

HOUSE No. 1601

By Mr. Murphy of Burlington, petition of Charles A. Murphy and others for legislation to amend the wiretap and electronic surveillance statute. The Judiciary.

The Commonwealth of Massachusetts

PETITION OF:

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In the Year Two Thousand and Seven.

AN ACT UPDATING THE MASSACHUSETTS WIRETAP STATUTE.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 Chapter 272 of the General Laws is hereby amended by striking
2 out Section 99 and inserting, in place thereof, the following new
3 section:—

4 Section 99. Wiretap and Electronic Surveillance.

5 A. Preamble.

6 The purpose of this chapter is to provide a procedure for law
7 enforcement agencies to seek court-approved wire and surveillance
8 orders that will keep pace with modern technology and criminal
9 techniques, while at the same time protecting individual rights and
10 privacy.

11 B. Definitions.

12 As used in this chapter:—

13 (a) “Aggrieved person” means a person who was a party to any
14 intercepted wire, oral, or electronic communication or a person
15 against whom the interception was directed.

16 (b) “Attorney for the state” means the attorney general, any assis-
17 tant attorney general specially designated by the attorney general,
18 any district attorney, or any assistant district attorney specially des-

19 ignited by the district attorney authorized to commence and prose-
20 cute an action under this chapter.

21 (c) “Aural transfer” means a transfer containing the human voice
22 at any point between and including the point of origin and the point
23 of reception.

24 (d) “Communication common carrier” means any person engaged
25 as a common carrier in providing or operating wire or electronic
26 communication facilities.

27 (e) “Contents” when used with respect to any wire, oral, or elec-
28 tronic communication, includes any information concerning the sub-
29 stance, purport, or meaning of that communication.

30 (f) “Corporate and institutional trading partners” means financial
31 institutions and general business entities and corporations which
32 engage in the business of cash and asset management, asset manage-
33 ment directed to custody operations, securities trading, and whole-
34 sale capital markets including foreign exchange, securities lending,
35 and the purchase, sale or exchange of securities, options, futures,
36 swaps, derivatives, repurchase agreements and other similar finan-
37 cial instruments with such financial institution.

38 (g) “Court of competent jurisdiction” means a superior court of
39 the Commonwealth.

40 (h) “Electronic communication” means any transfer of signs, sig-
41 nals, writing, images, sounds, data, or intelligence of any nature
42 transmitted in whole or in part by a wire, radio, electromagnetic,
43 photo-electronic or photo-optical system, excluding:—

44 (1) the radio portion of a cordless telephone communication that
45 is transmitted between the cordless telephone handset and the base
46 unit;

47 (2) any wire or oral communication;

48 (3) any communication made through a tone-only paging device;

49 (4) any communication from a tracking device, defined as an
50 electronic or mechanical device which permits the tracking of the
51 movement of a person or object; or

52 (5) electronic funds transfer information stored by a financial
53 institution in a communications system used for the electronic
54 storage and transfer of funds.

55 (i) “Electronic communication service” means any service which
56 provides to its users the ability to send or receive wire or electronic
57 communications.

58 (j) “Electronic communications system” means any wire, radio,
59 electromagnetic, photo-optical or photo-electronic facilities for the
60 transmission of wire or electronic communications, and any com-
61 puter facilities or related electronic equipment for the electronic
62 storage of such communications.

63 (k) “Electronic, mechanical, or other device” means any device or
64 apparatus which can be used to intercept a wire, oral, or electronic
65 communication other than:—

66 (1) any telephone or telegraph instrument, equipment or facility,
67 or any component thereof:—

68 (A) furnished to the subscriber or user by a provider of wire or
69 electronic communication service or commercial entity in the ordi-
70 nary course of its business, and being used by the subscriber or user
71 in the ordinary course of its business, or furnished by such sub-
72 scriber or user for connection to the facilities of such service and
73 used in the ordinary course of its business; or

74 (B) being used by a provider of wire or electronic communication
75 service in the ordinary course of its business, or by an investigative
76 or law enforcement officer in the ordinary course of the officer’s
77 duties; or

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

80 (l) “Electronic storage” means:—

81 (1) any temporary, intermediate storage of a wire or electronic
82 communication incidental to the electronic transmission thereof; and

83 (2) any storage of such communication by an electronic commu-
84 nication service for purposes of backup protection of such communi-
85 cation.

86 (m) “Financial institution” means a bank, as defined in Section 1
87 of Chapter 167, and an investment bank, securities broker, securities
88 dealer, investment adviser, mutual fund, investment company or
89 securities custodian as defined in Section 1.165-12(c)(1) of the
90 United States Treasury Regulations.

91 (n) “Intercept” means the aural or other acquisition of the contents
92 of any wire, electronic or oral communication through the use of any
93 electronic, mechanical, or other device; provided that it shall not
94 constitute an interception for an investigative or law enforcement
95 officer, as defined in this section, to record or transmit a wire, elec-
96 tronic or oral communication if the officer is a party to such

97 communication or has been given prior authorization to record or
98 transmit the communication by such a party and if recorded or trans-
99 mitted in the course of an investigation of any offense described in
100 Section G.

101 (o) “Investigative or law enforcement officer” means any officer
102 of the federal government, the state or political subdivision thereof,
103 who is empowered by law to conduct investigations of or to make
104 arrests for offenses enumerated in this chapter, and any attorney
105 authorized by law to prosecute or participate in the prosecution of
106 such offenses.

107 (p) “Judge of competent jurisdiction” means any judge of the
108 superior court of the Commonwealth.

109 (q) “Oral communication” means any verbal communication
110 uttered by a person exhibiting an expectation that such communica-
111 tion is not subject to interception under circumstances justifying
112 such expectation. However, such term excludes any electronic com-
113 munication.

114 (r) “Pen register” means a device or process which records or
115 decodes dialing, routing, addressing, or signaling information trans-
116 mitted by an instrument or facility from which a wire or electronic
117 communication is transmitted, provided, however, that such infor-
118 mation shall not include the contents of any communication. Such
119 term excludes any device or process used by a provider or customer
120 of a wire or electronic communication service for billing, or
121 recording as an incident to billing, for communications services pro-
122 vided by such provider of any device used by a provider, or any
123 device or process used by a provider or customer of a wire commu-
124 nication service for billing, cost accounting or other like purposes in
125 the ordinary course of its business.

126 (s) “Person” means any employee, or agent of the United States or
127 any state or political subdivision thereof, and any individual, part-
128 nership, association, joint stock company, trust, or corporation.

129 (t) “Readily accessible to the general public” means, with respect
130 to a radio communication, that such communication is not:—

131 (1) scrambled or encrypted;

132 (2) transmitted using modulation techniques whose essential para-
133 meters have been withheld from the public with the intention of pre-
134 serving the privacy of such communication;

135 (3) carried on a subcarrier or other signal subsidiary to a radio
136 transmission;

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

140 (5) transmitted on frequencies allocated under part 25, subpart D,
141 E, or F of part 74, or part 94 of the Rules of the Federal Communica-
142 tions Commission, unless, in the case of a communication trans-
143 mitted on a frequency allocated under part 74 that is not exclusively
144 allocated to broadcast auxiliary services, the communication is a
145 two-way voice communication by radio.

