

## 18 Pa.C.S. § 5703

PENNSYLVANIA CONSOLIDATED STATUTES  
TITLE 18. 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

## 18 Pa.C.S. § 5703 (2004)

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

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. § 5704 (2004)

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

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

- (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 made, has reviewed the facts and is satisfied that the consent is voluntary and has given prior approval for the interception; however such interception shall be subject to the recording and record keeping requirements of section 5714(a) (relating to recording of intercepted communications) and that the Attorney General, deputy attorney general, district attorney or assistant district attorney authorizing the interception shall be the custodian of recorded evidence obtained therefrom;

(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; 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) will resist with the use of weapons; or

(B) is threatening suicide or harm to 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 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 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:

## 18 Pa.C.S. § 5705

(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. D (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.

## 18 Pa.C.S. § 5705 (2004)

## § 5705. Possession, sale, distribution, manufacture or advertisement of electronic, mechanical or other devices

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.

## 18 Pa.C.S. § 5706

(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.

## 18 Pa.C.S. § 5706 (2004)

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

(a) UNLAWFUL ACTIVITIES.-- It shall not be unlawful under this chapter for:

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

(2) a person under contract with the United States, the Commonwealth or a political subdivision thereof, a state or a political subdivision thereof, or an officer, agent or employee of the United States, the Commonwealth or a political subdivision thereof, or a state or a political subdivision thereof, to possess, sell, distribute, manufacture, assemble or advertise an electronic, mechanical or other device, while acting in furtherance of the appropriate activities of the United States, the Commonwealth or a political subdivision thereof, a state or a political subdivision thereof or a provider of wire or electronic communication service.

(b) RESPONSIBILITY.--

(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

## 18 Pa.C.S. § 5707

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.

## 18 Pa.C.S. § 5707 (2004)

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

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.

## 18 Pa.C.S. § 5708 (2004)

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

The Attorney General, or, during the absence or incapacity of the Attorney General, a deputy attorney general designated in writing by the Attorney General, or the district attorney or, during the absence or incapacity of the district attorney, an assistant district attorney designated in writing by the district attorney of the county wherein the 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 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 telecommunication 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), known as the Tax Reform Code of 1971, where such offense is dangerous to life, limb or property and punishable by imprisonment for more than one year:

Section 1272 (relating to sales of unstamped cigarettes)

Section 1273 (relating to possession of unstamped cigarettes)

Section 1274 (relating to counterfeiting)

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

(5) Any offense set forth under the act of November 15, 1972 (P.L.

## 18 Pa.C.S. § 5709

1227, No. 272).

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

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

## 18 Pa.C.S. § 5709 (2004)

## § 5709. Application for order

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

## 18 Pa.C.S. § 5710

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.

## 18 Pa.C.S. § 5710 (2004)

## § 5710. Grounds for entry of order

(a) APPLICATION.-- Upon consideration of an application, the judge may enter an ex parte order, as requested or as modified, authorizing the interception of wire, electronic or oral 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,

## 18 Pa.C.S. § 5711

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.

## 18 Pa.C.S. § 5711 (2004)

## § 5711. Privileged communications

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

## 18 Pa.C.S. § 5712 (2004)

## § 5712. Issuance of order and effect

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

(g) **ENTRY BY LAW ENFORCEMENT OFFICERS.**-- An order authorizing the interception of a wire, electronic or oral communication shall, if requested, authorize the entry of premises or facilities specified in subsection (a)(3), or premises necessary to obtain access to the premises or facilities specified in subsection (a)(3), by the law enforcement officers specified in subsection (a)(1), as often as necessary solely for the purposes of installing, maintaining or removing an electronic, mechanical or other device or devices provided that such entry is reasonably necessary to accomplish the purposes of this 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.

#### 18 Pa.C.S. § 5714 (2004)

#### § 5714. Recording of intercepted communications

(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.

## 18 Pa.C.S. § 5721.1

- (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).

## 18 Pa.C.S. § 5721.1 (2004)

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

## (a) DISCLOSURE IN EVIDENCE GENERALLY.--

- (1) Except as provided in paragraph (2), no person shall disclose the contents of any wire, electronic or oral communication, or evidence derived therefrom, in any proceeding in any court, board or agency of this Commonwealth.
- (2) Any person who has obtained knowledge of the contents of any wire, electronic or oral communication, or evidence derived therefrom, which is properly subject to disclosure under section 5717 (relating to investigative disclosure or use of contents of wire, electronic or oral communications or derivative evidence), may also disclose such contents or evidence in any matter relating to any criminal, quasi-criminal, forfeiture, administrative enforcement or professional disciplinary proceedings in any court, board or agency of this Commonwealth or of another state or of the United States or before any state or Federal grand jury or investigating grand jury. Once such disclosure has been made, then any person may disclose the contents or evidence in any such proceeding.
- (3) Notwithstanding the provisions of paragraph (2), no disclosure in any such proceeding shall be made so long as any order excluding such contents or evidence pursuant to the provisions of subsection (b) is in effect.

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

- (1) Unless intercepted pursuant to an exception set forth in section 5704 (relating to exceptions to prohibition of interception and disclosure of communications), the interception was made without prior procurement of an order of authorization under section 5712 (relating to issuance of order and effect) or an order of approval under section

5713(a) (relating to emergency situations) or 5713.1(b) (relating to emergency hostage and barricade situations).

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

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

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

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

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

(c) PROCEDURE.--

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

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

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

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

(5) With respect to exclusion claims under subsection (b)(6), the movant shall have the initial burden of demonstrating by a preponderance of the evidence that the interception took place in his home. Once he meets this burden, the burden shall shift to the respondent to demonstrate by a preponderance of the evidence that the interception was in accordance with section 5704(2)(iv).

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

## 18 Pa.C.S. § 5728

(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.

## 18 Pa.C.S. § 5728 (2004)

## § 5728. 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 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.