004. Malicious Mischief ☞ 9

Evidence, that defendant deposited and retrieved information from hospital's and private telephone message company's voice mailboxes (VMBs) without authority to do so, ousted authorized users from VMBs by altering passwords, and disrupted normal use of VMBs, supported conviction for **unlawful use of computer**. Com. v. Gerulis, 616 A.2d 686, 420 Pa.Super. 266, Super.1992, appeal denied 633 A.2d 150, 535 Pa. 645. Telecommunications ☞ 1351

Finding that defendant intended to disrupt normal functioning of organizations, as required to support conviction for **unlawful use of computer**, was supported by evidence that, by changing access codes, defendant prevented authorized users from accessing voice mailboxes (VMBs) she used to market **unlawfully** obtained information. Com. v. Gerulis, 616 A.2d 686, 420 Pa.Super. 266, Super.1992, appeal denied 633 A.2d 150, 535 Pa. 645. Telecommunications ☞ 1351

Intent

Intent element of statute criminalizing unauthorized use of computer may be established by showing either that defendant intended to interrupt normal functioning of an organization or that defendant intended to defraud or deceive; intent element is disjunctive rather than conjunctive. Com. v. Gerulis, 616 A.2d 686, 420 Pa.Super. 266, Super.1992, appeal denied 633 A.2d 150, 535 Pa. 645. Telecommunications ☞ 1348

Computer network

Evidence was sufficient to establish that the Internet was a “computer network,” as element of offense of **unlawful use of a computer**, without need for expert testimony, given that Internet was understood by laypersons to be international network of interconnected **computers**. Com. v. Murgallis, 753 A.2d 870, Super.2000. Telecommunications ¶ 1351

Defendant was not prejudiced in prosecution for **unlawful use of a computer** by information that referred to Internet as “computer system,” rather than “computer network,” in that information provided adequate notice of the nature of the crime and defendant did not maintain that he was surprised by reference, and thus, fact that information referred to Internet as computer system was not relevant. Com. v. Murgallis, 753 A.2d 870, Super.2000. Criminal Law ¶ 1167(1)

Access

Evidence was sufficient to establish that use of e-mail was within statutory definition of “access” of a **computer system**, as element of offense of **unlawful use of a computer**, as defendant's use of e-mail to fraudulently sell and receive various items of aquarium equipment was use of resources of **computer network**. Com. v. Murgallis, 753 A.2d 870, Super.2000. Telecommunications ¶ 1348

Theft offenses

Theft by deception convictions did not merge for sentencing purposes with the convictions of **unlawful use of computer**, in that theft by deception was not lesser included offense of **unlawful use of computer**, as that offense did not have as element obtaining or withholding property of another as did theft by deception. Com. v. Murgallis, 753 A.2d 870, Super.2000. Sentencing And Punishment ¶ 527

Schools

School board acted appropriately in expelling high school student for remainder of semester for violating school district's **computer use policy** by decoding encrypted information and helping another student to access extremely sensitive and private school district information; appendix to policy indicated that suggested 10-day suspension for violations was only a guide and that an individual case could warrant modification of listed penalties, student had previously committed serious violation of policy, and his conduct was felonious under criminal statutes. M.T. v. Central York School Dist., 937 A.2d 538, Cmwlth.2007, appeal denied 951 A.2d 1168, 597 Pa. 723. Education ¶ 757

18 Pa.C.S.A. § 7611, PA ST 18 Pa.C.S.A. § 7611

Current through Regular Session Act 2013-88, 91, 93 to 97, 99 to 103, except 20 Pa.C.S.A. § 7101 to End current through 2013-104

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Subchapter B. Hacking and Similar Offenses (Refs & Annos)

18 Pa.C.S.A. § 7612

§ 7612. Disruption of service

Effective: February 14, 2003

Currentness

(a) **Offense defined.**—A person commits an offense if he intentionally or knowingly engages in a scheme or artifice, including, but not limited to, a denial of service attack upon any computer, computer system, computer network, computer software, computer program, computer server, computer database, World Wide Web site or telecommunication device or any part thereof that is designed to block, impede or deny the access of information or initiation or completion of any sale or transaction by users of that computer, computer system, computer network, computer software, computer program, computer server or database or any part thereof.

(b) **Grading.**—An offense under this section shall constitute a felony of the third degree.

Credits

2002, Dec. 16, P.L. 1953, No. 226, § 3, effective in 60 days.

18 Pa.C.S.A. § 7612, PA ST 18 Pa.C.S.A. § 7612
Current through Regular Session Act 2014-5

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§ 7613. Computer theft, PA ST 18 Pa.C.S.A. § 7613

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Subchapter B. Hacking and Similar Offenses (Refs & Annos)

18 Pa.C.S.A. § 7613

§ 7613. Computer theft

Effective: February 14, 2003

Currentness

(a) Offense defined.--A person commits an offense if he unlawfully accesses or exceeds his authorization to access any data from a computer, computer system or computer network or takes or copies any supporting documentation whether existing or residing internal or external to a computer, computer system or computer network of another with the intent to deprive him thereof.

(b) Grading.--An offense under this section shall constitute a felony of the third degree.

Credits

2002, Dec. 16, P.L. 1953, No. 226, § 3, effective in 60 days.