146 (u) “Trap and trace device” means a device or process which cap-
147 tures the incoming electronic or other impulses which identify the
148 originating number or other dialing, routing, addressing, and sig-
149 naling information reasonably likely to identify the source of a wire
150 or electronic communication, provided, however, that such informa-
151 tion shall not include the contents of any communication. Provided,
152 however, that any caller identification device lawfully installed shall
153 be excluded from this definition.

154 (v) “User” means any person or entity who:—

155 (1) uses an electronic or wire communication service; and

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

158 (w) “Wire communication” means any aural transfer made in
159 whole or in part through the use of facilities for the transmission of
160 communications by the aid of wire, cable, or other like connection
161 between the point of origin and the point of reception, including the
162 use of such connection in a switching station, furnished or operated
163 by any person engaged in providing or operating such facilities for
164 the transmission of intrastate, interstate or foreign communications
165 or communications affecting intrastate, interstate or foreign com-
166 merce. However, such term excludes the radio portion of a cordless
167 telephone communication that is transmitted between the cordless
168 telephone handset and the base unit.

169 C. Unlawful Interception and Disclosure of Wire, Oral, or Elec-
170 tronic Communications.

171 (a) Except as provided in subsection (d), it is unlawful for a
172 person to intentionally:—

173 (1) intercept, endeavor to intercept, or procure any other person to
174 intercept or endeavor to intercept, any wire, oral, or electronic com-
175 munication;

176 (2) use, endeavor to use, or procure any other person to use or
177 endeavor to use any electronic, mechanical, or other device to inter-
178 cept any oral communication when:—

179 (A) such device is affixed to, or otherwise transmits a signal
180 through, a wire, cable, or other like connection used in wire commu-
181 nications; or

182 (B) such device transmits communications by radio, or interferes
183 with transmission of such communication.

184 (3) disclose, or endeavor to disclose, to any other person the con-
185 tents of any wire, oral, or electronic communication, knowing or
186 having reason to know that the information was obtained through the
187 interception of a wire, oral, or electronic communication in violation
188 of this subsection; or

189 (4) use, or endeavor to use, the contents of any wire, oral, or elec-
190 tronic communication, knowing or having reason to know that the
191 information was obtained through the interception of a wire, oral, or
192 electronic communication in violation of this subsection; or

193 (5) edit, alter or tamper with any tape, transcription or recording
194 of wire, oral or electronic communications by any means, or attempt
195 to edit, alter or tamper with any tape, transcription or recording of
196 wire, oral or electronic communications by any means with the
197 intent to present in any judicial proceeding or proceeding under oath,
198 or present such recording or permit such recording to be presented in
199 any judicial proceeding or proceeding under oath, without fully indi-
200 cating the nature of the changes made in the original state of the
201 recording.

202 (b) Proof of the installation of any intercepting device by any
203 person under circumstances evincing an intent to commit an inter-
204 ception, which is not authorized or permitted by this section, shall be
205 prima facie evidence of a violation of this subsection.

206 (c) Any person who violates subsection (a) and any person who
207 permits or on behalf of any other person commits or attempts to
208 commit, or any person who participates in a conspiracy to commit or
209 attempt to commit, or any accessory to a person who commits a vio-
210 lation of subsection (a) shall be punished as provided in subsection
211 (f) or shall be subject to suit as provided in Section Q.

212 (d) It shall be lawful under this chapter for:—

213 (1) an operator of a switchboard, or an officer, employee, or agent
214 of a provider of wire or electronic communication service, whose
215 facilities are used in the transmission of a wire communication, to
216 intercept, disclose, or use that communication in the normal course
217 of that person's employment while engaged in any activity which is
218 a necessary incident to the rendition of that person's service or to the
219 protection of the rights or property of the provider of that service, or
220 which is necessary to prevent the use of such facilities in violation of
221 section fourteen A of chapter two hundred and sixty-nine of the
222 General Laws; except that a provider of wire communication service
223 to the public shall not utilize service observing or random moni-
224 toring except for mechanical or service quality control checks;

225 (2) (A) providers of wire or electronic communication service,
226 their officers, employees, and agents, landlords, custodians, or other
227 persons, to provide information, facilities, or technical assistance to
228 persons authorized by law to intercept wire, oral, or electronic com-
229 munications or to conduct electronic surveillance, if such provider,
230 its officers, employees, or agents, landlord, custodian, or other speci-
231 fied person, has been provided with:—

232 (i) a court order directing such assistance signed by the autho-
233 rizing judge; or

234 (ii) a certification in writing by the attorney for the state that no
235 warrant or court order is required by law, that all statutory require-
236 ments have been met, and that the specified assistance is required.
237 The certification shall set forth the period of time during which the
238 provision of information, facilities, or technical assistance is autho-
239 rized and specifying the information, facilities, or assistance
240 required;

241 (B) No provider of wire or electronic communication service,
242 officer, employee, or agent thereof, or landlord, custodian, or other
243 specified person shall disclose the existence of any interception or sur-
244 veillance or the device used to accomplish the interception or sur-
245 veillance with respect to which the person has been furnished a court
246 order or certification under this chapter, except as may otherwise be
247 required by legal process and then only after prior notification to the
248 attorney for the state as may be appropriate. Any such disclosure,
249 shall render such person liable for the civil damages provided for in
250 Section Q.

251 (C) No cause of action shall lie in any court against any provider
252 of wire or electronic communication service, its officers, employees,
253 or agents, landlord, custodian, or other specified person for pro-
254 viding information, facilities, or assistance in accordance with the
255 terms of a court order or certification under this chapter.

256 (3) a person to intercept or access an electronic communication
257 made through an electronic communication system that is configured
258 so that such electronic communication is readily accessible to the
259 general public;

260 (4) a person to intercept any radio communication which is trans-
261 mitted:—

262 (A) by any station for the use of the general public, or that relates
263 to ships, aircraft, vehicles, or persons in distress;

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

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

270 (D) by any marine or aeronautical communications system;

271 (5) a person to engage in any conduct which:—

272 (A) is prohibited by Section 633 of the Communications Act of
273 1934; or

274 (B) is excepted from the applications of Section 705(a) of the
275 Communications Act of 1934 by Section 705(b) of that Act;

276 (6) a person to intercept any wire or electronic communication the
277 transmission of which is causing harmful interference to any law-
278 fully operating station or consumer electronic equipment, to the
279 extent necessary to identify the source of such interference;

280 (7) other users of the same frequency to intercept any radio com-
281 munication made through a system that utilized frequencies moni-
282 tored by individuals engaged in the provision or the use of such
283 system, if such communication is not scrambled or encrypted;

284 (8) a person to use a pen register or a trap and trace device in
285 accordance with the provisions defined in this chapter;

286 (9) a provider of electronic communication service to record the
287 fact that a wire or electronic communication was initiated or com-
288 pleted in order to protect such provider, another provider furnishing
289 service toward the completion of the wire or electronic communica-

290 tion, or a user of that service, from fraudulent, unlawful or abusive
291 use of such service;

