

2A:156A-2

LEGISLATIVE HISTORY CHECKLIST
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(Wiretapping law--amendments)

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SPONSOR(S) Crecco

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ASSEMBLY COMMITTEE SUBSTITUTE FOR
ASSEMBLY, Nos. 130 and 1587

STATE OF NEW JERSEY

ADOPTED SEPTEMBER 21, 1992

Sponsored by Assemblywoman CRECCO, Assemblymen
R. BROWN, CATANIA and Baer

1 AN ACT concerning wiretapping and electronic surveillance,
2 amending and supplementing P.L.1968, c.409.

3

4 BE IT ENACTED *by the Senate and General Assembly of the*
5 *State of New Jersey:*

6 1. Section 2 of P.L.1968, c.409 (C.2A:156A-2) is amended to
7 read as follows:

8 2. As used in this act:

9 a. "Wire communication" means any [communication] aural
10 transfer made in whole or in part through the use of facilities for
11 the transmission of communications by the aid of wire, cable or
12 other like connection between the point of origin and the point of
13 reception, including the use of such connection in a switching
14 station, furnished or operated by [a telephone, telegraph or radio
15 company for hire as a communication common carrier] any person
16 engaged in providing or operating such facilities for the
17 transmission of intrastate, interstate or foreign communication.
18 "Wire communication" includes any electronic storage of such
19 communication, and the radio portion of a cordless telephone
20 communication that is transmitted between the cordless
21 telephone handset and the base unit;

22 b. "Oral communication" means any oral communication
23 uttered by a person exhibiting an expectation that such
24 communication is not subject to interception under circumstances
25 justifying such expectation, but does not include any electronic
26 communication;

27 c. "Intercept" means the aural or other acquisition of the
28 contents of any wire, electronic or oral communication through
29 the use of any electronic, mechanical, or other device;

30 d. ["Intercepting device"] "Electronic, mechanical or other
31 device" means any device or apparatus, including an induction
32 coil, that can be used to intercept a wire, electronic or oral
33 communication other than:

34 (1) Any telephone or telegraph instrument, equipment or
35 facility, or any component thereof, furnished to the subscriber or
36 user by a [communication common carrier] provider of wire or
37 electronic communication service in the ordinary course of its
38 business and being used by the subscriber or user in the ordinary
39 course of its business; or [being used by a communication commen
40 carrier] furnished by such subscriber or user for connection to the
41 facilities of such service and used in the ordinary course of its

EXPLANATION--Matter enclosed in bold-faced brackets [thus] in the
above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Senate floor amendments adopted November 9, 1992.

1 business; or being used by a provider of wire or electronic
2 communication service in the ordinary course of its business, or
3 by an investigative or law enforcement officer in the ordinary
4 course of his duties; or

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

7 e. "Person" means that term as defined in R.S.1:1-2 and
8 includes any officer or employee of the State or of a political
9 subdivision thereof;

10 f. "Investigative or law enforcement officer" means any
11 officer of the State of New Jersey or of a political subdivision
12 thereof who is empowered by law to conduct investigations of, or
13 to make arrests for, any offense enumerated in section 8 of [this
14 act] P.L.1968, c.409 (C.2A:156A-8) and any attorney authorized
15 by law to prosecute or participate in the prosecution of any such
16 offense;

17 g. "Contents," when used with respect to any wire, electronic
18 or oral communication, includes any information concerning the
19 identity of the parties to such communication or the existence,
20 substance, purport, or meaning of that communication, except
21 that for purposes of sections 22, 23, 24 and 26 of P.L. , c.
22 (C.)(now pending before the Legislature as this bill) contents,
23 when used with respect to any wire, electronic, or oral
24 communication means any information concerning the substance,
25 purport or meaning of that communication;

26 h. "Court of competent jurisdiction" means the Superior Court;

27 i. "Judge," when referring to a judge authorized to receive
28 applications for, and to enter, orders authorizing interceptions of
29 wire, electronic or oral communications, means one of the
30 several judges of the Superior Court to be designated from time
31 to time by the Chief Justice of the Supreme Court to receive
32 applications for, and to enter, orders authorizing interceptions of
33 wire, electronic or oral communications pursuant to this act;

34 j. "Communication common carrier" means any person
35 engaged as a common carrier for hire, in intrastate, interstate or
36 foreign communication by wire or radio or in intrastate,
37 interstate or foreign radio transmission of energy; but a person
38 engaged in radio broadcasting shall not, while so engaged, be
39 deemed a common carrier;

40 k. "Aggrieved person" means a person who was a party to any
41 intercepted wire, electronic or oral communication or a person
42 against whom the interception was directed[.];

43 l. "In-progress trace" means the determination of the origin of
44 a telephonic communication to a known telephone during [an
45 interception.] the communication;

46 m. "Electronic communication" means any transfer of signs,
47 signals, writing, images, sounds, data, or intelligence of any
48 nature transmitted in whole or in part by a wire, radio,
49 electromagnetic, photoelectric or photo-optical system that
50 affects interstate, intrastate or foreign commerce, but does not
51 include:

52 (1) Any wire or oral communication;

53 (2) Any communication made through a tone-only paging
54 device; or

- 1 (3) Any communication from a tracking device;
2 n. "User" means any person or entity who:
3 (1) Uses an electronic communication service; and
4 (2) Is duly authorized by the provider of such service to engage
5 in such use;
6 o. "Electronic communication system" means any wire, radio,
7 electromagnetic, photo-optical or photoelectronic facilities for
8 the transmission of electronic communications, and any computer
9 facilities or related electronic equipment for the electronic
10 storage of such communications;
11 p. "Electronic communication service" means any service
12 which provides to the users thereof the ability to send or receive
13 wire or electronic communications;
14 q. "Electronic storage" means:
15 (1) Any temporary, intermediate storage of a wire or
16 electronic communication incidental to the electronic
17 transmission thereof; and
18 (2) Any storage of such communication by an electronic
19 communication service for purpose of backup protection of the
20 communication;
21 r. "Readily accessible to the general public" means, with
22 respect to a radio communication, that such communication is
23 not:
24 (1) Scrambled or encrypted;
25 (2) Transmitted using modulation techniques whose essential
26 parameters have been withheld from the public with the intention
27 of preserving the privacy of such communication;
28 (3) Carried on a subcarrier or other signal subsidiary to a radio
29 transmission;
30 (4) Transmitted over a communication system provided by a
31 common carrier, unless the communication is a tone-only paging
32 system communication; or
33 (5) Transmitted on frequencies allocated under part 25,
34 subpart D, E, or F of part 74, or part 94 of the Rules of the
35 Federal Communications Commission, unless, in the case of a
36 communication transmitted on a frequency allocated under part
37 74 that is not exclusively allocated to broadcast auxiliary
38 services, the communication is a two-way voice communication
39 by radio;
40 s. "Remote computing service" means the provision to the
41 public of computer storage or processing services by means of an
42 electronic communication system;
43 t. "Aural transfer" means a transfer containing the human
44 voice at any point between and including the point of origin and
45 the point of reception;
46 u. "Tracking device" means an electronic or mechanical
47 device which permits the tracking of the movement of a person
48 or device.
49 (cf: P.L.1978, c.51, s.1)
50 2. Section 3 of P.L.1968, c.409 (C.2A:156A-3) is amended to
51 read as follows:
52 3. Except as otherwise specifically provided in this act, any
53 person who:
54 a. Purposely intercepts, endeavors to intercept, or procures

1 any other person to intercept or endeavor to intercept any wire,
2 electronic or oral communication; or

3 b. Purposely discloses or endeavors to disclose to any other
4 person the contents of any wire, electronic or oral
5 communication, or evidence derived therefrom, knowing or
6 having reason to know that the information was obtained through
7 the interception of a wire, electronic or oral communication; or

8 c. Purposely uses or endeavors to use the contents of any wire,
9 electronic or oral communication, or evidence derived therefrom,
10 knowing or having reason to know, that the information was
11 obtained through the interception of a wire, electronic or oral
12 communication;

13 shall be guilty of a crime of the third degree. Subsections b.
14 and c. of this section shall not apply to the contents of any wire,
15 electronic or oral communication, or evidence derived therefrom,
16 that has become common knowledge or public information.

17 (cf: P.L.1989, c.85, s.1)

18 3. Section 4 of P.L.1968, c.409 (C.2A:156A-4) is amended to
19 read as follows:

20 4. It shall not be unlawful under this act for:

21 a. An operator of a switchboard, or an officer, agent or
22 employee of a [communication common carrier] provider of wire
23 or electronic communication service, whose facilities are used in
24 the transmission of a wire or electronic communication, to
25 intercept, disclose or use that communication in the normal
26 course of his employment while engaged in any activity which is a
27 necessary incident to the rendition of his service or to the
28 protection of the rights or property of the [carrier of such
29 communication] provider of that service. No [communication
30 common carrier] provider of wire or electronic communication
31 service shall utilize service observing or random monitoring
32 except for mechanical or service quality control checks;

33 b. Any investigative or law enforcement officer to intercept a
34 wire, electronic or oral communication, where such officer is a
35 party to the communication or where another officer who is a
36 party to the communication requests or requires him to make
37 such interception;

38 c. Any person acting at the direction of an investigative or law
39 enforcement officer to intercept a wire, electronic or oral
40 communication, where such person is a party to the
41 communication or one of the parties to the communication has
42 given prior consent to such interception; provided, however, that
43 no such interception shall be made unless the Attorney General or
44 his designee or a county prosecutor within his authority
45 determines that there exists a reasonable suspicion that evidence
46 of criminal conduct will be derived from such interception; [or]

47 d. A person not acting under color of law to intercept a wire,
48 electronic or oral communication, where such person is a party to
49 the communication or one of the parties to the communication
50 has given prior consent to such interception unless such
51 communication is intercepted or used for the purpose of
52 committing any criminal or tortious act in violation of the
53 Constitution or laws of the United States or of this State or for
54 the purpose of committing any other injurious act. The fact that

1 such person is the subscriber to a particular telephone does not
2 constitute consent effective to authorize interception of
3 communications among parties not including such person on that
4 telephone. Any person who unlawfully intercepts or uses such
5 communication as provided in this paragraph shall be subject to
6 the civil liability established in section 24 of [this act] P.L.1968,
7 c.409 (C.2A:156A-24), in addition to any other criminal or civil
8 liability imposed by law;

9 e. Any person to intercept or access an electronic
10 communication made through an electronic communication
11 system that is configured so that such electronic communication
12 is readily accessible to the general public;

13 f. Any person to intercept any radio communication which is
14 transmitted:

15 (1) by any station for the use of the general public, or that
16 relates to ships, aircraft, vehicles, or persons in distress;

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

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

23 (4) by any marine or aeronautical communications system;

24 g. Any person to engage in any conduct which:

25 (1) is prohibited by section 633 of the Communications Act of
26 1934; or

27 (2) is excepted from the application of section 705(a) of the
28 Communications Act of 1934 by section 705(b) of that Act;

29 h. Any person to intercept any wire or electronic
30 communication the transmission of which is causing harmful
31 interference to any lawfully operating station or consumer
32 electronic equipment, to the extent necessary to identify the
33 source of such interference; or for other users of the same
34 frequency to intercept any radio communication made through a
35 system that utilizes frequencies monitored by individuals engaged
36 in the provision or the use of such system, if such communication
37 is not scrambled or encrypted; or

38 i. A provider of wire or electronic communication service to
39 record the fact that a wire or electronic communication was
40 initiated or completed in order to protect such provider, another
41 provider furnishing service toward the completion of the wire or
42 electronic communication, or a user of that service, from
43 fraudulent, unlawful or abusive use of such service.

44 (cf: P.L.1978, c.51, s.2).