18 Pa.C.S.A. § 7613, PA ST 18 Pa.C.S.A. § 7613
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§ 7614. Unlawful duplication, PA ST 18 Pa.C.S.A. § 7614

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Subchapter B. Hacking and Similar Offenses (Refs & Annos)

18 Pa.C.S.A. § 7614

§ 7614. Unlawful duplication

Effective: February 14, 2003

Currentness

(a) Offense defined.—A person commits the offense of unlawful duplication if he makes or causes to be made an unauthorized copy, in any form, including, but not limited to, any printed or electronic form of computer data, computer programs or computer software residing in, communicated by or produced by a computer or computer network.

(b) Grading.—An offense under subsection (a) shall be graded as follows:

(1) An offense under this section shall constitute a felony of the third degree.

(2) If the economic value of the duplicated material is greater than \$2,500, the grading of the offense shall be one grade higher than specified in paragraph (1).

Credits

2002, Dec. 16, P.L. 1953, No. 226, § 3, effective in 60 days.

18 Pa.C.S.A. § 7614, PA ST 18 Pa.C.S.A. § 7614
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§ 7615. Computer trespass, PA ST 18 Pa.C.S.A. § 7615

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Subchapter B. Hacking and Similar Offenses (Refs & Annos)

18 Pa.C.S.A. § 7615

§ 7615. Computer trespass

Effective: February 14, 2003

Currentness

(a) Offense defined.—A person commits the offense of computer trespass if he knowingly and without authority or in excess of given authority uses a computer or computer network with the intent to:

- (1) temporarily or permanently remove computer data, computer programs or computer software from a computer or computer network;
- (2) cause a computer to malfunction, regardless of the amount of time the malfunction persists;
- (3) alter or erase any computer data, computer programs or computer software;
- (4) effect the creation or alteration of a financial instrument or of an electronic transfer of funds; or
- (5) cause physical injury to the property of another.

(b) Grading.—An offense under this section shall constitute a felony of the third degree.

Credits

2002, Dec. 16, P.L. 1953, No. 226, § 3, effective in 60 days.

18 Pa.C.S.A. § 7615, PA ST 18 Pa.C.S.A. § 7615

Current through Regular Session Act 2014-5

§ 7616. Distribution of computer virus, PA ST 18 Pa.C.S.A. § 7616

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Chapter 76. Computer Offenses

Subchapter B. Hacking and Similar Offenses (Refs & Annos)

18 Pa.C.S.A. § 7616

§ 7616. Distribution of computer virus

Effective: February 14, 2003

Currentness

(a) Offense defined.—A person commits an offense if the person intentionally or knowingly sells, gives or otherwise distributes or possesses with the intent to sell, give or distribute computer software or a computer program that is designed or has the capability to:

(1) prevent, impede, control, delay or disrupt the normal operation or use of a computer, computer program, computer software, computer system, computer network, computer database, World Wide Web site or telecommunication device; or

(2) degrade, disable, damage or destroy the performance of a computer, computer program, computer software, computer system, computer network, computer database, World Wide Web site or telecommunication device or any combination thereof.

(b) Grading.—An offense under this section shall constitute a felony of the third degree.

Credits

2002, Dec. 16, P.L. 1953, No. 226, § 3, effective in 60 days.

18 Pa.C.S.A. § 7616, PA ST 18 Pa.C.S.A. § 7616

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Chapter 76. Computer Offenses
Subchapter E. Electronic Mail

18 Pa.C.S.A. § 7661

§ 7661. Unlawful transmission of electronic mail

Effective: February 14, 2003

Currentness

(a) Offense defined.—A person commits the offense of unlawful transmission of electronic mail if he:

(1) Uses a computer or computer network without authority and with the intent to falsify or forge electronic mail transmission information or other routine information in any manner in connection with the transmission of unsolicited electronic mail through or into the computer network of an electronic mail service provider, Internet service provider or its subscribers.

(2) Sells, gives or otherwise distributes or possesses with the intent to sell, give or distribute computer software which:

(i) is primarily designed or produced for the purpose of facilitating or enabling the falsification of electronic mail transmission information or other routing information;

(ii) has only limited commercially significant purpose or use other than to facilitate or to enable the falsification of electronic mail transmission information or other routing information; or

(iii) is marketed by that person or another person acting in concert with that person with that person's knowledge for the use in facilitating or enabling the falsification of electronic mail transmission information or other routing information.

(b) Grading.—

(1) Except as provided in paragraphs (2) and (3), unlawful transmission of electronic mail is a misdemeanor of the third degree punishable by a fine of not more than \$2,500.

(2) If there is damage to the property of another valued at \$2,500 or more caused by that person's reckless disregard for the consequences of his act in violation of this section, unlawful transmission of electronic mail is a misdemeanor of the first degree punishable by a fine of not more than \$10,000.

§ 7661. Unlawful transmission of electronic mail, PA ST 18 Pa.C.S.A. § 7661

(3) If there is damage to the property of another valued at \$2,500 or more caused by that person's malicious act in violation of this section, unlawful transmission of electronic mail is a felony of the third degree punishable by a fine of not more than \$15,000.

(c) Rights preserved.—Nothing in this section shall be construed to:

(1) Establish any liability by reason of terms or conditions adopted by or technical measures implemented by an electronic mail service provider or Internet service provider doing business in this Commonwealth to prevent the transmission of unsolicited electronic mail in violation of this section.

(2) Interfere with or prohibit terms or conditions in a contract or license related to computers, computer data, computer networks, computer operations, computer programs, computer services or computer software.

(d) Definitions.—As used in this section, the term “electronic mail” shall include facsimiles and wireless advertisements in addition to other electronic mail.

Credits

2002, Dec. 16, P.L. 1953, No. 226, § 3, effective in 60 days.

18 Pa.C.S.A. § 7661, PA ST 18 Pa.C.S.A. § 7661

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