292 (10) investigative and law enforcement officers of the United
293 States of America to violate the provisions of this section if acting
294 pursuant to authority of the laws of the United States and within the
295 scope of their authority;

296 (11) any person duly authorized to make specified interceptions
297 by a warrant issued pursuant to this section;

298 (12) investigative or law enforcement officers to violate the provi-
299 sions of this section for the purposes of ensuring the safety of any
300 law enforcement officer or agent thereof who is acting in an under-
301 cover capacity, or as a witness for the Commonwealth; provided,
302 however, that any such interception which is not otherwise permitted
303 by this section shall be deemed unlawful for purposes of Section I
304 (m);

305 (13) a financial institution to record telephone communications
306 with its corporate or institutional trading partners in the ordinary
307 course of its business; provided, however, that such financial institu-
308 tion shall establish and maintain a procedure to provide semi-annual
309 written notice to its corporate and institutional trading partners that
310 telephone communications over designated lines will be recorded;

311 (14) a person acting under color of law to intercept the wire or
312 electronic communications of a computer trespasser transmitted to,
313 through or from a computer, if:—

314 (A) the owner or operator of the computer authorizes the intercep-
315 tion of the computer trespasser's communication on the computer;

316 (B) the person acting under color of law is lawfully engaged in an
317 investigation;

318 (C) the person acting under color of law has reasonable grounds
319 to believe that the contents of the computer trespasser's communica-
320 tions will be relevant to the investigation; and

321 (D) such interception does not acquire communications other than
322 those transmitted to or from the computer trespasser;

323 (15) any investigative or law enforcement officer, specially desig-
324 nated by the Attorney General or a District Attorney, who reason-
325 ably determines that an emergency situation exists that involves
326 immediate danger of death or serious physical injury to any person,
327 and there are grounds upon which an order could be entered under
328 this chapter to authorize such interception, may intercept such wire,

329 oral, or electronic communication if an application for an order
330 approving the interception is made in accordance with this section
331 within forty-eight hours after the interception has occurred, or begins
332 to occur. In the absence of an order, such interception shall immedi-
333 ately terminate when the communication sought is obtained or when
334 the application for the order is denied, whichever is earlier. In the
335 event such application for approval is denied, the contents of any
336 wire, oral, or electronic communication intercepted shall be subject
337 to the prohibitions set forth in Section F and the civil remedies of
338 Section Q. No such violation shall be subject to criminal penalties.

339 (16) for an employee of:—

340 (A) an ambulance service licensed pursuant to the General Laws,
341 a fire station employing firefighters, as defined by the General Laws,
342 a law enforcement agency as defined by this chapter, or any other
343 entity with published emergency telephone numbers; or

344 (B) an agency operating an emergency telephone number “911”
345 system established pursuant to the General Laws, to intercept and
346 record incoming wire and electronic communications; however, such
347 employee may intercept and record incoming wire and electronic
348 communications to designated “911” telephone numbers and pub-
349 lished non-emergency telephone numbers staffed by trained dis-
350 patchers at public safety answering points only. It is also lawful for
351 such employee to intercept and record outgoing wire or electronic
352 communications to the numbers from which such incoming wire or
353 electronic communications were placed when necessary to obtain
354 information required to provide the emergency services being
355 requested.

356 (e) (1) Except as provided in paragraph (2) of this subsection, a
357 person or entity providing an electronic communication service to
358 the public shall not intentionally divulge the contents of any commu-
359 nication, other than one to such person or entity, or an agent thereof,
360 while in transmission on that service to any person or entity other
361 than an addressee or intended recipient of such communication or an
362 agent of such addressee or intended recipient.

363 (2) A person or entity providing electronic communication service
364 to the public may divulge the contents of any such communica-
365 tion:—

366 (A) as otherwise authorized in Section C (d) or H of this chapter;

367 (B) with the lawful consent of the originator or any addressee or
368 intended recipient of such communication;

369 (C) to a person employed or authorized, or whose facilities are
370 used, to forward such communication to its destination; or

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

374 (f) Except as otherwise specifically provided in this section, any
375 person who willfully commits an interception, attempts to commit
376 an interception, or procures any other person to commit an intercep-
377 tion or to attempt to commit an interception of any wire, oral or elec-
378 tronic communication shall be fined not more than ten thousand
379 dollars, or imprisoned in the state prison for not more than five
380 years, or imprisoned in a jail or house of correction for not more
381 than two and one half years, or both so fined and given one such
382 imprisonment.

383 D. Unlawful Manufacture, Distribution, Possession, and Adver-
384 tising of Wire, Oral, or Electronic Communication Intercepting
385 Devices.

386 (a) Except as provided in subsection (c), it is unlawful for any
387 person to intentionally:—

388 (1) transport or transmit any electronic, mechanical, or other
389 device, knowing or having reason to know that the design of such
390 device renders it useful for the purpose of the surreptitious intercep-
391 tion of wire, oral, or electronic communications, or knowing or
392 having reason to know that the device is intended for surreptitious
393 interception of wire, oral, or electronic communications; or

394 (2) manufacture, assemble, possess, or sell any electronic,
395 mechanical, or other device, knowing or having reason to know that
396 the design of such device renders it useful for the purpose of the sur-
397 reptitious interception of wire, oral, or electronic communications,
398 or knowing or having reason to know that the device is intended for
399 surreptitious interception of wire, oral, or electronic communica-
400 tions; or

401 (3) place in any newspaper, magazine, handbill, or other publica-
402 tion any advertisement of:—

403 (A) any electronic, mechanical, or other device, knowing or
404 having reason to know that the design of such device renders it
405 useful for the purpose of surreptitious interception of wire, oral, or

406 electronic communications, or knowing or having reason to know
407 that the device is intended for surreptitious interception of wire, oral,
408 or electronic communications; or

409 (B) any other electronic, mechanical, or other device, where such
410 advertisement promotes the use of such device for the purpose of the
411 surreptitious interception of wire, oral, or electronic communica-
412 tions.

413 (b) A person who violates subsection (a) shall be fined not more
414 than \$10,000, or imprisoned not more than five years in state prison
415 or not more than two and one half year in a jail or house of correc-
416 tion, or both such fine and imprisonment.

417 (c) The installation of any such intercepting device by such
418 person or with his permission or at his direction shall be prima facie
419 evidence of possession as required by subsection (a).

420 (d) Any person who permits or on behalf of any other person
421 commits or attempts to commit, or any person who participates in a
422 conspiracy to commit or attempt to commit, or any accessory to a
423 person who commits a violation of subsection (a) shall be punished
424 in the same manner as is provided for the respective offenses as
425 described in subsection (b).

426 (e) Notwithstanding subsection (a), it shall be lawful for a person
427 to transport, or manufacture, assemble, possess, or sell any elec-
428 tronic, mechanical, or other device, knowing or having reason to
429 know that the design of such device renders it primarily useful for
430 the purpose of the surreptitious interception of wire, oral, or elec-
431 tronic communications, or knowing or having reason to know that
432 the device is intended for surreptitious interception of wire, oral, or
433 electronic communications, if the person is:—

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

438 (2) an officer, agent, or employee of, or a person under contract
439 with, bidding upon contracts with, or in the course of doing business
440 with, the United States, a state, or a political subdivision thereof, in
441 the normal course of the activities of the United States, a state, or a
442 political subdivision thereof.