45 4. Section 5 of P.L.1968, c.409 (C.2A:156A-5) is amended to
46 read as follows:

47 5. Except as otherwise specifically provided in section 6 of
48 [this act] P.L.1968, c.409 (C.2A:156A-6), any person who:

49 a. Purposely possesses an [intercepting] electronic, mechanical
50 or other device, knowing or having reason to know that the design
51 of such device renders it primarily useful for the purpose of the
52 surreptitious interception of a wire, electronic or oral
53 communication;

54 b. Purposely sells an [intercepting] electronic, mechanical or

1 other device, knowing or having reason to know that the design of
2 such device renders it primarily useful for the purpose of the
3 surreptitious interception of a wire, electronic or oral
4 communication;

5 c. Purposely distributes an [intercepting] electronic,
6 mechanical or other device, knowing or having reason to know
7 that the design of such device renders it primarily useful for the
8 purpose of the surreptitious interception of a wire, electronic or
9 oral communication;

10 d. Purposely manufactures or assembles an [intercepting]
11 electronic, mechanical or other device, knowing or having reason
12 to know that the design of such device renders it primarily useful
13 for the purpose of the surreptitious interception of a wire,
14 electronic or oral communication; or

15 e. Purposely places in any newspaper, magazine, handbill, or
16 other publication any advertisement of any [intercepting]
17 electronic, mechanical or other device, knowing or having reason
18 to know that the design of such device renders it primarily useful
19 for the purpose of the surreptitious interception of a wire,
20 electronic or oral communication or of any [intercepting]
21 electronic, mechanical or other device where such advertisement
22 promotes the use of such device for the purpose of the
23 surreptitious interception of a wire, electronic or oral
24 communication;

25 shall be guilty of a crime of the third degree.

26 (cf: P.L.1989, c.85, s.2)

27 5. Section 6 of P.L.1968, c.409 (C.2A:156A-6) is amended to
28 read as follows:

29 6. It shall not be unlawful under this act for:

30 a. A [communication common carrier] provider of wire or
31 electronic communication service, or an officer, agent or
32 employee of, or a person under contract with [a communication
33 common carrier, in the usual course of the communication
34 common carrier's business] such a provider of wire or electronic
35 communication service in the normal course of the business of
36 providing that wire or electronic communication service; or

37 b. A person under contract with the United States, a state or a
38 political subdivision thereof, or an officer, agent or employee of
39 a state or a political subdivision thereof; to possess, sell,
40 distribute, manufacture or assemble any [intercepting] electronic,
41 mechanical or other device, while acting in furtherance of the
42 appropriate activities of the United States, a state or a political
43 subdivision thereof or a [communication common carrier]
44 provider of wire or electronic communication service.

45 (cf: P.L.1975, c.131, s.3)

46 6. Section 7 of P.L.1968, c.409 (C.2A:156A-7) is amended to
47 read as follows:

48 7. Any [intercepting] electronic, mechanical or other device
49 possessed, used, sent, distributed, manufactured, or assembled in
50 violation of this act [is hereby declared to be a nuisance and] may
51 be seized and forfeited to the State pursuant to chapter 64 of
52 Title 2C of the New Jersey Statutes.

53 (cf: P.L.1968, c.409, s.7)

54 7. Section 8 of P.L.1968, c.409 (C.2A:156A-8) is amended to

1 read as follows:

2 8. The Attorney General, [a] county prosecutor [or with the
3 approval of the Attorney General, except in those investigations
4 directly involving possible misconduct by officials and employees
5 of the Department of Law and Public Safety, the chairman of the
6 State Commission of Investigation when authorized by a majority
7 of the members of that commission,] or a person designated to
8 act for such an official and to perform his duties in and during his
9 actual absence or disability, may authorize, in writing, an ex
10 parte application to a judge designated to receive the same for an
11 order authorizing the interception of a wire, or electronic or oral
12 communication by the investigative or law enforcement officers
13 or agency having responsibility for an investigation when such
14 interception may provide evidence of the commission of the
15 offense of murder, kidnapping, gambling, robbery, bribery, a
16 violation of paragraph (1) or (2) of subsection b. of N.J.S.2C:12-1,
17 a violation of N.J.S.2C:21-19 punishable by imprisonment for
18 more than one year, terroristic threats, violations of
19 N.J.S.2C:35-3, N.J.S.2C:35-4 and N.J.S.2C:35-5, violations of
20 sections 112 through 116, inclusive, of the "Casino Control Act,"
21 P.L.1977, c.110 (C.5:12-112 through 5:12-116), arson, burglary,
22 theft and related offenses punishable by imprisonment for more
23 than one year, escape, forgery, alteration of motor vehicle
24 identification numbers, unlawful manufacture, purchase, use, or
25 transfer of firearms, unlawful possession or use of destructive
26 devices or explosives, racketeering or a violation of subsection g.
27 of N.J.S.2C:5-2, leader of organized crime, organized criminal
28 activity directed toward the unlawful transportation, storage,
29 disposal, discharge, release, abandonment or disposition of any
30 harmful, hazardous, toxic, destructive, or polluting substance,
31 violations of subsection b. of N.J.S.2C:24-4 or any conspiracy to
32 commit any of the foregoing offenses or which may provide
33 evidence aiding in the apprehension of the perpetrator or
34 perpetrators of any of the foregoing offenses.

35 (cf: P.L.1989, c.85, s.3)

36 8. Section 9 of P.L.1968, c.409 (C.2A:156A-9) is amended to
37 read as follows:

38 9. Each application for an order of authorization to intercept a
39 wire, electronic or oral communication shall be made in writing
40 upon oath or affirmation and shall state:

- 41 a. The authority of the applicant to make such application;
- 42 b. The identity and qualifications of the investigative or law
43 enforcement officers or agency for whom the authority to
44 intercept a wire, electronic or oral communication is sought and
45 the identity of whoever authorized the application.
- 46 c. A particular statement of the facts relied upon by the
47 applicant, including: (1) The identity of the particular person, if
48 known, committing the offense and whose communications are to
49 be intercepted; (2) The details as to the particular offense that
50 has been, is being, or is about to be committed; (3) The particular
51 type of communication to be intercepted; and a showing that
52 there is probable cause to believe that such communication will
53 be communicated on the wire or electronic communication
54 [facility] facilities involved or at the particular place where the

1 oral communication is to be intercepted; (4) [The] Except as
2 provided in subsection g. of this section, the character and
3 location of the particular wire or electronic communication
4 facilities involved or the particular place where the oral
5 communication is to be intercepted; (5) A statement of the period
6 of time for which the interception is required to be maintained; if
7 the character of the investigation is such that the authorization
8 for interception should not automatically terminate when the
9 described type of communication has been first obtained, a
10 particular statement of facts establishing probable cause to
11 believe that additional communications of the same type will
12 occur thereafter; (6) A particular statement of facts showing that
13 other normal investigative procedures with respect to the offense
14 have been tried and have failed or reasonably appear to be
15 unlikely to succeed if tried or to be too dangerous to employ;

16 d. Where the application is for the renewal or extension of an
17 order, a particular statement of facts showing the results thus far
18 obtained from the interception, or a reasonable explanation of
19 the failure to obtain such results;

20 e. A complete statement of the facts concerning all previous
21 applications, known to the individual authorizing and to the
22 individual making the application, made to any court for
23 authorization to intercept a wire, electronic or oral
24 communication involving any of the same facilities or places
25 specified in the application or involving any person whose
26 communication is to be intercepted, and the action taken by the
27 court on each such application; and

28 f. Such additional testimony or documentary evidence in
29 support of the application as the judge may require.

30 g. An application need not meet the requirements of paragraph
31 (4) of subsection c. of this section if:

32 (1) with respect to the application for an interception of an
33 oral communication:

34 (a) the application is approved by the Attorney General or
35 county prosecutor or a person designated to act for such an
36 official and to perform his duties in and during his actual absence
37 or disability; and

38 (b) the application contains a full and complete statement as
39 to why specification is not practical and identifies the person
40 committing the offense and whose communications are to be
41 intercepted; and

42 (c) the judge finds that such specification is not practical.

43 (2) with respect to the application for an interception of a
44 wire or electronic communication:

45 (a) the application is approved by the Attorney General or
46 county prosecutor or a person designated to act for such an
47 official and to perform his duties in and during his actual absence
48 or disability; and

49 (b) the application identifies the person believed to be
50 committing the offense and whose communications are to be
51 intercepted and the applicant makes a showing of a purpose, on
52 the part of that person, to thwart interception by changing
53 facilities; and

54 (c) the judge finds that such purpose has been adequately

1 shown.

2 An interception of a communication under an order issued in
3 conformity with this subsection shall not begin until the facilities
4 from which, or the place where, the communication is to be
5 intercepted is ascertained by the person implementing the
6 interception order. A provider of wire or electronic
7 communication service that has received an order as provided for
8 in this subsection may make a motion that the court modify or
9 quash the order on the ground that the provider's assistance with
10 respect to the interception cannot be performed in a timely or
11 reasonable fashion. The court upon notice to the Attorney
12 General or county prosecutor shall decide such a motion
13 expeditiously.

14 (cf: P.L.1975, c.131, s.5)

15 9. Section 10 of P.L.1968, c.409 (C.2A:156A-10) is amended to
16 read as follows:

17 10. Upon consideration of an application, the judge may enter
18 an ex parte order, as requested or as modified, authorizing the
19 interception of a wire, electronic or oral communication, if the
20 court determines on the basis of the facts submitted by the
21 applicant that there is or was probable cause for belief that:

22 a. The person whose communication is to be intercepted is
23 engaging or was engaged over a period of time as a part of a
24 continuing criminal activity or is committing, has or had
25 committed or is about to commit an offense as provided in
26 section 8 of [this act] P.L.1968, c.409 (C.2A:156A-8);

27 b. Particular communications concerning such offense may be
28 obtained through such interception;

29 c. Normal investigative procedures with respect to such
30 offense have been tried and have failed or reasonably appear to
31 be unlikely to succeed if tried or to be too dangerous to employ;

32 d. Except in the case of an application meeting the
33 requirements of subsection g. of section 9 of P.L.1968, c.409
34 (C.2A:156A-9), [The] the facilities from which, or the place
35 where, the wire, electronic or oral communications are to be
36 intercepted, are or have been used, or are about to be used, in
37 connection with the commission of such offense, or are leased to,
38 listed in the name of, or commonly used by, such individual;

39 e. The investigative or law enforcement officers or agency to
40 be authorized to intercept the wire, electronic or oral
41 communication are qualified by training and experience to
42 execute the interception sought; and

43 f. In the case of an application, other than a renewal or
44 extension, for an order to intercept a communication of a person
45 or on a facility which was the subject of a previous order
46 authorizing interception, the application is based upon new
47 evidence or information different from and in addition to the
48 evidence or information offered to support the prior order,
49 regardless of whether such evidence was derived from prior
50 interceptions or from other sources.

51 As part of the consideration of an application in which there is
52 no corroborative evidence offered, the judge shall inquire in
53 camera as to the identity of any informants or any other
54 additional information concerning the basis upon which the

1 investigative or law enforcement officer or agency has applied
2 for the order of authorization which the judge finds relevant in
3 order to determine if there is probable cause pursuant to this
4 section.

5 (cf: P.L.1975, c.131, s.6)

6 10. Section 11 of P.L.1968, c.409 (C.2A:156A-11) is amended
7 to read as follows:

8 11. If the facilities from which a wire or electronic
9 communication is to be intercepted are public, no order shall be
10 issued unless the court, in addition to the matters provided in
11 section 10 [above] of P.L.1968, c.409 (C.2A:156A-10), determines
12 that there is a special need to intercept wire or electronic
13 communications over such facilities.