443 E. Confiscation of Wire, Oral, or Electronic Communication
444 Interception Devices.

445 Upon conviction of a violation of this section, any electronic,
446 mechanical, or other device used, sent, carried, manufactured,
447 assembled, possessed or sold in violation of this chapter may be con-
448 fiscated by the Commonwealth and forwarded, by the authority of
449 the written order of the court, to the colonel of the state police, who
450 shall destroy said article.

451 F. Prohibition of Use as Evidence of Intercepted Wire, Oral or
452 Electronic Communications.

453 No part of the contents of any wire, oral or electronic communica-
454 tion intercepted in violation of this chapter, and no evidence derived
455 therefrom, may be received in evidence in any trial, hearing, or other
456 proceeding in or before any court, grand jury, department, officer,
457 agency, regulatory body, legislative committee, or other authority of
458 this state, or political subdivision thereof, if the disclosure of that
459 information would be in violation of this chapter. The prohibition of
460 use as evidence provided in this section does not apply in cases of
461 prosecution for criminal interception in violation of the provisions of
462 this chapter.

463 G. Authorization for Interception of Wire, Oral, or Electronic
464 Communications.

465 (a) The attorney for the state may authorize an application to a
466 judge of competent jurisdiction for, and such judge may grant in
467 conformity with Section I of this chapter an order authorizing the
468 interception of wire, oral or electronic communications by an inves-
469 tigative or law enforcement officer, or an agency having responsi-
470 bility for the investigation of the offense as to which the application
471 is made, when such interception may provide or has provided evi-
472 dence of:—

473 (1) any offense which involves murder, kidnapping, robbery, or
474 extortion;

475 (2) any of the following offenses:— arson, assault and battery
476 with a dangerous weapon, bribery, burglary, misuse of credit cards or
477 fraudulent use of credit cards to obtain money, goods or services,
478 malicious destruction of property, embezzlement, escape, throwing
479 or placing explosives at or near persons or property, illegal posses-
480 sion or storage of explosives, possession of infernal machines,
481 forgery, gaming in violation of sections sixteen and seventeen, sev-
482 enteen A and seventeen B of chapter two hundred and seventy-one
483 of the General Laws, identity fraud in violation of Section 37E of

484 chapter two hundred sixty-six of the General Laws, insurance fraud,
485 intimidation of witnesses or jurors or persons furnishing information
486 in connection with criminal proceedings, larceny, lending of money
487 or things of value in violation of the General Laws, mayhem, escape,
488 perjury, subornation of perjury, receiving stolen property, communi-
489 cating terroristic threats, possessing or using chemical, biological or
490 nuclear weapons, possession or use of hoax substances;

491 (3) any offense involving the distribution of a narcotic drug, mari-
492 juana, or other dangerous drug;

493 (4) coercion of child under eighteen into criminal conspiracy,
494 inducing person under eighteen to have sexual intercourse, posses-
495 sion or dissemination of matter harmful to minors, posing or
496 exhibiting child in state of nudity or sexual conduct, dissemination
497 of visual material of child in state of nudity or sexual conduct, pur-
498 chase or possession of visual material of child depicted in sexual
499 conduct;

500 (5) any offense punishable by imprisonment for more than one
501 year involving the possession or distribution of firearms;

502 (6) any accessory to any offense described in this section or any
503 conspiracy or attempt or solicitation to commit any offense
504 described in this subsection;

505 (7) the location of any fugitive from justice from an offense
506 described in this subsection.

507 H. Authorization for Disclosure and Use of Intercepted Wire,
508 Oral, and Electronic Communications.

509 (a) Any investigative or law enforcement officer who, by any
510 means authorized by this chapter, has obtained knowledge of the
511 contents of any wire, oral, or electronic communication, or evidence
512 derived therefrom, may:—

513 (1) disclose such contents to another investigative or law enforce-
514 ment officer to the extent that such disclosure is appropriate to the
515 proper performance of the official duties of the officer making or
516 receiving the disclosure; or

517 (2) use such contents to the extent such use is appropriate to the
518 proper performance of the officer's official duties.

519 (b) Any person who has received, by any means authorized by
520 this chapter, any information concerning a wire, oral, or electronic
521 communication, or evidence derived therefrom, intercepted in accord-
522 dance with the provisions of this chapter may disclose the contents

523 of that communication or such derivative evidence while giving tes-
524 timony under oath or affirmation in any proceeding in any court of
525 the United States or of any state or in any federal or state grand jury
526 proceeding.

527 (c) No otherwise privileged wire, oral, or electronic communica-
528 tion intercepted in accordance with, or in violation of, the provisions
529 of this chapter shall lose its privileged character.

530 (d) An investigative or law enforcement officer engaged in inter-
531 cepting wire, oral, or electronic communications in the manner
532 authorized herein, who intercepts wire, oral, or electronic communi-
533 cations relating to offenses other than those specified in the order of
534 authorization or approval, may disclose or use the contents thereof,
535 and evidence derived therefrom, as provided in subsection (a) of this
536 section. Such contents and any evidence derived therefrom may be
537 used under subsection (b) of this section if a judge of competent
538 jurisdiction so authorizes after finding on subsequent application
539 that the contents were otherwise intercepted in accordance with the
540 provisions of this chapter.

541 (e) Except as otherwise specifically provided in this section, any
542 person who willfully discloses to any person, any information con-
543 cerning or contained in, the application for, the granting or denial of
544 orders for interception, renewals, notice or return on an ex parte
545 order granted pursuant to this section, or the contents of any docu-
546 ment, tape, or recording kept in accordance with Section I(m), shall
547 be guilty of a misdemeanor punishable by imprisonment in a jail or
548 house of correction for not more than two years or by a fine of not
549 more than five thousand dollars or both.

550 I. Procedure for Interception of Wire, Oral, or Electronic Commu-
551 nications.

552 (a) An application for a warrant authorized by this section must
553 be made to a judge of competent jurisdiction in the county where the
554 interception is to occur, or the county where the office of the appli-
555 cant is located, or in the event that there is no judge of competent
556 jurisdiction sitting in said county at such time, to a judge of compe-
557 tent jurisdiction sitting in Suffolk County; except that for these pur-
558 poses, the office of the attorney general shall be deemed to be
559 located in Suffolk County.