14 If the facilities from which, or the place where, the wire,
15 electronic or oral communications are to be intercepted are being
16 used, or are about to be used, or are leased to, listed in the name
17 of, or commonly used by, a licensed physician, a licensed
18 practicing psychologist, an attorney-at-law, a practicing
19 clergyman, or a newspaperman, or is a place used primarily for
20 habitation by a husband and wife, no order shall be issued unless
21 the court, in addition to the matters provided in section 10
22 [above] of P.L.1968, c.409 (C.2A:156A-10), determines that there
23 is a special need to intercept wire, electronic or oral
24 communications over such facilities or in such places. Special
25 need as used in this section shall require in addition to the
26 matters required by section 10 of [this act] P.L.1968, c.409
27 (C.2A:156A-10), a showing that the licensed physician, licensed
28 practicing psychologist, attorney-at-law, practicing clergyman or
29 newspaperman is personally engaging in or was engaged in over a
30 period of time as a part of a continuing criminal activity or is
31 committing, has or had committed or is about to commit an
32 offense as provided in section 8 of [the act] P.L.1968, c.409
33 (C.2A:156A-8) or that the public facilities or the place used
34 primarily for habitation by a husband and wife are being regularly
35 used by someone who is personally engaging in or was engaged in
36 over a period of time as a part of a continuing criminal activity
37 or is committing, has or had committed or is about to commit
38 such an offense. No otherwise privileged wire, electronic or oral
39 communication intercepted in accordance with, or in violation of,
40 the provisions of this act, shall lose its privileged character.

41 (cf: P.L.1978, c.51, s.4)

42 11. Section 12 of P.L.1968, c.409 (C.2A:156A-12) is amended
43 to read as follows:

44 12. Each order authorizing the interception of any wire,
45 electronic or oral communication shall state:

- 46 a. The judge is authorized to issue the order;
- 47 b. The identity of, or a particular description of, the person, if
48 known, whose communications are to be intercepted;
- 49 c. The character and location of the particular communication
50 facilities as to which, or the particular place of the
51 communication as to which, authority to intercept is granted, or,
52 in the case of an application meeting the requirements of
53 subsection g. of section 9 of P.L.1968, c.409 (C.2A:156A-9) that
54 specification is not practical or that the purpose to thwart

1 interception by changing facilities has been shown;

2 d. A particular description of the type of the communication
3 to be intercepted and a statement of the particular offense to
4 which it relates;

5 e. The identity of the investigative or law enforcement
6 officers or agency to whom the authority to intercept a wire,
7 electronic or oral communication is given and the identity of
8 whoever authorized the application; and

9 f. The period of time during which such interception is
10 authorized, including a statement as to whether or not the
11 interception shall automatically terminate when the described
12 communication has been first obtained.

13 No order entered under this section shall authorize the
14 interception of any wire, electronic or oral communication for a
15 period of time in excess of that necessary under the
16 circumstances. Every order entered under this section shall
17 require that such interception begin and terminate as soon as
18 practicable and be conducted in such a manner as to minimize or
19 eliminate the interception of such communications not otherwise
20 subject to interception under this act by making reasonable
21 efforts, whenever possible, to reduce the hours of interception
22 authorized by said order. Except as provided below in subsection
23 g. of this section, no order entered under this section shall
24 authorize the interception of wire, electronic or oral
25 communications for any period exceeding 20 days. Extensions or
26 renewals of such an order may be granted for two additional
27 periods of not more than 10 days. No extension or renewal shall
28 be granted unless an application for it is made in accordance with
29 this section, and the court makes the findings required by
30 sections 10[,] and 11 of P.L.1968, c.409 (C.2A:156A-10 and
31 2A:156A-11)and by this section.

32 g. Orders entered under this section to provide evidence of
33 racketeering in violation of N.J.S.2C:41-2, leader of organized
34 crime in violation of subsection g. of N.J.S.2C:5-2, or leader of
35 narcotics trafficking network in violation of N.J.S.2C:35-3, may
36 authorize the interception of wire, electronic or oral
37 communications for a period not to exceed 30 days and extensions
38 or renewals of any order may be granted for additional periods of
39 not more than 30 days, without limitation on the number of
40 extension or renewal orders; provided, however, that orders
41 authorized pursuant to this subsection shall not exceed six months.

42 h. Whenever an order authorizing an interception is entered,
43 the order may require reports to be made to the judge who issued
44 the order showing what progress has been made toward
45 achievement of the authorized objective and the need for
46 continued interception. Such reports shall be made at such
47 intervals as the court may require.

48 An order authorizing the interception of a wire, electronic or
49 oral communication shall, upon request of the applicant, direct
50 that a [communication common carrier] provider of wire or
51 electronic communication service shall furnish the applicant
52 forthwith all information, facilities and technical assistance
53 necessary to accomplish the interception unobtrusively and with a
54 minimum of interference with the services that such [carrier]

1 provider is affording the person whose communications are to be
2 intercepted.

3 The obligation of a [communication common carrier] provider
4 of wire or electronic communication service under such an order
5 [may] shall include but is not limited to conducting, [for good
6 cause shown,] an in-progress trace during an interception [;
7 provided, however, that a county prosecutor must receive the
8 approval of the Attorney General or his designee prior to
9 requesting an order which includes an in-progress trace] and shall
10 also include the provision of technical assistance and equipment
11 and utilization of any technological features which are available
12 to the provider of wire or electronic communication service. The
13 obligation of the provider of wire or electronic communication
14 service to conduct an in-progress trace and provide other
15 technical assistance may arise pursuant to court order based upon
16 probable cause, under circumstances not involving an interception
17 pursuant to this act. Any [communication common carrier]
18 provider of wire or electronic communication service furnishing
19 such facilities or [technical] assistance shall be compensated
20 therefor by the applicant at the prevailing rates. Said [carrier]
21 provider shall be immune from civil liability for any assistance
22 rendered to the applicant pursuant to this section.

23 (cf: P.L.1989, c.85, s.4)

24 12. Section 13 of P.L.1968, c.409 (C.2A:156A-13) is amended
25 to read as follows:

26 13. Whenever, upon informal application by an authorized
27 applicant, a judge determines there are grounds upon which an
28 order could be issued pursuant to this act, and that an emergency
29 situation exists [with respect to] that involves: a. the
30 investigation of conspiratorial activities of organized crime,
31 related to an offense designated in section 8 of [this act,]
32 P.L.1968, c.409 (C.2A:156A-8); or b. immediate danger of death
33 or serious bodily injury to any person, dictating authorization for
34 immediate interception of wire, electronic or oral communication
35 before an application for an order could with due diligence be
36 submitted to him and acted upon, the judge may grant verbal
37 approval for such interception without an order, conditioned upon
38 the filing with him, within 48 hours thereafter, of an application
39 for an order which, if granted, shall recite the verbal approval
40 and be retroactive to the time of such verbal approval. Such
41 interception shall immediately terminate when the
42 communication sought is obtained or when the application for an
43 order is denied. In the event no application for an order is made,
44 the content of any wire, electronic or oral communication
45 intercepted shall be treated as having been obtained in violation
46 of this act.

47 In the event no application is made or an application made
48 pursuant to this section is denied, the court shall require the
49 wire, tape or other recording of the intercepted communication
50 to be delivered to, and sealed by, the court and such evidence
51 shall be retained by the court in accordance with section 14 of
52 P.L.1968, c.409 (C.2A:156A-14) and the same shall not be used or
53 disclosed in any legal proceeding except in a civil action brought
54 by an aggrieved person pursuant to section 24 of P.L.1968, c.409

1 (C.2A:156A-24) or as otherwise authorized by court order.
2 Failure to effect delivery of any such wire, tape or other
3 recording shall be punishable as contempt by the court directing
4 such delivery. Evidence of verbal authorization to intercept an
5 oral, electronic or wire communication shall be a defense to any
6 charge against the investigating or law enforcement officer for
7 engaging in unlawful interception.

8 (cf: P.L.1968, c.409, s.13)

9 13. Section 14 of P.L.1968, c.409 (C.2A:156A-14) is amended
10 to read as follows:

11 14. Any wire, electronic or oral communication intercepted in
12 accordance with this act shall, if practicable, be recorded by
13 tape, wire or other comparable method. The recording shall be
14 done in such a way as will protect it from editing or other
15 alteration. Immediately upon the expiration of the order or
16 extensions or renewals thereof, the tapes, wires or other
17 recordings shall be transferred to the judge issuing the order and
18 sealed under his direction. Custody of the tapes, wires or other
19 recordings shall be maintained wherever the court directs. They
20 shall not be destroyed except upon an order of such court and in
21 any event shall be kept for 10 years. Duplicate tapes, wires or
22 other recordings may be made for disclosure or use pursuant to
23 subsection a. of section 17 of [this act] P.L.1968, c.409
24 (C.2A:156A-17). The presence of the seal provided by this
25 section, or a satisfactory explanation for its absence, shall be a
26 prerequisite for the disclosure of the contents of any wire,
27 electronic or oral communication, or evidence derived therefrom,
28 under subsection b. of section 17 of [this act] P.L.1968, c.409
29 (C.2A:156A-17).

30 (cf: P.L.1968, c.409, s.14)

31 14. Section 16 of P.L.1968, c.409 (C.2A:156A-16) is amended
32 to read as follows:

33 16. Within a reasonable time but not later than 90 days after
34 the termination of the period of the order or of extensions or
35 renewals thereof, or the date of the denial of an order applied for
36 under section 13 of P.L.1968, c.409 (C.2A:156A-13), the issuing
37 or denying judge shall cause to be served on the persons named in
38 the order or application, persons arrested as a result of the
39 interception of their conversations, persons indicted as a result of
40 the interception of their conversations, persons whose
41 conversations were intercepted and against whom indictments are
42 likely to be returned, persons whose conversations were
43 intercepted and who are potential witnesses to criminal
44 activities, and such other parties to the intercepted
45 communications as the judge may in his discretion determine to
46 be in the interest of justice, an inventory which shall include:

47 a. Notice of the entry of the order or the application for an
48 order denied under section 13 of P.L.1968, c.409 (C.2A:156A-13);

49 b. The date of the entry of the order or the denial of an order
50 applied for under section 13 of P.L.1968, c.409 (C.2A:156A-13);

51 c. The period of authorized or disapproved interception; and

52 d. The fact that during the period wire, electronic or oral
53 communications were or were not intercepted.

54 The court, upon filing of a motion, may in its discretion make

1 available to such persons or their attorneys for inspection such
2 portions of the intercepted communications, applications and
3 orders as the court determines to be in the interest of justice.
4 On an ex parte showing of good cause to the court the serving of
5 the inventories required by this section may be postponed.

6 (cf: P.L.1978, c.51, s.6)

7 15. Section 17 of P.L.1968, c.409 (C.2A:156A-17) is amended
8 to read as follows:

9 17. a. Any investigative or law enforcement officer or other
10 person who, by any means authorized by this act, has obtained
11 knowledge of the contents of any wire, electronic or oral
12 communication, or evidence derived therefrom, may disclose or
13 use such contents or evidence to investigative or law
14 enforcement officers of this or another state, any of its political
15 subdivisions, or of the United States to the extent that such
16 disclosure or use is appropriate to the proper performance of [his]
17 the official duties of the officer making or receiving the
18 disclosure.

19 b. Any person who, by any means authorized by this act, has
20 obtained any information concerning any wire, electronic or oral
21 communication or evidence derived therefrom intercepted in
22 accordance with the provisions of this act, may disclose the
23 contents of such communications or derivative evidence while
24 giving testimony under oath or affirmation in any criminal
25 proceeding in any court of this or another state or of the United
26 States or before any Federal or State grand jury; provided,
27 however, that the contents of any wire, electronic or oral
28 communication may be initially disclosed solely through the use
29 of the testimony of a witness to such communication or the
30 actual recording of the communication.

31 c. The contents of any intercepted wire, electronic or oral
32 communication, or evidence derived therefrom, may otherwise be
33 disclosed or used only upon a showing of good cause before a
34 court of competent jurisdiction.

35 (cf: P.L.1975, c.131, s.9)

36 16. Section 18 of P.L.1968, c.409 (C.2A:156A-18) is amended
37 to read as follows:

38 18. When an investigative or law enforcement officer, while
39 engaged in intercepting wire, electronic or oral communications
40 in the manner authorized herein, intercepts wire, electronic or
41 oral communications relating to offenses other than those
42 specified in the order of authorization, the contents thereof, and
43 evidence derived therefrom, may be disclosed or used as provided
44 in subsection a. of section 17 of P.L.1968, c.409 (C.2A:156A-17).
45 Such contents and any evidence derived therefrom may be used
46 under subsection b. of section 17 of P.L.1968, c.409
47 (C.2A:156A-17) when authorized or approved by a judge of
48 competent jurisdiction where such judge finds on subsequent
49 application that the contents were otherwise intercepted in
50 accordance with the provisions of this act. Such application shall
51 be made as soon as practicable.

52 (cf: P.L.1968, c.409, s.18)

53 17. Section 19 of P.L.1968, c.409 (C.2A:156A-19) is amended
54 to read as follows:

1 19. Except as specifically authorized pursuant to this act any
2 person who knowingly uses or discloses the existence of an order
3 authorizing interception of a wire, electronic or oral
4 communication or the contents of, or information concerning, an
5 intercepted wire, electronic or oral communication or evidence
6 derived therefrom, is guilty of a crime of the third degree.

7 (cf: P.L.1989, c.85, s.5)

8 18. Section 20 of P.L.1968, c.409 (C.2A:156A-20) is amended
9 to read as follows:

10 20. The contents of any wire, electronic or oral
11 communication intercepted in accordance with the provisions of
12 this act, or evidence derived therefrom, shall not be disclosed in
13 any trial, hearing, or proceeding before any court of this State
14 unless not less than 10 days before the trial, hearing, or
15 proceeding the parties to the action have been served with a copy
16 of the order and accompanying application under which the
17 interception was authorized.

18 The service of inventory, order, and application required by
19 this section may be waived by the court where it finds that the
20 service is not practicable and that the parties will not be
21 prejudiced by the failure to make the service.

22 (cf: P.L.1968, c.409, s.20)

23 19. Section 21 of P.L.1968, c.409 (C.2A:156A-21) is amended
24 to read as follows:

25 21. Any aggrieved person in any trial, hearing, or proceeding in
26 or before any court or other authority of this State may move to
27 suppress the contents of any intercepted wire, electronic or oral
28 communication, or evidence derived therefrom, on the grounds
29 that:

30 a. The communication was unlawfully intercepted;

31 b. The order of authorization is insufficient on its face;

32 c. The interception was not made in conformity with the order
33 of authorization or in accordance with the requirements of
34 section 12 of P.L.1968, c.409 (C.2A:156A-12).

35 The motion shall be made at least 10 days before the trial,
36 hearing, or proceeding unless there was no opportunity to make
37 the motion or the moving party was not aware of the grounds for
38 the motion. Motions by coindictees are to be heard in a single
39 consolidated hearing.

40 The court, upon the filing of such motion by the aggrieved
41 person, shall make available to the aggrieved person or his
42 counsel for inspection such portions of the intercepted
43 communication, or evidence derived therefrom, as the court
44 determines to be in the interests of justice. If the motion is
45 granted, the entire contents of all intercepted wire, electronic or
46 oral communications obtained during or after any interception
47 which is determined to be in violation of this act under
48 subsections a., b., or c. [above] of this section, or evidence
49 derived therefrom, shall not be received in evidence in the trial,
50 hearing or proceeding.

51 In addition to any other right to appeal, the State shall have
52 the right to appeal from an order granting a motion to suppress if
53 the official to whom the order authorizing the intercept was
54 granted shall certify to the court that the appeal is not taken for

1 purposes of delay. The appeal shall be taken within the time
2 specified by the Rules of Court and shall be diligently prosecuted.
3 (cf: P.L.1978, c.51, s.7)

4 20. Section 24 of P.L.1968, c.409 (C.2A:156A-24) is amended
5 to read as follows:

6 24. Any person whose wire, electronic or oral communication
7 is intercepted, disclosed or used in violation of this act shall have
8 a civil cause of action against any person who intercepts,
9 discloses or uses or procures any other person to intercept,
10 disclose or use, such communication; and shall be entitled to
11 recover from any such person:

12 a. Actual damages, but not less than liquidated damages
13 computed at the rate of \$100.00 a day for each day of violation,
14 or \$1,000.00, whichever is higher;

15 b. Punitive damages; and

16 c. A reasonable attorney's fee and other litigation costs
17 reasonably incurred.

18 (cf: P.L.1968, c.409, s.24)

19 21. (New section) Unlawful access to stored communications.

20 a. A person is guilty of a crime of the fourth degree if he (1)
21 knowingly accesses without authorization a facility through which
22 an electronic communication service is provided or exceeds an
23 authorization to access that facility, and (2) thereby obtains,
24 alters, or prevents authorized access to a wire or electronic
25 communication while that communication is in electronic storage.

26 b. A person is guilty of a crime of the third degree if, for the
27 purpose of commercial advantage, private commercial gain, or
28 malicious destruction or damage, he (1) knowingly accesses
29 without authorization a facility through which an electronic
30 communication service is provided or exceeds an authorization to
31 access that facility, and (2) thereby obtains, alters, or prevents
32 authorized access to a wire or electronic communication while
33 that communication is in electronic storage.

34 c. This section does not apply to conduct authorized: (1) by
35 the person or entity providing a wire or electronic communication
36 service; or (2) by a user of that service with respect to a
37 communication of or intended for that user; or (3) by section 10
38 of P.L.1968, c.409 (C.2A:156A-10), section 13 of P.L.1968, c.409
39 (C.2A:156A-13), or by section 23 or 24 of P.L. , c.
40 (C. . . .) (now pending before the Legislature as this bill).

41 22. (New section) Disclosure of contents.

42 a. (1) Except as provided in subsection b. of this section, a
43 person or entity providing an electronic communication service to
44 the public shall not knowingly divulge to any person or entity the
45 contents of a communication while in electronic storage by that
46 service; and

47 (2) Except as provided in subsection b. of this section, a person
48 or entity providing remote computing service to the public shall
49 not knowingly divulge to any person or entity the contents of any
50 communication which is carried or maintained on that service:

51 (a) on behalf of, and received by means of electronic
52 transmission from, or created by means of computer processing
53 of communications received by means of electronic transmission
54 from, a subscriber or customer of the service; and

1 (b) solely for the purpose of providing storage or computer
2 processing services to the subscriber or customer, if the provider
3 is not authorized to access the contents of any such
4 communication for the purpose of providing any services other
5 than storage or computer processing.

6 b. A person or entity may divulge the contents of a
7 communication:

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

10 (2) as authorized or required by section 4 of P.L.1968, c.409
11 (C.2A:156A-4), section 17 of P.L.1968, c.409 (C.2A:156A-17),
12 section 18 of P.L.1968, c.409 (C.2A:156A-18) or section 23 of
13 P.L. , c. (C.) (now pending before the Legislature
14 as this bill);

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

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

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

23 (6) to a law enforcement agency, if the contents were
24 inadvertently obtained by the provider and appear to pertain to
25 the commission of a crime.

26 23. (New section) Requirements for access.

27 a. ¹[An investigative or law enforcement officer] A law
28 enforcement agency¹, but no other governmental entity, may
29 require the disclosure by a provider of wire or electronic
30 communication service of the contents of an electronic
31 communication ¹[that is in electronic storage in an electronic
32 communication system for 180 days or less, only pursuant to]
33 without notice to the subscriber or the customer if the law
34 enforcement agency obtains¹ a warrant.

35 ¹[b. A governmental entity may require the disclosure by a
36 provider of wire or electronic communication service of the
37 contents of an electronic communication, that has been in
38 electronic storage in an electronic communication system for
39 more than 180 days or may require the provider of a remote
40 computing service to disclose the contents of any electronic
41 communication that is held or maintained on that service as
42 provided in subsection c. of this section as follows:

43 (1) without notice to the subscriber or the customer if a law
44 enforcement officer obtains a warrant; or

45 (2) with prior notice from the governmental entity to the
46 subscriber or customer, if the governmental entity uses an
47 administrative subpoena authorized by a federal or State statute
48 or a grand jury or trial subpoena or obtains a court order for the
49 disclosure pursuant to the provisions of subsection f. of this
50 section; except that delayed notice may be given pursuant to
51 section 25 of P.L. , c. (C.) (now pending before
52 the Legislature as this bill).

53 c. The provisions of subsection b. of this section shall be
54 applicable to an electronic communication that is held or

1 maintained on a remote computing service:

2 (1) on behalf of, and received by means of electronic
3 transmission from, or created by means of computer processing
4 of communications received by means of electronic transmission
5 from, a subscriber or customer of such remote computing service;
6 and

7 (2) solely for the purpose of providing storage or computer
8 processing services to the subscriber or customer, if the provider
9 is not authorized to access the contents of any such
10 communication for the purpose of providing any services other
11 than storage or computer processing.

12 d.] b.¹ Except as provided in subsection ¹[e.] c.¹ of this
13 section, a provider of wire or electronic communication service
14 or remote computing service may disclose a record or other
15 information pertaining to a subscriber or customer of the service
16 to any person other than a governmental entity. This subsection
17 shall not apply to the contents covered by ¹[subsections a., b. or
18 c.] subsection a.¹ of this section.

19 ¹[e.] c.¹ A provider of wire or electronic communication
20 service or remote computing service shall disclose a record or
21 other information pertaining to a subscriber or customer of the
22 service, other than contents covered by ¹[subsections a., b., or
23 c.] subsection a.¹ of this section, to a ¹[governmental entity] law
24 enforcement agency¹ under the following circumstances:

25 ¹[(1) the governmental entity uses an administrative subpoena
26 authorized by federal or State statute or a grand jury or trial
27 subpoena; or

28 (2) a law enforcement officer obtains a warrant; or

29 (3) the governmental entity obtains a court order for the
30 disclosure under subsection f. of this section; or

31 (4) the governmental entity obtains the consent of the
32 subscriber or customer to the disclosure]

33 (1) the law enforcement agency has obtained a warrant; or

34 (2) the law enforcement agency has obtained the consent of the
35 subscriber or customer to the disclosure¹.

36 A ¹[governmental entity] law enforcement agency¹ receiving
37 records or information pursuant to this subsection is not required
38 to provide notice to the customer or subscriber.

39 ¹[f. A court order for disclosure under subsections b. or e. of
40 this section shall be issued only if the governmental entity shows
41 that there is probable cause to believe the contents of a wire or
42 electronic communication, or the records or other information
43 sought, are relevant to a legitimate law enforcement inquiry. A
44 court issuing an order pursuant to this section, on a motion made
45 promptly by a service provider, may quash or modify the order if
46 the information or records requested are unusually voluminous in
47 nature or compliance with the order would otherwise cause an
48 undue burden on the provider.

49 g.] d.¹ Notwithstanding any other provision of law to the
50 contrary, no service provider, its officers, employees, agents or
51 other specified persons shall be liable in any civil action for
52 damages as a result of providing information, facilities or
53 assistance in accordance with the terms of a court order¹ [,
54 warrant, subpoena or certification] or warrant¹ under this section.

1 24. (New section) Backup preservation.