560 (b) Each application for an order authorizing or approving the
561 interception of a wire, oral, or electronic communication under this

562 chapter shall be made in writing upon oath or affirmation and shall
563 state:—

564 (1) the identity of the investigative or law enforcement officer
565 making the application, and the officer authorizing the application;

566 (2) the applicant's authority to make such application;

567 (3) fully and completely the facts and circumstances relied upon
568 by the applicant, to justify the applicant's belief that an order should
569 be issued, including:—

570 (E) details as to the particular offense that has been, is being, or is
571 about to be committed;

572 (F) except as provided in subsection (p) of this section, a descrip-
573 tion of the nature and location of the facilities from which or the
574 place where the communication is to be intercepted;

575 (G) a particular description of the type of communications sought
576 to be intercepted and that such communications are not legally privi-
577 leged; and

578 (H) the identity of the person, if known, committing the offense
579 and whose communications are to be intercepted;

580 (4) whether or not other investigative procedures have been tried
581 and failed or why they reasonably appear unlikely to succeed if tried
582 or otherwise might be too dangerous;

583 (5) the period of time for which the interception is required to be
584 maintained;

585 (6) the facts concerning all previous applications known to the
586 individual authorizing and making the application, made to any
587 judge for authorization to intercept, or for approval of interceptions
588 of, wire, oral, or electronic communications involving any of the
589 same persons, facilities or places specified in the application, and the
590 action taken by the judge on each such application;

591 (7) where the application is for the extension of an order, the
592 results thus far obtained from the interception, or a reasonable expla-
593 nation of the failure to obtain such results; and

594 (8) if it is reasonably necessary to make a secret entry upon a pri-
595 vate place and premises in order to install an intercepting device to
596 effectuate the interception, a statement to such effect.

597 (c) The judge may require the applicant to furnish additional testi-
598 mony or documentary evidence in support of the application. A ver-
599 batim transcript of every such interrogation or examination must be

600 taken, and a transcription of the same, sworn to by the stenographer,
601 shall be attached to the application and be deemed a part thereof.

602 (d) Upon such application the judge may enter an ex parte order,
603 as requested or as modified, authorizing or approving interception of
604 wire, oral, or electronic communications within the state, if the judge
605 determines on the basis of the facts submitted by the applicant
606 that:—

607 (1) there is probable cause for belief that an individual is commit-
608 ting, has committed, or is about to commit a particular offense enu-
609 merated in Section G of this chapter;

610 (2) there is probable cause for belief that particular communica-
611 tions concerning that offense will be obtained through such intercep-
612 tion;

613 (3) normal investigative procedures have been tried and failed or
614 reasonably appear unlikely to succeed if tried or may otherwise be
615 too dangerous; and

616 (4) except as provided in subsection (p), there is probable cause
617 for belief that the facilities from which, or the place where, the wire,
618 oral, or electronic communications are to be intercepted are being
619 used, or are about to be used, in connection with the commission of
620 such offense, or are leased to, listed in the name of, or commonly
621 used by such person.

622 (e) Each order authorizing or approving the interception of any
623 wire, oral, or electronic communication under this chapter shall
624 specify:—

625 (1) the subscription and title of the issuing judge;

626 (2) the identity of the person, if known, whose communications
627 are to be intercepted;

628 (3) the nature and location of the communications facilities as to
629 which, or the place where, authority to intercept is granted;

630 (4) a particular description of the type of communication sought
631 to be intercepted, and a statement of the particular offense to which
632 it relates;

633 (5) the identity of the agency authorized to intercept the commu-
634 nications, and of the person authorizing the application ;(6) the
635 period of time during which such interception is authorized; and

636 (6) an express authorization to make secret entry upon a private
637 place or premises to install a specified intercepting device, if such
638 entry is necessary to execute the warrant.

639 (f) An order authorizing the interception of a wire, oral, or elec-
640 tronic communication under this chapter shall, upon request of the
641 applicant, direct that a provider of wire or electronic communication
642 service, landlord, custodian, or other person shall furnish the appli-
643 cant forthwith all information, facilities, and technical assistance
644 necessary to accomplish the interception unobtrusively and with a
645 minimum of interference with the services that such service
646 provider, landlord, custodian, or person is according the person
647 whose communications are to be intercepted. Any provider of wire
648 or electronic communication service, landlord, custodian or other
649 person furnishing such facilities or technical assistance shall be com-
650 pensated therefor by the applicant for reasonable expenses incurred
651 in providing such facilities or assistance.

652 (g) An order entered under this section may authorize or approve
653 the interception of any wire, oral, or electronic communication for
654 the shorter of 30 days or the period necessary to achieve the objec-
655 tive of the authorization. Such 30 day period begins on the earlier of
656 the day on which the investigative or law enforcement officer first
657 begins to conduct an interception under the order or ten days after
658 the order is entered, whichever occurs earliest. Extensions of an
659 order may be granted only upon application for an extension made in
660 accordance with subsection (b) of this section and the court making
661 the findings required by subsection (d) of this section. The period of
662 extension shall be the shorter of 30 days or the time the authorizing
663 judge deems necessary to achieve the purposes for which it was
664 granted. Every order and extension thereof shall contain a provision
665 that the authorization to intercept shall be executed as soon as practi-
666 cable, shall be conducted in such a way as to minimize the intercep-
667 tion of communications not otherwise subject to interception under
668 this chapter, and must terminate upon the earlier of 30 days or the
669 attainment of the authorized objective. In the event the intercepted
670 communication is in a code or a foreign language, and an expert in
671 that foreign language or code is not reasonably available during the
672 interception period, minimization may be accomplished as soon as
673 practicable after such interception of the communication in full.

674 (h) An interception under this chapter may be conducted in whole
675 or in part by federal, state, county or municipal personnel, or by an
676 individual operating under a contract with the state, county or

677 municipality acting under the supervision of an investigative or law
678 enforcement officer authorized to conduct the interception.

679 (i) Whenever an order authorizing interception is entered pursuant
680 to this chapter, the order may require reports to be made to the judge
681 who issued the order showing what progress has been made toward
682 achievement of the authorized objective and the need for continued
683 interception. Such reports shall be made at intervals as the judge
684 may require.

685 (j) Notwithstanding any other provision of this chapter, any inves-
686 tigative or law enforcement officer, specially designated by the
687 attorney for the state, may intercept a wire, oral or electronic com-
688 munication prior to issuance of an order approving the interception if

689 (1) the officer reasonably determines that:—

690 (A) an emergency situation exists that involves immediate danger
691 of death or serious physical injury to any person or the danger of
692 escape of a prisoner; and there are grounds upon which an order
693 could be entered under this chapter to authorize such interception;
694 and

695 (B) an application for an order approving the interception is made
696 in accordance with this section within 48 hours after the interception
697 has occurred, or begins to occur.

698 (k) In the absence of an order approving an interception described
699 in subsection (j), such interception shall immediately terminate upon
700 the earlier of obtainment of the communication sought or denial of
701 the application.

702 (l) In the event an application for approval of an interception
703 described in subsection (j) is denied, or in any other case where the
704 interception is terminated without an order having been issued, the
705 contents of any wire, oral, or electronic communication intercepted
706 shall be subject to the prohibitions set forth in Section F and the civil
707 remedies of Section Q. No such violation shall be subject to criminal
708 penalties.

709 (m) (1) The contents of any wire, oral, or electronic communica-
710 tion intercepted by any means authorized by this chapter shall, if
711 possible, be recorded on tape or wire or other comparable device.
712 Upon examination of the return and a determination that it complies
713 with this section, the issuing judge shall forthwith order that the
714 application, all renewal applications, warrant, all renewal orders and
715 the return thereto be transmitted to the chief justice by such persons

716 as he shall designate. The application, all renewal applications, war-
717 rant, all renewal orders and the return shall be stored in a secure
718 place which shall be designated by the chief justice, to which access
719 shall be denied to all persons except the chief justice or such court
720 officers or administrative personnel of the court as he shall desig-
721 nate.