2 a. (1) A ¹[governmental entity] law enforcement agency¹
3 acting pursuant to section 23 of P.L. , c. (C.)
4 (now pending before the Legislature as this bill) may include in a
5 ¹[subpoena or]¹ court order a requirement that the service
6 provider to whom the request is directed create a backup copy of
7 the contents of the electronic communication sought in order to
8 preserve those communications. Without notifying the subscriber
9 or customer of the ¹[subpoena or]¹ court order, the service
10 provider shall create the backup copy as soon as practicable,
11 consistent with its regular business practices, but in no event
12 later than within two business days after receipt by the provider
13 of the ¹[subpoena or]¹ court order and shall confirm to the
14 ¹[governmental entity] law enforcement agency¹ that the backup
15 copy has been made.

16 (2) Notice to the subscriber or customer shall be made by the
17 ¹[governmental entity] law enforcement agency¹ within three
18 days after receipt of confirmation that the backup copy has been
19 made¹[, unless the notice is delayed pursuant to section 25 of
20 P.L. , c. (C.) (now pending before the Legislature
21 as this bill)]¹.

22 (3) The service provider shall not destroy or permit the
23 destruction of the backup copy until either the delivery of the
24 information or the resolution of all proceedings, including any
25 appeals, concerning the ¹[subpoena or]¹ court order, whichever is
26 later.

27 (4) The service provider shall release the backup copy to the
28 requesting ¹[the governmental entity] law enforcement agency¹
29 if, 14 days after the ¹[entity's] agency's¹ notice to the
30 subscriber or customer, the provider has not received written
31 notice from the subscriber or customer that the subscriber or
32 customer has filed a motion to ¹[quash the subpoena or]¹ vacate
33 the order pursuant to subsection b. of this section or the provider
34 has not initiated proceedings to challenge the request of the
35 ¹[entity] agency¹.

36 ¹[(5) A governmental entity may require the creation of a
37 backup copy if in its sole discretion the entity determines that
38 there is reason to believe that notification as to the existence of
39 the subpoena or court order required under section 23 of
40 P.L. , c. (C.) (now pending before the Legislature
41 as this bill), may result in destruction of or tampering with
42 evidence. This determination is not subject to challenge by the
43 subscriber, customer or service provider.]¹

44 b. Within 14 days after notice by the ¹[governmental entity]
45 law enforcement agency¹ to the subscriber or customer under
46 paragraph (2) of subsection a. of this section the subscriber or
47 customer may file a motion to ¹[quash the subpoena or]¹ vacate
48 the court order, copies to be served upon the ¹[entity] agency¹
49 and written notice of the challenge to be given to the service
50 provider. A motion to vacate a court order shall be filed in the
51 court which issued the order. ¹[A motion to quash a subpoena
52 shall be filed in the court which has authority to enforce the
53 subpoena.]¹ The motion or application shall contain an affidavit
54 or sworn statement stating that the applicant is a customer of or

1 subscriber to the service from which the contents of electronic
2 communications maintained for the applicant have been sought
3 and shall contain the applicant's reasons for believing that the
4 records sought are not relevant to a legitimate law enforcement
5 inquiry or that there has not been substantial compliance with the
6 provisions of sections 21 through ¹[27] 26¹ of P.L. . . . , c. . . . ,
7 (C. . .)(now pending before the Legislature as this bill).

8 c. Service shall be made upon the ¹[governmental entity] law
9 enforcement agency¹ by delivering or mailing by registered or
10 certified mail a copy of the papers to the person, office or
11 department specified in the notice which the customer received
12 pursuant to paragraph (2) of subsection a. of this section.

13 d. If the court finds that the subscriber or customer has
14 properly complied with subsections b. and c. of this section, the
15 court shall order the ¹[governmental entity] law enforcement
16 agency¹ to file a sworn response, which may be filed in camera if
17 it includes the reasons which make in camera review
18 appropriate. If the court is unable to determine the motion or
19 application on the basis of the initial allegations and responses,
20 the court may conduct such additional proceedings as it deems
21 appropriate. All such proceedings shall be completed and the
22 motion or application decided as soon as practicable after the
23 filing of the ¹[entity's] agency's¹ response.

24 e. If the court finds that the applicant is not the subscriber or
25 customer for whom the communications sought by the
26 ¹[governmental entity] law enforcement agency¹ are maintained,
27 or that there is reason to believe that the law enforcement
28 inquiry is legitimate and that the communications sought are
29 relevant to that inquiry, it shall deny the motion or application
30 and order the process enforced. If the court finds that the
31 applicant is the subscriber or customer for whom the
32 communications sought are maintained, and that there is not
33 reason to believe that the communications sought are relevant to
34 a legitimate law enforcement inquiry, or that there has not been
35 substantial compliance with the provisions of sections 21 through
36 ¹[27] 26¹ of P.L. . . . , c. (C. . .)(now pending before the Legislature
37 as this bill.), it shall order the process quashed.

38 ¹[f. A court order denying a motion or application under this
39 section shall not be deemed a final order, and no interlocutory
40 appeal may be taken therefrom. The governmental entity shall
41 have the right to appeal from an order granting a motion or
42 application under this section.]¹

43 ¹[25. (New section) Delayed notice.

44 a. Court orders. A governmental entity acting pursuant to
45 subsection b. of section 23 of P.L. . . . , c. . . . (C. . . .) (now
46 pending before the Legislature as this bill) may, where a court
47 order is sought, include in the application a request for an order
48 delaying the notification required pursuant to section 23 of
49 P.L. . . . , c. . . . (C. . . .) (now pending before the Legislature
50 as this bill) for a period not to exceed 90 days. The court shall
51 grant the request if there is reason to believe that notification of
52 the existence of the court order may have an adverse result as
53 defined in subsection f. of this section .

54 b. Subpoenas. A governmental entity acting pursuant to

1 section 23 of P.L. , c. (C.) (now pending before
2 the Legislature as this bill) may, where an administrative
3 subpoena authorized by a federal or State statute or grand jury or
4 trial subpoena is used, delay the notification required pursuant to
5 subsection b. of section 23 of P.L. , c. (C.) (now
6 pending before the Legislature as this bill) for a period not to
7 exceed 90 days upon the execution of a written certification of a
8 supervisory official that there is reason to believe that
9 notification of the existence of the subpoena may have an
10 adverse result as defined in subsection f. of this section. The
11 governmental entity shall maintain a true copy of a certification
12 under this subsection.

13 c. Extensions of the delay of notification provided for in
14 subsections a. and b. of this section of up to 90 days each may be
15 granted by the court upon request or by certification by a
16 supervisory official in the case of a subpoena.

17 d. Upon expiration of the period of delay of notification, or,
18 where applicable, upon expiration of the final extension of the
19 period of delay of notification, the governmental entity shall
20 serve upon, or deliver by registered or first class mail to, the
21 customer or subscriber a copy of the process or request together
22 with notice which:

23 (1) states with reasonable specificity the nature of the law
24 enforcement inquiry; and

25 (2) informs the customer or subscriber:

26 (a) that information maintained for the customer or subscriber
27 by the provider named in the process or request was supplied to
28 or requested by the governmental entity and the date on which
29 the supplying or request took place;

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

31 (c) the identity of the supervisory official or the court which
32 made the certification or determination pursuant to which that
33 delay was made; and

34 (d) the statutory provision authorizing the delay.

35 e. A governmental entity acting pursuant to section 23 of
36 P.L. , c. (C.) (now pending before the Legislature
37 as this bill), when it is not required to notify the subscriber or
38 customer, or when it may delay notice pursuant to this section,
39 may apply to a court for an order commanding a service provider
40 to whom a warrant, subpoena or court order is directed, not to
41 notify any other person of the existence of the warrant, subpoena
42 or court order for such period as the court deems appropriate.
43 The court shall enter the order if there is reason to believe that
44 notification of the existence of the warrant, subpoena or court
45 order may have an adverse result as defined in subsection f. of
46 this section.

47 f. An adverse result is:

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

49 (2) flight from prosecution;

50 (3) destruction of or tampering with evidence;

51 (4) intimidation of potential witnesses; or

52 (5) other serious jeopardy to an investigation or undue delay of
53 a trial.

54 g. As used in this section, the term "supervisory official"

1 means the administrative or law enforcement officer in charge of
2 the investigation or the prosecuting attorney or assistant
3 prosecuting attorney.]¹

4 ¹[26.] 25.¹ (New section) Cost reimbursement.

5 a. Except as otherwise provided in subsection c. of this
6 section, a ¹[governmental entity] law enforcement agency¹
7 obtaining the contents of communications, records or other
8 information under sections 22, 23 or 24 of P.L., c. (C.
9) (now pending before the Legislature as this bill) shall
10 reimburse the person or provider for such costs as are reasonably
11 necessary and which have been directly incurred in searching for,
12 assembling, reproducing and otherwise providing the information.
13 Reimbursable costs shall include, but shall not be limited to, any
14 costs due to necessary disruption of normal operations of any
15 electronic communication service or remote computing service in
16 which the information may be stored.

17 b. The amount of the reimbursement provided for in subsection
18 a. of this section shall be as mutually agreed upon by a
19 ¹[governmental entity] law enforcement agency¹ and the service
20 provider. In the absence of agreement, reimbursement shall be
21 determined by the court which issued the order for production of
22 the information or, if no court order was issued, then by the court
23 before which a criminal prosecution relating to the information
24 would be brought.

25 c. The requirement of subsection a. of this section does not
26 apply with respect to records or other information maintained by
27 a provider of wire or electronic communication service which
28 relates to telephone toll records and telephone listings obtained
29 under section 23 of P.L., c. (C.) (now pending
30 before the Legislature as this bill). The court may, however,
31 order reimbursement as described in subsection a. of this section
32 if the court determines the information required is voluminous or
33 otherwise causes an undue burden on the provider.

34 ¹[27.] 26.¹ (New section) Civil action.

35 a. Except as provided in subsection ¹[g.] d.¹ of section 23 of
36 P.L., c. (C.) (now pending before the Legislature
37 as this bill), any service provider, subscriber or customer
38 aggrieved by any violation of sections 21, 22, 23, ¹[24 or 25] or
39 24¹ of P.L., c. (C.) (now pending before the
40 Legislature as this bill) may recover, in a civil action, such relief
41 as may be appropriate from the person or entity which knowingly
42 or purposefully engaged in the conduct constituting the violation.

43 b. In a civil action under this section, appropriate relief may
44 include:

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

47 (2) damages under subsection c. of this section; and

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

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

1 d. A civil action under this section may not be commenced
2 later than two years after the date upon which the claimant first
3 discovered or had a reasonable opportunity to discover the
4 violation.

5 ¹[28.] 27.¹ (New section) It shall be a complete defense to any
6 civil or criminal action brought pursuant to sections 21, 22, 23,
7 24¹[, 25 and 27] and 26¹ of P.L., c.(C.) (now
8 pending before the Legislature as this bill) that the person made
9 good faith reliance on:

10 a. a court warrant or order ¹[, a grand jury or trial
11 subpoena]¹, a legislative authorization or a statutory
12 authorization;

13 b. a request of an investigative or law enforcement officer
14 under section 13 of P.L.1968, c.409 (C.2A:156A-13); or

15 c. a good faith determination that section 4 of P.L.1968, c.409
16 (C.2A:156A-4) permitted the conduct which is the subject of the
17 complaint.

18 ¹[29.] 28.¹ (New section) Exclusivity of remedies.

19 The remedies and sanctions described in sections 21 and ¹[27]
20 26¹ of P.L., c.(C.) (now pending before the
21 Legislature as this bill) are the only judicial remedies and
22 sanctions for nonconstitutional violations of sections 21, 22, 23¹[,
23 24 and 25] and 24¹ of P.L., c.(C.) (now pending
24 before the Legislature as this bill).

25 ¹[30.] 29.¹ This act shall take effect immediately and shall
26 expire on July 1, 1994.