722 The recordings shall not be destroyed except upon an order of the
723 issuing or denying judge and in any event shall be kept for ten years.
724 Notice prior to the destruction shall be given to the applicant
725 attorney general or his successor or the applicant district attorney or
726 his successor and upon a showing of good cause to the chief justice,
727 the application, warrant, renewal and return may be kept for such
728 additional period as the chief justice shall determine but in no event
729 longer than the longest period of limitation for any designated
730 offense specified in the warrant, after which time they must be
731 destroyed by a person designated by the chief justice. Duplicate
732 recordings may be made for use or disclosure pursuant to the provi-
733 sions of Section H (a) of this chapter for investigations. The pres-
734 ence of the seal provided for by this subsection, or a satisfactory
735 explanation for the absence thereof, shall be a prerequisite for the
736 use or disclosure of the contents of any wire, oral, or electronic com-
737 munication, or evidence derived therefrom, under Section H(b).

738 (2) Applications made and orders granted under this chapter shall
739 be sealed by the judge. Such applications and orders shall be dis-
740 closed only upon a showing of good cause before a judge of compe-
741 tent jurisdiction and shall not be destroyed except on order of the
742 issuing or denying judge, and in any event shall be kept for ten
743 years.

744 (3) Except as otherwise provided in subparagraph (a), within a
745 reasonable time, not to exceed 90 days, after the filing of an applica-
746 tion for an order of approval under subsection (l) which is denied, or
747 the termination of the period of an order or extensions thereof, an
748 investigative or law enforcement officer of the Commonwealth shall
749 serve an attested copy of the warrant or the renewal on the persons
750 named in the warrant, and such other aggrieved person who shall
751 reasonably be known to the person who obtained the warrant as a
752 result of information obtained from an authorized interception. The
753 attested copy of the warrant shall be served by leaving the same at
754 his usual place of abode, or in hand, or if this is not possible by

755 mailing the same by certified or registered mail to his last known
756 place of abode. A return of service shall be made to the issuing
757 judge, except, that if such service is postponed as provided in this
758 subparagraph, it shall be made to the chief justice. The return of
759 service shall be deemed a part of the return of the warrant and
760 attached thereto.

761 (a) Upon an ex parte showing of important special facts which set
762 forth the need for continued secrecy to the satisfaction of the issuing
763 judge, said judge may direct that the attested copy of the warrant be
764 served on such parties as are required by this subsection at such time
765 as may be appropriate in the circumstances but in no event may he it
766 to be served later than three (3) years from the time of expiration of
767 the warrant or the last renewal thereof.

768 (b) The judge, upon the filing of a motion, may make available to
769 such person or such person's counsel for inspection such portions of
770 the intercepted communications, applications and orders as the judge
771 determines to be in the interest of justice.

772 (n) The contents of any wire, oral or electronic communication
773 intercepted pursuant to this chapter, or evidence derived therefrom,
774 shall not be received in evidence or otherwise disclosed in any trial,
775 hearing, or other proceeding in a court of the Commonwealth unless
776 each party, not less than ten days before the trial, hearing, or pro-
777 ceeding, has been furnished with a copy of the court order and
778 accompanying application under which the interception was autho-
779 rized or approved and a complete copy of each recording or a state-
780 ment under oath of the evidence overheard as a result of the
781 transmission which the Commonwealth intends to offer in evidence.
782 This ten day period may be waived by the judge if the judge finds
783 that it was not possible to furnish the party with the above informa-
784 tion ten days before the trial, hearing or proceeding and that the
785 party will not be prejudiced by the delay in receiving such informa-
786 tion.

787 (o) Any aggrieved person who is a party in any trial, hearing, or
788 proceeding in or before any court, department, officer, agency, regu-
789 latory body, or other authority of this state, or a political subdivision
790 thereof, may move to suppress the contents of any wire, oral or elec-
791 tronic communication intercepted pursuant to this chapter, or evi-
792 dence derived therefrom, on the grounds that:—

793 (1) the communication was unlawfully intercepted;

794 (2) the application or renewal failed to set forth facts sufficient to
795 establish probable cause for the issuance of the warrant;

796 (3) the order of authorization or approval under which it was
797 intercepted is insufficient on its face or does not conform with the
798 provisions of this chapter; or

799 (4) the interception was not made in conformity with the order of
800 authorization or approval.

801 Such motion shall be made before the trial, hearing, or proceeding
802 unless there was no opportunity to make such motion or the person
803 was not aware of the grounds of the motion. If the motion is granted,
804 the contents of the intercepted wire or oral communication, or evi-
805 dence derived therefrom, shall be suppressed.

806 (p) The requirements of subsections (b)(3)(B) and (d)(4) of this
807 section relating to the specification of the facilities from which, or
808 the place where, the communication is to be intercepted are inapplic-
809 able if:—

810 (1) in the case of an application with respect to the interception of
811 an oral communication:—

812 (A) the application is by an investigative or law enforcement
813 officer and is approved by the attorney for the state;

814 (B) the application contains a full complete statement as to why
815 such specification is not practical and identifies the person commit-
816 ting the offenses and whose communications are to be intercepted;
817 and

818 (C) the judge finds that such specification is not practical; and

819 (2) in the case of an application with respect to a wire or elec-
820 tronic communication:—

821 (A) the application is by an investigative or law enforcement
822 officer and is approved by the attorney for the state;

823 (B) the application identifies the person believed to be commit-
824 ting the offense and whose communications are to be intercepted and
825 the applicant makes a showing of a purpose, on the part of that
826 person, to thwart interception by changing facilities; and

827 (C) the judge finds that such purpose has been adequately shown.

828 (q) An interception of a communication under an order to which
829 the requirements of subsections (b)(3)(B) and (d)(4) of this section
830 do not apply by reason of subsection (p) shall not begin until the
831 facilities from which, or the place where, the communication is to be
832 intercepted is ascertained by the person implementing the intercep-

833 tion order. A provider of wire or electronic communication service
834 that has received an order as provided for in subsection (p)(2) may
835 move the court to modify or quash the order on the ground that its
836 assistance with respect to the interception cannot be performed in a
837 timely or reasonable fashion. The court, upon notice to the state,
838 shall decide such a motion expeditiously.

839 J. Warrant Return.

840 Within seven days after termination of the warrant or the last
841 renewal thereof, a return must be made thereon to the judge issuing
842 the warrant by the applicant therefor, containing the following:—

843 (a) A statement of the nature and location of the communications
844 facilities, if any, and premise or places where the interceptions were
845 made; and

846 (b) The periods of time during which such interceptions were
847 made; and

848 (c) The names of the parties to the communications intercepted if
849 known; and

850 (d) The original recording of the oral, wire or electronic commu-
851 nications intercepted, if any; and

852 (e) A statement attested under the pains and penalties of perjury
853 by each person who heard oral or wire communications as a result of
854 the interception authorized by the warrant, which were not recorded,
855 stating everything that was overheard to the best of his recollection
856 at the time of the execution of the statement.