27
28
29
30

31 Amends and supplements the "New Jersey Wiretapping and
32 Electronic Surveillance Act."

ASSEMBLY, No. 1587

STATE OF NEW JERSEY

INTRODUCED JUNE 18, 1992

By Assemblymen R. BROWN, CATANIA and Romano

1 AN ACT concerning wiretapping and electronic surveillance,
2 amending and supplementing P.L.1968, c.409.

3

4 BE IT ENACTED *by the Senate and General Assembly of the*
5 *State of New Jersey:*

6 1. Section 2 of P.L.1968, c.409 (C.2A:156A-2) is amended to
7 read as follows:

8 2. As used in this act:

9 a. "Wire communication" means any [communication] aural
10 transfer made in whole or in part through the use of facilities for
11 the transmission of communications by the aid of wire, cable or
12 other like connection between the point of origin and the point of
13 reception, including the use of such connection in a switching
14 station, furnished or operated by [a telephone, telegraph or radio
15 company for hire as a communication common carrier] any person
16 engaged in providing or operating such facilities for the
17 transmission of intrastate, interstate or foreign communication.
18 "Wire communication" includes any electronic storage of such
19 communication, and the radio portion of a cordless telephone
20 communication that is transmitted between the cordless
21 telephone handset and the base unit;

22 b. "Oral communication" means any oral communication
23 uttered by a person exhibiting an expectation that such
24 communication is not subject to interception under circumstances
25 justifying such expectation, but does not include any electronic
26 communication;

27 c. "Intercept" means the aural or other acquisition of the
28 contents of any wire, electronic or oral communication through
29 the use of any electronic, mechanical, or other device;

30 d. ["Intercepting device"] "Electronic, mechanical or other
31 device" means any device or apparatus, including an induction
32 coil, that can be used to intercept a wire, electronic or oral
33 communication other than;

34 (1) Any telephone or telegraph instrument, equipment or
35 facility, or any component thereof, furnished to the subscriber or
36 user by a [communication common carrier] provider of wire or
37 electronic communication service in the ordinary course of its
38 business and being used by the subscriber or user in the ordinary
39 course of its business; or [being used by a communication common
40 carrier] furnished by such subscriber or user for connection to the
41 facilities of such service and used in the ordinary course of its
42 business; or being used by a provider of wire or electronic
43 communication service in the ordinary course of its business, or

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in the
above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 by an investigative or law enforcement officer in the ordinary
2 course of his duties; or

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

5 e. "Person" means that term as defined in R.S.1:1-2 and
6 includes any officer or employee of the State or of a political
7 subdivision thereof;

8 f. "Investigative or law enforcement officer" means any
9 officer of the State of New Jersey or of a political subdivision
10 thereof who is empowered by law to conduct investigations of, or
11 to make arrests for, any offense enumerated in section 8 of [this
12 act] P.L.1968, c.409 (C.2A:156A-8) and any attorney authorized
13 by law to prosecute or participate in the prosecution of any such
14 offense;

15 g. "Contents," when used with respect to any wire, electronic
16 or oral communication, includes any information concerning the
17 identity of the parties to such communication or the existence,
18 substance, purport, or meaning of that communication, except
19 that for purposes of sections 22, 23, 24 and 26 of P.L. , c.
20 (C.)(now pending before the Legislature as this bill) contents,
21 when used with respect to any wire, electronic, or oral
22 communication means any information concerning the substance,
23 purport or meaning of that communication;

24 h. "Court of competent jurisdiction" means the Superior Court;

25 i. "Judge," when referring to a judge authorized to receive
26 applications for, and to enter, orders authorizing interceptions of
27 wire, electronic or oral communications, means one of the
28 several judges of the Superior Court to be designated from time
29 to time by the Chief Justice of the Supreme Court to receive
30 applications for, and to enter, orders authorizing interceptions of
31 wire, electronic or oral communications pursuant to this act;

32 j. "Communication common carrier" means any person
33 engaged as a common carrier for hire, in intrastate, interstate or
34 foreign communication by wire or radio or in intrastate,
35 interstate or foreign radio transmission of energy; but a person
36 engaged in radio broadcasting shall not, while so engaged, be
37 deemed a common carrier;

38 k. "Aggrieved person" means a person who was a party to any
39 intercepted wire, electronic or oral communication or a person
40 against whom the interception was directed[.];

41 l. "In-progress trace" means the determination of the origin of
42 a telephonic communication to a known telephone during an
43 interception[.];

44 m. "Electronic communication" means any transfer of signs,
45 signals, writing, images, sounds, data, or intelligence of any
46 nature transmitted in whole or in part by a wire, radio,
47 electromagnetic, photoelectric or photo-optical system that
48 affects interstate, intrastate or foreign commerce, but does not
49 include:

50 (1) Any wire or oral communication;

51 (2) Any communication made through a tone-only paging
52 device; or

53 (3) Any communication from a tracking device;

54 n. "User" means any person or entity who:

- 1 (1) Uses an electronic communication service; and
2 (2) Is duly authorized by the provider of such service to engage
3 in such use;
4 o. "Electronic communication system" means any wire, radio,
5 electromagnetic, photo-optical or photoelectronic facilities for
6 the transmission of electronic communications, and any computer
7 facilities or related electronic equipment for the electronic
8 storage of such communications;
9 p. "Electronic communication service" means any service
10 which provides to the users thereof the ability to send or receive
11 wire or electronic communications;
12 q. "Electronic storage" means:
13 (1) Any temporary, intermediate storage of a wire or
14 electronic communication incidental to the electronic
15 transmission thereof; and
16 (2) Any storage of such communication by an electronic
17 communication service for purpose of backup protection of the
18 communication;
19 r. "Readily accessible to the general public" means, with
20 respect to a radio communication, that such communication is
21 not:
22 (1) Scrambled or encrypted;
23 (2) Transmitted using modulation techniques whose essential
24 parameters have been withheld from the public with the intention
25 of preserving the privacy of such communication;
26 (3) Carried on a subcarrier or other signal subsidiary to a radio
27 transmission;
28 (4) Transmitted over a communication system provided by a
29 common carrier, unless the communication is a tone-only paging
30 system communication; or
31 (5) Transmitted on frequencies allocated under part 25,
32 subpart D, E, or F of part 74, or part 94 of the Rules of the
33 Federal Communications Commission, unless, in the case of a
34 communication transmitted on a frequency allocated under part
35 74 that is not exclusively allocated to broadcast auxiliary
36 services, the communication is a two-way voice communication
37 by radio;
38 s. "Remote computing service" means the provision to the
39 public of computer storage or processing services by means of an
40 electronic communication system;
41 t. "Aural transfer" means a transfer containing the human
42 voice at any point between and including the point of origin and
43 the point of reception;
44 u. "Tracking device" means an electronic or mechanical
45 device which permits the tracking of the movement of a person
46 or device.
47 (cf: P.L.1978, c.51, s.1)
48 2. Section 3 of P.L.1968, c.409 (C.2A:156A-3) is amended to
49 read as follows:
50 3. Except as otherwise specifically provided in this act, any
51 person who:
52 a. Purposely intercepts, endeavors to intercept, or procures
53 any other person to intercept or endeavor to intercept any wire,
54 electronic or oral communication; or

1 b. Purposely discloses or endeavors to disclose to any other
2 person the contents of any wire, electronic or oral
3 communication, or evidence derived therefrom, knowing or
4 having reason to know that the information was obtained through
5 the interception of a wire, electronic or oral communication; or

6 c. Purposely uses or endeavors to use the contents of any wire,
7 electronic or oral communication, or evidence derived therefrom,
8 knowing or having reason to know, that the information was
9 obtained through the interception of a wire, electronic or oral
10 communication;

11 shall be guilty of a crime of the third degree. Subsections b.
12 and c. of this section shall not apply to the contents of any wire,
13 electronic or oral communication, or evidence derived therefrom,
14 that has become common knowledge or public information.
15 (cf: P.L.1989, c.85, s.1)

16 3. Section 4 of P.L.1968, c.409 (C.2A:156A-4) is amended to
17 read as follows:

18 4. It shall not be unlawful under this act for:

19 a. An operator of a switchboard, or an officer, agent or
20 employee of a [communication common carrier] provider of wire
21 or electronic communication service, whose facilities are used in
22 the transmission of a wire or electronic communication, to
23 intercept, disclose or use that communication in the normal
24 course of his employment while engaged in any activity which is a
25 necessary incident to the rendition of his service or to the
26 protection of the rights or property of the [carrier of such
27 communication] provider of that service. No [communication
28 common carrier] provider of wire or electronic communication
29 service shall utilize service observing or random monitoring
30 except for mechanical or service quality control checks;

31 b. Any investigative or law enforcement officer to intercept a
32 wire, electronic or oral communication, where such officer is a
33 party to the communication or where another officer who is a
34 party to the communication requests or requires him to make
35 such interception;

36 c. Any person acting at the direction of an investigative or law
37 enforcement officer to intercept a wire, electronic or oral
38 communication, where such person is a party to the
39 communication or one of the parties to the communication has
40 given prior consent to such interception; provided, however, that
41 no such interception shall be made unless the Attorney General or
42 his designee or a county prosecutor within his authority
43 determines that there exists a reasonable suspicion that evidence
44 of criminal conduct will be derived from such interception; [or]

45 d. A person not acting under color of law to intercept a wire,
46 electronic or oral communication, where such person is a party to
47 the communication or one of the parties to the communication
48 has given prior consent to such interception unless such
49 communication is intercepted or used for the purpose of
50 committing any criminal or tortious act in violation of the
51 Constitution or laws of the United States or of this State or for
52 the purpose of committing any other injurious act. The fact that
53 such person is the subscriber to a particular telephone does not
54 constitute consent effective to authorize interception of

1 communications among parties not including such person on that
2 telephone. Any person who unlawfully intercepts or uses such
3 communication as provided in this paragraph shall be subject to
4 the civil liability established in section 24 of [this act] P.L.1968,
5 c.409 (C.2A:156A-24), in addition to any other criminal or civil
6 liability imposed by law;

7 e. Any person to intercept or access an electronic
8 communication made through an electronic communication
9 system that is configured so that such electronic communication
10 is readily accessible to the general public;

11 f. Any person to intercept any radio communication which is
12 transmitted:

13 (1) by any station for the use of the general public, or that
14 relates to ships, aircraft, vehicles, or persons in distress;

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

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

21 (4) by any marine or aeronautical communications system;

22 g. Any person to engage in any conduct which:

23 (1) is prohibited by section 633 of the Communications Act of
24 1934; or

25 (2) is excepted from the application of section 705(a) of the
26 Communications Act of 1934 by section 705(b) of that Act;

27 h. Any person to intercept any wire or electronic
28 communication the transmission of which is causing harmful
29 interference to any lawfully operating station or consumer
30 electronic equipment, to the extent necessary to identify the
31 source of such interference; or for other users of the same
32 frequency to intercept any radio communication made through a
33 system that utilizes frequencies monitored by individuals engaged
34 in the provision or the use of such system, if such communication
35 is not scrambled or encrypted; or

36 i. A provider of wire or electronic communication service to
37 record the fact that a wire or electronic communication was
38 initiated or completed in order to protect such provider, another
39 provider furnishing service toward the completion of the wire or
40 electronic communication, or a user of that service, from
41 fraudulent, unlawful or abusive use of such service.

42 (cf: P.L.1978, c.51, s.2).