857 K. General Prohibition on Pen Register and Trap and Trace
858 Device Use; Exceptions.

859 (a) Except as provided in Section O (b) of this chapter, no person
860 may install or use a pen register or a trap and trace device without
861 first obtaining a court order under Section L of this chapter.

862 (b) The prohibition of section (a) is inapplicable with respect to
863 the use of a pen register or a trap and trace device by a provider of
864 electronic or wire communication service:—

865 (1)(A) relating to the operation, maintenance, and testing of a
866 wire or electronic communication service or to the protection of the
867 rights or property of such provider, or to the protection of users of
868 that service from abuse of service or unlawful use of service; or

869 (B) to record the fact that a wire or electronic communication was
870 initiated or completed in order to protect such provider, another
871 provider furnishing service toward the completion of the wire com-

872 munication, or a user of that service, from fraudulent, unlawful or
873 abusive use of service; or

874 (2) where the consent of the user of that service has been
875 obtained.

876 (c) A government agency authorized to install and use a pen reg-
877 ister or trap and trace device under Sections K through O shall use
878 technology reasonably available to it that restricts the recording or
879 decoding of electronic or other impulses to the dialing, routing,
880 addressing, and signaling information utilized in the processing and
881 transmitting of wire or electronic communications so as not to
882 include the contents of any wire or electronic communications.

883 (d) A person who knowingly violates subsection (a) shall be fined
884 not more than \$5,000.00 for each violation, or imprisoned in a jail or
885 house of correction for not more than one year, or both such fine and
886 imprisonment.

887 L. Application for an Order for a Pen Register or Trap and Trace
888 Device.

889 (a) A state investigative or law enforcement officer authorized by
890 the attorney for the state may make application in writing under oath
891 or equivalent affirmation to a court of competent jurisdiction for an
892 order or an extension of an order under Section M of this chapter
893 authorizing or approving the installation and use of a pen register or
894 a trap and trace device under this chapter.

895 (b) An application under subsection (a) shall include:—

896 (1) the identity of the attorney for the state or the law enforcement
897 or investigative officer making the application and the identity of the
898 law enforcement agency conducting the investigation; and

899 (2) a certification under oath by the applicant that the information
900 likely to be obtained is relevant to an ongoing criminal investigation
901 being conducted by that agency.

902 M. Issuance of an Order for a Pen Register or a Trap and Trace
903 Device.

904 (a) In general:—

905 (1) Upon an application made under Section L, the court shall
906 enter an ex parte order authorizing the installation and use of a pen
907 register or trap and trace device within the jurisdiction of the court,
908 if the court finds that the State law enforcement or investigative
909 officer has certified to the court that the information likely to be

910 obtained by such installation and use is relevant to an ongoing crim-
911 inal investigation.

912 (2) (A) Where the law enforcement agency implementing an ex
913 parte order under this subsection seeks to do so by installing and
914 using its own pen register or trap and trace device on a packet-
915 switched data network of a provider of electronic communication
916 service to the public, the agency shall ensure that a record will be
917 maintained which will identify:—

918 (i) any officer or officers who installed the device and any officer
919 or officers who accessed the device to obtain information from the
920 network;

921 (ii) the date and time the device was installed, the date and time
922 the device was uninstalled, and the date, time, and duration of each
923 time the device is accessed to obtain information;

924 (iii) the configuration of the device at the time of its installation
925 and any subsequent modification thereof; and

926 (iv) any information which has been collected by the device.

927 To the extent that the pen register or trap and trace device can be
928 set automatically to record this information electronically, the record
929 shall be maintained electronically throughout the installation and use
930 of such device.

931 (B) The record maintained under subparagraph (A) shall be pro-
932 vided ex parte and under seal to the court which entered the ex parte
933 order authorizing the installation and use of the device within 30
934 days after termination of the order (including any extensions
935 thereof). Upon examination of the return and a determination that it
936 complies with this section, the issuing judge shall forthwith order
937 that the application, all renewal applications, warrant, all renewal
938 orders and the return thereto be transmitted to the chief justice by
939 such persons as he shall designate. Their contents shall not be dis-
940 closed except as provided in this section. The application, renewal
941 application(s), warrant(s), the renewal order(s) and the return or any
942 one of them or any part of them may be transferred to any trial court,
943 grand jury proceeding of any jurisdiction by any law enforcement or
944 investigative officer or court officer designated by the chief justice
945 and a trial justice may allow them to be disclosed in accordance with
946 Section H.

947 The application, all renewal applications, warrant, all renewal
948 orders and the return shall be stored in a secure place which shall be

949 designated by the chief justice, to which access shall be denied to all
950 persons except the chief justice or such court officers or administra-
951 tive personnel of the court as he shall designate.

952 Any violation of the terms and conditions of any order of the
953 chief justice, pursuant to the authority granted in this paragraph,
954 shall be punished as a criminal contempt of court in addition to any
955 other punishment authorized by law.

956 (b) An order issued under this section:—

957 (1) shall specify:—

958 (A) the identity, if known, of the person to whom is leased or in
959 whose name is listed the telephone line or other facility to which the
960 pen register or trap and trace device is to be attached or applied;

961 (B) the identity, if known, of the person who is the subject of the
962 criminal investigation;

963 (C) the attributes of the communications to which the order
964 applies, including the number or other identifier and, if known, the
965 location of the telephone line or other facility to which the pen reg-
966 ister or trap and trace device is to be attached or applied, and, in the
967 case of an order authorizing installation and use of a trap and trace
968 device under subsection (a)(2), the geographic limits of the order;
969 and

970 (D) a statement of the offense to which the information likely to
971 be obtained by the pen register or trap and trace device relates; and

972 (2) shall direct, upon the request of the applicant, the furnishing
973 of information, facilities, and technical assistance necessary to
974 accomplish the installation of the pen register or trap and trace
975 device under Section N.

976 (c) An order issued under this section:—

977 (1) shall authorize the installation and use of a pen register or a
978 trap and trace device for a period not to exceed 60 days; and

979 (2) may be granted only upon an application for an order under
980 Section L of this chapter after a judicial finding required by subsec-
981 tion (a). Any period(s) of extension shall not exceed 60 days.

982 (d) An order authorizing or approving the installation and use of a
983 pen register or a trap and trace device shall direct that:—

984 (1) the order be sealed until otherwise ordered by the court;

985 (2) the person owning or leasing the line or other facility to which
986 the pen register or a trap and trace device is attached or applied, or
987 who is obligated by the order to provide assistance to the applicant,

988 not disclose the existence of the pen register or trap and trace device
989 or the existence of the investigation to the listed subscriber, or to any
990 other person, unless or until otherwise ordered by the court; and

991 (3) a violation of this subsection may be punished as a contempt
992 of the issuing or denying court.

993 N. Assistance in Installation and Use of a Pen Register or a Trap
994 and Trace Device.

995 (a) Upon the request of the attorney for the state or an investiga-
996 tive or law enforcement officer authorized to install and use a pen
997 register under this chapter, a provider of wire or electronic commu-
998 nication service, landlord, custodian, or other person shall furnish
999 such investigative or law enforcement officer forthwith all informa-
1000 tion, facilities, and technical assistance necessary to accomplish the
1001 installation of the pen register unobtrusively and with a minimum of
1002 interference with the service that the person so ordered by the court
1003 accords the party with respect to whom the installation and use is to
1004 take place, if such assistance is directed by a court order as provided
1005 in Section M(b)(2) of this chapter.