43 4. Section 5 of P.L.1968, c.409 (C.2A:156A-5) is amended to
44 read as follows:

45 5. Except as otherwise specifically provided in section 6 of
46 [this act] P.L.1968, c.409 (C.2A:156A-6), any person who:

47 a. Purposely possesses an [intercepting] electronic, mechanical
48 or other device, knowing or having reason to know that the design
49 of such device renders it primarily useful for the purpose of the
50 surreptitious interception of a wire, electronic or oral
51 communication;

52 b. Purposely sells an [intercepting] electronic, mechanical or
53 other device, knowing or having reason to know that the design of
54 such device renders it primarily useful for the purpose of the

1 surreptitious interception of a wire, electronic or oral
2 communication;

3 c. Purposely distributes an [intercepting] electronic,
4 mechanical or other device, knowing or having reason to know
5 that the design of such device renders it primarily useful for the
6 purpose of the surreptitious interception of a wire, electronic or
7 oral communication;

8 d. Purposely manufactures or assembles an [intercepting]
9 electronic, mechanical or other device, knowing or having reason
10 to know that the design of such device renders it primarily useful
11 for the purpose of the surreptitious interception of a wire,
12 electronic or oral communication; or

13 e. Purposely places in any newspaper, magazine, handbill, or
14 other publication any advertisement of any [intercepting]
15 electronic, mechanical or other device, knowing or having reason
16 to know that the design of such device renders it primarily useful
17 for the purpose of the surreptitious interception of a wire,
18 electronic or oral communication or of any [intercepting]
19 electronic, mechanical or other device where such advertisement
20 promotes the use of such device for the purpose of the
21 surreptitious interception of a wire, electronic or oral
22 communication;

23 shall be guilty of a crime of the third degree.

24 (cf: P.L.1989, c.85, s.2)

25 5. Section 6 of P.L.1968, c.409 (C.2A:156A-6) is amended to
26 read as follows:

27 6. It shall not be unlawful under this act for:

28 a. A [communication common carrier] provider of wire or
29 electronic communication service, or an officer, agent or
30 employee of, or a person under contract with [a communication
31 common carrier, in the usual course of the communication
32 common carrier's business] such a provider of wire or electronic
33 communication service in the normal course of the business of
34 providing that wire or electronic communication service; or

35 b. A person under contract with the United States, a state or a
36 political subdivision thereof, or an officer, agent or employee of
37 a state or a political subdivision thereof; to possess, sell,
38 distribute, manufacture or assemble any [intercepting] electronic,
39 mechanical or other device, while acting in furtherance of the
40 appropriate activities of the United States, a state or a political
41 subdivision thereof or a [communication common carrier]
42 provider of wire or electronic communication service.

43 (cf: P.L.1975, c.131, s.3)

44 6. Section 7 of P.L.1968, c.409 (C.2A:156A-7) is amended to
45 read as follows:

46 7. Any [intercepting] electronic, mechanical or other device
47 possessed, used, sent, distributed, manufactured, or assembled in
48 violation of this act [is hereby declared to be a nuisance and] may
49 be seized and forfeited to the State pursuant to chapter 64 of
50 Title 2C of the New Jersey Statutes.

51 (cf: P.L.1968, c.409, s.7)

52 7. Section 8 of P.L.1968, c.409 (C.2A:156A-8) is amended to
53 read as follows:

54 8. The Attorney General, [a] county prosecutor [or with the

1 approval of the Attorney General, except in those investigations
2 directly involving possible misconduct by officials and employees
3 of the Department of Law and Public Safety, the chairman of the
4 State Commission of Investigation when authorized by a majority
5 of the members of that commission,] or a person designated to
6 act for such an official and to perform his duties in and during his
7 actual absence or disability, may authorize, in writing, an ex
8 parte application to a judge designated to receive the same for an
9 order authorizing the interception of a wire, or electronic or oral
10 communication by the investigative or law enforcement officers
11 or agency having responsibility for an investigation when such
12 interception may provide evidence of the commission of the
13 offense of murder, kidnapping, gambling, robbery, bribery, a
14 violation of paragraph (1) or (2) of subsection b. of N.J.S.2C:12-1,
15 a violation of N.J.S.2C:21-19 punishable by imprisonment for
16 more than one year, terroristic threats, violations of
17 N.J.S.2C:35-3, N.J.S.2C:35-4 and N.J.S.2C:35-5, violations of
18 sections 112 through 116, inclusive, of the "Casino Control Act,"
19 P.L.1977, c.110 (C.5:12-112 through 5:12-116), arson, burglary,
20 theft and related offenses punishable by imprisonment for more
21 than one year, escape, forgery, alteration of motor vehicle
22 identification numbers, unlawful manufacture, purchase, use, or
23 transfer of firearms, unlawful possession or use of destructive
24 devices or explosives, racketeering or a violation of subsection g.
25 of N.J.S.2C:5-2, leader of organized crime, organized criminal
26 activity directed toward the unlawful transportation, storage,
27 disposal, discharge, release, abandonment or disposition of any
28 harmful, hazardous, toxic, destructive, or polluting substance,
29 violations of subsection b. of N.J.S.2C:24-4 or any conspiracy to
30 commit any of the foregoing offenses or which may provide
31 evidence aiding in the apprehension of the perpetrator or
32 perpetrators of any of the foregoing offenses.
33 (cf: P.L.1989, c.85, s.3)

34 8. Section 9 of P.L.1968, c.409 (C.2A:156A-9) is amended to
35 read as follows:

36 9. Each application for an order of authorization to intercept a
37 wire, electronic or oral communication shall be made in writing
38 upon oath or affirmation and shall state:

39 a. The authority of the applicant to make such application;

40 b. The identity and qualifications of the investigative or law
41 enforcement officers or agency for whom the authority to
42 intercept a wire, electronic or oral communication is sought and
43 the identity of whoever authorized the application.

44 c. A particular statement of the facts relied upon by the
45 applicant, including: (1) The identity of the particular person, if
46 known, committing the offense and whose communications are to
47 be intercepted; (2) The details as to the particular offense that
48 has been, is being, or is about to be committed; (3) The particular
49 type of communication to be intercepted; and a showing that
50 there is probable cause to believe that such communication will
51 be communicated on the wire or electronic communication
52 [facility] facilities involved or at the particular place where the
53 oral communication is to be intercepted; (4) [The] Except as
54 provided in subsection g. of this section, the character and

1 location of the particular wire or electronic communication
2 facilities involved or the particular place where the oral
3 communication is to be intercepted; (5) A statement of the period
4 of time for which the interception is required to be maintained; if
5 the character of the investigation is such that the authorization
6 for interception should not automatically terminate when the
7 described type of communication has been first obtained, a
8 particular statement of facts establishing probable cause to
9 believe that additional communications of the same type will
10 occur thereafter; (6) A particular statement of facts showing that
11 other normal investigative procedures with respect to the offense
12 have been tried and have failed or reasonably appear to be
13 unlikely to succeed if tried or to be too dangerous to employ;

14 d. Where the application is for the renewal or extension of an
15 order, a particular statement of facts showing the results thus far
16 obtained from the interception, or a reasonable explanation of
17 the failure to obtain such results;

18 e. A complete statement of the facts concerning all previous
19 applications, known to the individual authorizing and to the
20 individual making the application, made to any court for
21 authorization to intercept a wire, electronic or oral
22 communication involving any of the same facilities or places
23 specified in the application or involving any person whose
24 communication is to be intercepted, and the action taken by the
25 court on each such application; and

26 f. Such additional testimony or documentary evidence in
27 support of the application as the judge may require.

28 g. An application need not meet the requirements of paragraph
29 (4) of subsection c. of this section if:

30 (1) with respect to the application for an interception of an
31 oral communication:

32 (a) the application is approved by the Attorney General or
33 county prosecutor or a person designated to act for such an
34 official and to perform his duties in and during his actual absence
35 or disability; and

36 (b) the application contains a full and complete statement as
37 to why specification is not practical and identifies the person
38 committing the offense and whose communications are to be
39 intercepted; and

40 (c) the judge finds that such specification is not practical.

41 (2) with respect to the application for an interception of a
42 wire or electronic communication:

43 (a) the application is approved by the Attorney General or
44 county prosecutor or a person designated to act for such an
45 official and to perform his duties in and during his actual absence
46 or disability; and

47 (b) the application identifies the person believed to be
48 committing the offense and whose communications are to be
49 intercepted and the applicant makes a showing of a purpose, on
50 the part of that person, to thwart interception by changing
51 facilities; and

52 (c) the judge finds that such purpose has been adequately
53 shown.

54 An interception of a communication under an order issued in

1 conformity with this subsection shall not begin until the facilities
2 from which, or the place where, the communication is to be
3 intercepted is ascertained by the person implementing the
4 interception order. A provider of wire or electronic
5 communication service that has received an order as provided for
6 in this subsection may make a motion that the court modify or
7 quash the order on the ground that the provider's assistance with
8 respect to the interception cannot be performed in a timely or
9 reasonable fashion. The court upon notice to the Attorney
10 General or county prosecutor shall decide such a motion
11 expeditiously.

12 (cf: P.L.1975, c.131, s.5)

13 9. Section 10 of P.L.1968, c.409 (C.2A:156A-10) is amended to
14 read as follows:

15 10. Upon consideration of an application, the judge may enter
16 an ex parte order, as requested or as modified, authorizing the
17 interception of a wire, electronic or oral communication, if the
18 court determines on the basis of the facts submitted by the
19 applicant that there is or was probable cause for belief that:

20 a. The person whose communication is to be intercepted is
21 engaging or was engaged over a period of time as a part of a
22 continuing criminal activity or is committing, has or had
23 committed or is about to commit an offense as provided in
24 section 8 of [this act] P.L.1968, c.409 (C.2A:156A-8);

25 b. Particular communications concerning such offense may be
26 obtained through such interception;

27 c. Normal investigative procedures with respect to such
28 offense have been tried and have failed or reasonably appear to
29 be unlikely to succeed if tried or to be too dangerous to employ;

30 d. Except in the case of an application meeting the
31 requirements of subsection g. of section 9 of P.L.1968, c.409
32 (C.2A:156A-9), [The] the facilities from which, or the place
33 where, the wire, electronic or oral communications are to be
34 intercepted, are or have been used, or are about to be used, in
35 connection with the commission of such offense, or are leased to,
36 listed in the name of, or commonly used by, such individual;

37 e. The investigative or law enforcement officers or agency to
38 be authorized to intercept the wire, electronic or oral
39 communication are qualified by training and experience to
40 execute the interception sought; and

41 f. In the case of an application, other than a renewal or
42 extension, for an order to intercept a communication of a person
43 or on a facility which was the subject of a previous order
44 authorizing interception, the application is based upon new
45 evidence or information different from and in addition to the
46 evidence or information offered to support the prior order,
47 regardless of whether such evidence was derived from prior
48 interceptions or from other sources.

49 As part of the consideration of an application in which there is
50 no corroborative evidence offered, the judge shall inquire in
51 camera as to the identity of any informants or any other
52 additional information concerning the basis upon which the
53 investigative or law enforcement officer or agency has applied
54 for the order of authorization which the judge finds relevant in

1 order to determine if there is probable cause pursuant to this
2 section.

3 (cf: P.L.1975, c.131, s.6)

4 10. Section 11 of P.L.1968, c.409 (C.2A:156A-11) is amended
5 to read as follows:

6 11. If the facilities from which a wire or electronic
7 communication is to be intercepted are public, no order shall be
8 issued unless the court, in addition to the matters provided in
9 section 10 [above] of P.L.1968, c.409 (C.2A:156A-10), determines
10 that there is a special need to intercept wire or electronic
11 communications over such facilities.