1006 (b) Upon the request of the attorney for the state or an investiga-
1007 tive or law enforcement officer authorized to receive the results of a
1008 trap and trace device under this chapter, a provider of a wire or elec-
1009 tronic communication service, landlord, custodian, or other person
1010 shall install such device forthwith on the appropriate line or facility
1011 and shall furnish such investigative or law enforcement officer all
1012 additional information, facilities and technical assistance including
1013 installation and operation of the device unobtrusively and with a
1014 minimum of interference with the services that the person so ordered
1015 by the court accords the party with respect to whom the installation
1016 and use is to take place, if such installation and assistance is directed
1017 by a court order as provided in Section M(b)(2) of this chapter.
1018 Unless otherwise ordered by the court, the results of the trap and
1019 trace device shall be furnished, pursuant to Section M(b) or Section
1020 O of the chapter, to the attorney for the state or the investigative or
1021 law enforcement officer, designated in the court order, at reasonable
1022 intervals during regular business hours for the duration of the order.

1023 (c) A provider of a wire or electronic communication service,
1024 landlord, custodian, or other person who furnishes facilities or tech-
1025 nical assistance pursuant to this section shall be reasonably compen-

1026 sated for such reasonable expenses incurred in providing such facili-
1027 ties and assistance.

1028 (d) No cause of action shall lie in any court against any provider
1029 of a wire or electronic communication service, its officers,
1030 employees, agents, or other specified persons for providing informa-
1031 tion, facilities or assistance in accordance with a court order under
1032 this chapter or request pursuant to Section O of this chapter.

1033 (e) A good faith reliance on a court order under this chapter, a
1034 request pursuant to Section O of this chapter, a legislative authoriza-
1035 tion, or a statutory authorization is a complete defense against any
1036 civil or criminal action brought under this chapter.

1037 (f) Any unexcused failure of the provider of an electronic or wire
1038 communications service to comply with a court order under this
1039 chapter or a request pursuant to Section O may be punished as a con-
1040 tempt of the issuing court.

1041 O. Emergency Pen Register and Trap and Trace Device Installa-
1042 tion and Use.

1043 (a) Notwithstanding any other provision of this chapter, any
1044 investigative or law enforcement officer, specially designated by the
1045 attorney for the state, may have installed and use a pen register or
1046 trap and trace device if:—

1047 (1) the officer reasonably determines that an emergency situation
1048 exists that involves immediate danger of death or serious bodily
1049 injury to any person or the danger of escape of a prisoner; and

1050 (2) within 48 hours after the installation has occurred, or begins to
1051 occur, an order approving the installation or use is issued in accor-
1052 dance with Section M of this chapter.

1053 (b) In the absence of an authorizing order, such use shall immedi-
1054 ately terminate upon the earlier of obtainment of the information
1055 sought, denial of the application, or the lapse of 48 hours since the
1056 installation of the pen register or trap and trace device.

1057 (c) The knowing installation or use by any investigative or law
1058 enforcement officer of a pen register or trap and trace device pur-
1059 suant to subsection (a) without application for the authorizing order
1060 within 48 hours of the installation shall constitute a violation of this
1061 chapter and shall make such person liable to the penalties outlined in
1062 Section K(d) of this chapter, unless a court of competent jurisdiction
1063 in its discretion determines that the failure to obtain a timely order

1064 pursuant to this section was the result of mitigating or other circum-
1065 stances.

1066 (d) A provider for a wire or electronic service, landlord, custo-
1067 dian, or other person who furnished facilities or technical assistance
1068 pursuant to this section shall be reasonably compensated for such
1069 reasonable expenses incurred in providing such facilities and assis-
1070 tance.

1071 (e) No cause of action shall lie in any court against any provider
1072 of wire or electronic communication service, its officers, employees,
1073 or agents, landlord, custodian, or other specified person for pro-
1074 viding information, facilities, or assistance in accordance with the
1075 terms of this section.

1076 P. Reports Concerning Intercepted Wire, Oral, or Electronic Com-
1077 munications and Pen Register and Trap and Trace Devices.

1078 (a) On the second Friday of January, each year, the attorney
1079 general and each district attorney shall report to the general court:—

1080 (1) a general description of the interceptions made under such
1081 order or extension, including:—

1082 (A) the number of applications made for warrants during the pre-
1083 vious year;

1084 (B) the name of the applicant;

1085 (C) the number of warrants issued;

1086 (D) the effective period of the warrants;

1087 (E) the number and designation of the offenses for which those
1088 applications were sought, and for each of the designated offenses the
1089 following:—

1090 (i) the number of renewals,

1091 (ii) the number of interceptions made during the previous year,

1092 (iii) the number of indictments believed to be obtained as a result
1093 of those interceptions,

1094 (iv) the number of criminal convictions obtained in trials where
1095 interception evidence or evidence derived therefrom was introduced.

1096 (2) the number of pen register orders and orders for trap and trace
1097 devices applied for by investigative or law enforcement officers of
1098 the state.

1099 (b) This report shall be a public document and be made available
1100 to the public at the offices of the attorney general and district attor-
1101 neys. In the event of failure to comply with the provisions of this

1102 paragraph any person may compel compliance by means of an action
1103 of mandamus.

1104 Q. Authorized Recovery of Civil Damages.

1105 (a) Except as provided in Section M(c), any person whose wire,
1106 oral, or electronic communication is intercepted, disclosed, or inten-
1107 tionally used in violation of this chapter may in a civil action recover
1108 from the person or entity, other than the United States, the Common-
1109 wealth of Massachusetts or any political subdivision thereof, which
1110 engaged in that violation such relief as may be appropriate:—

1111 (b) In an action under this section, appropriate relief includes:—

1112 (1) damages under subsection (c) and punitive damages in appro-
1113 priate cases; and

1114 (2) a reasonable attorney's fee and other litigation costs reason-
1115 ably incurred.

1116 (c) The court may assess as damages whichever is the greater
1117 of:—

1118 (1) the sum of the actual damages suffered by the plaintiff and any
1119 profits made by the violator as a result of the violation; or

1120 (2) \$100 a day for each day of violation; or

1121 (3) \$1,000.

1122 (d) A complete defense against any civil action brought under this
1123 chapter is a good faith reliance on:—

1124 (1) a court warrant or order, a grand jury subpoena, a legislative
1125 authorization, or a statutory authorization;

1126 (2) a request of an investigative or law enforcement officer under
1127 Section I (j) of this chapter; or

1128 (3) a good faith determination that Section C(d) of this chapter
1129 permitted the conduct complained of.

1130 (e) A civil action under this section may not be commenced later
1131 than two years after the date upon which the claimant first has a rea-
1132 sonable opportunity to discover the violation.

1133 R. Severability.

1134 If any provisions of this chapter or application thereof to any
1135 person or circumstance is held invalid, the invalidity does not affect
1136 other provisions or applications of the chapter which can be given
1137 effect without the invalid provisions or application, and to this end
1138 the provisions of this chapter are severable.