12 If the facilities from which, or the place where, the wire,
13 electronic or oral communications are to be intercepted are being
14 used, or are about to be used, or are leased to, listed in the name
15 of, or commonly used by, a licensed physician, a licensed
16 practicing psychologist, an attorney-at-law, a practicing
17 clergyman, or a newspaperman, or is a place used primarily for
18 habitation by a husband and wife, no order shall be issued unless
19 the court, in addition to the matters provided in section 10
20 [above] of P.L.1968, c.409 (C.2A:156A-10), determines that there
21 is a special need to intercept wire, electronic or oral
22 communications over such facilities or in such places. Special
23 need as used in this section shall require in addition to the
24 matters required by section 10 of [this act] P.L.1968, c.409
25 (C.2A:156A-10), a showing that the licensed physician, licensed
26 practicing psychologist, attorney-at-law, practicing clergyman or
27 newspaperman is personally engaging in or was engaged in over a
28 period of time as a part of a continuing criminal activity or is
29 committing, has or had committed or is about to commit an
30 offense as provided in section 8 of [the act] P.L.1968, c.409
31 (C.2A:156A-8) or that the public facilities or the place used
32 primarily for habitation by a husband and wife are being regularly
33 used by someone who is personally engaging in or was engaged in
34 over a period of time as a part of a continuing criminal activity
35 or is committing, has or had committed or is about to commit
36 such an offense. No otherwise privileged wire, electronic or oral
37 communication intercepted in accordance with, or in violation of,
38 the provisions of this act, shall lose its privileged character.

39 (cf: P.L.1978, c.51, s.4)

40 11. Section 12 of P.L.1968, c.409 (C.2A:156A-12) is amended
41 to read as follows:

42 12. Each order authorizing the interception of any wire,
43 electronic or oral communication shall state:

- 44 a. The judge is authorized to issue the order;
- 45 b. The identity of, or a particular description of, the person, if
46 known, whose communications are to be intercepted;
- 47 c. The character and location of the particular communication
48 facilities as to which, or the particular place of the
49 communication as to which, authority to intercept is granted, or,
50 in the case of an application meeting the requirements of
51 subsection g. of section 9 of P.L.1968, c.409 (C.2A:156A-9) that
52 specification is not practical or that the purpose to thwart
53 interception by changing facilities has been shown;
- 54 d. A particular description of the type of the communication

1 to be intercepted and a statement of the particular offense to
2 which it relates;

3 e. The identity of the investigative or law enforcement
4 officers or agency to whom the authority to intercept a wire,
5 electronic or oral communication is given and the identity of
6 whoever authorized the application; and

7 f. The period of time during which such interception is
8 authorized, including a statement as to whether or not the
9 interception shall automatically terminate when the described
10 communication has been first obtained.

11 No order entered under this section shall authorize the
12 interception of any wire, electronic or oral communication for a
13 period of time in excess of that necessary under the
14 circumstances. Every order entered under this section shall
15 require that such interception begin and terminate as soon as
16 practicable and be conducted in such a manner as to minimize or
17 eliminate the interception of such communications not otherwise
18 subject to interception under this act by making reasonable
19 efforts, whenever possible, to reduce the hours of interception
20 authorized by said order. Except as provided below in subsection
21 g. of this section, no order entered under this section shall
22 authorize the interception of wire, electronic or oral
23 communications for any period exceeding 20 days. Extensions or
24 renewals of such an order may be granted for two additional
25 periods of not more than 10 days. No extension or renewal shall
26 be granted unless an application for it is made in accordance with
27 this section, and the court makes the findings required by
28 sections 10[,] and 11 of P.L.1968, c.409 (C.2A:156A-10 and
29 2A:156A-11) and by this section.

30 g. Orders entered under this section to provide evidence of
31 racketeering in violation of N.J.S.2C:41-2, leader of organized
32 crime in violation of subsection g. of N.J.S.2C:5-2, or leader of
33 narcotics trafficking network in violation of N.J.S.2C:35-3, may
34 authorize the interception of wire, electronic or oral
35 communications for a period not to exceed 30 days and extensions
36 or renewals of any order may be granted for additional periods of
37 not more than 30 days, without limitation on the number of
38 extension or renewal orders; provided, however, that orders
39 authorized pursuant to this subsection shall not exceed six months.

40 h. Whenever an order authorizing an interception is entered,
41 the order may require reports to be made to the judge who issued
42 the order showing what progress has been made toward
43 achievement of the authorized objective and the need for
44 continued interception. Such reports shall be made at such
45 intervals as the court may require.

46 An order authorizing the interception of a wire, electronic or
47 oral communication shall, upon request of the applicant, direct
48 that a [communication common carrier] provider of wire or
49 electronic communication service shall furnish the applicant
50 forthwith all information, facilities and technical assistance
51 necessary to accomplish the interception unobtrusively and with a
52 minimum of interference with the services that such [carrier]
53 provider is affording the person whose communications are to be
54 intercepted.

1 The obligation of a [communication common carrier] provider
2 of wire or electronic communication service under such an order
3 may include but is not limited to [conducting,] for good cause
4 shown, [an in-progress trace during an interception; provided,
5 however, that a county prosecutor must receive the approval of
6 the Attorney General or his designee prior to requesting an order
7 which includes an in-progress trace] the provision of technical
8 assistance and equipment and utilization of any available
9 technological features which the provider offers to its
10 subscribers. Any [communication common carrier] provider of
11 wire or electronic communication service furnishing such
12 facilities or [technical] assistance shall be compensated therefor
13 by the applicant at the prevailing rates. Said [carrier] provider
14 shall be immune from civil liability for any assistance rendered to
15 the applicant pursuant to this section.

16 (cf: P.L.1989, c.85, s.4)

17 12. Section 13 of P.L.1968, c.409 (C.2A:156A-13) is amended
18 to read as follows:

19 13. Whenever, upon informal application by an authorized
20 applicant, a judge determines there are grounds upon which an
21 order could be issued pursuant to this act, and that an emergency
22 situation exists [with respect to] that involves: a. the
23 investigation of conspiratorial activities of organized crime,
24 related to an offense designated in section 8 of [this act,]
25 P.L.1968, c.409 (C.2A:156A-8); or b. immediate danger of death
26 or serious bodily injury to any person, dictating authorization for
27 immediate interception of wire, electronic or oral communication
28 before an application for an order could with due diligence be
29 submitted to him and acted upon, the judge may grant verbal
30 approval for such interception without an order, conditioned upon
31 the filing with him, within 48 hours thereafter, of an application
32 for an order which, if granted, shall recite the verbal approval
33 and be retroactive to the time of such verbal approval. Such
34 interception shall immediately terminate when the
35 communication sought is obtained or when the application for an
36 order is denied. In the event no application for an order is made,
37 the content of any wire, electronic or oral communication
38 intercepted shall be treated as having been obtained in violation
39 of this act.

40 In the event no application is made or an application made
41 pursuant to this section is denied, the court shall require the
42 wire, tape or other recording of the intercepted communication
43 to be delivered to, and sealed by, the court and such evidence
44 shall be retained by the court in accordance with section 14 of
45 P.L.1968, c.409 (C.2A:156A-14) and the same shall not be used or
46 disclosed in any legal proceeding except in a civil action brought
47 by an aggrieved person pursuant to section 24 of P.L.1968, c.409
48 (C.2A:156A-24) or as otherwise authorized by court order.
49 Failure to effect delivery of any such wire, tape or other
50 recording shall be punishable as contempt by the court directing
51 such delivery. Evidence of verbal authorization to intercept an
52 oral, electronic or wire communication shall be a defense to any
53 charge against the investigating or law enforcement officer for
54 engaging in unlawful interception.

55 (cf: P.L.1968, c.409, s.13)

1 13. Section 14 of P.L.1968, c.409 (C.2A:156A-14) is amended
2 to read as follows:

3 14. Any wire, electronic or oral communication intercepted in
4 accordance with this act shall, if practicable, be recorded by
5 tape, wire or other comparable method. The recording shall be
6 done in such a way as will protect it from editing or other
7 alteration. Immediately upon the expiration of the order or
8 extensions or renewals thereof, the tapes, wires or other
9 recordings shall be transferred to the judge issuing the order and
10 sealed under his direction. Custody of the tapes, wires or other
11 recordings shall be maintained wherever the court directs. They
12 shall not be destroyed except upon an order of such court and in
13 any event shall be kept for 10 years. Duplicate tapes, wires or
14 other recordings may be made for disclosure or use pursuant to
15 subsection a. of section 17 of [this act] P.L.1968, c.409
16 (C.2A:156A-17). The presence of the seal provided by this
17 section, or a satisfactory explanation for its absence, shall be a
18 prerequisite for the disclosure of the contents of any wire,
19 electronic or oral communication, or evidence derived therefrom,
20 under subsection b. of section 17 of [this act] P.L.1968, c.409
21 (C.2A:156A-17).

22 (cf: P.L.1968, c.409, s.14)

23 14. Section 16 of P.L.1968, c.409 (C.2A:156A-16) is amended
24 to read as follows:

25 16. Within a reasonable time but not later than 90 days after
26 the termination of the period of the order or of extensions or
27 renewals thereof, or the date of the denial of an order applied for
28 under section 13 of P.L.1968, c.409 (C.2A:156A-13), the issuing
29 or denying judge shall cause to be served on the persons named in
30 the order or application, persons arrested as a result of the
31 interception of their conversations, persons indicted as a result of
32 the interception of their conversations, persons whose
33 conversations were intercepted and against whom indictments are
34 likely to be returned, persons whose conversations were
35 intercepted and who are potential witnesses to criminal
36 activities, and such other parties to the intercepted
37 communications as the judge may in his discretion determine to
38 be in the interest of justice, an inventory which shall include:

39 a. Notice of the entry of the order or the application for an
40 order denied under section 13 of P.L.1968, c.409 (C.2A:156A-13);

41 b. The date of the entry of the order or the denial of an order
42 applied for under section 13 of P.L.1968, c.409 (C.2A:156A-13);

43 c. The period of authorized or disapproved interception; and

44 d. The fact that during the period wire, electronic or oral
45 communications were or were not intercepted.

46 The court, upon filing of a motion, may in its discretion make
47 available to such persons or their attorneys for inspection such
48 portions of the intercepted communications, applications and
49 orders as the court determines to be in the interest of justice.
50 On an ex parte showing of good cause to the court the serving of
51 the inventories required by this section may be postponed.

52 (cf: P.L.1978, c.51, s.6)

53 15. Section 17 of P.L.1968, c.409 (C.2A:156A-17) is amended
54 to read as follows:

1 17. a. Any investigative or law enforcement officer or other
2 person who, by any means authorized by this act, has obtained
3 knowledge of the contents of any wire, electronic or oral
4 communication, or evidence derived therefrom, may disclose or
5 use such contents or evidence to investigative or law
6 enforcement officers of this or another state, any of its political
7 subdivisions, or of the United States to the extent that such
8 disclosure or use is appropriate to the proper performance of [his]
9 the official duties of the officer making or receiving the
10 disclosure.

11 b. Any person who, by any means authorized by this act, has
12 obtained any information concerning any wire, electronic or oral
13 communication or evidence derived therefrom intercepted in
14 accordance with the provisions of this act, may disclose the
15 contents of such communications or derivative evidence while
16 giving testimony under oath or affirmation in any criminal
17 proceeding in any court of this or another state or of the United
18 States or before any Federal or State grand jury; provided,
19 however, that the contents of any wire, electronic or oral
20 communication may be initially disclosed solely through the use
21 of the testimony of a witness to such communication or the
22 actual recording of the communication.

23 c. The contents of any intercepted wire, electronic or oral
24 communication, or evidence derived therefrom, may otherwise be
25 disclosed or used only upon a showing of good cause before a
26 court of competent jurisdiction.

27 (cf: P.L.1975, c.131, s.9)

28 16. Section 18 of P.L.1968, c.409 (C.2A:156A-18) is amended
29 to read as follows:

30 18. When an investigative or law enforcement officer, while
31 engaged in intercepting wire, electronic or oral communications
32 in the manner authorized herein, intercepts wire, electronic or
33 oral communications relating to offenses other than those
34 specified in the order of authorization, the contents thereof, and
35 evidence derived therefrom, may be disclosed or used as provided
36 in subsection a. of section 17 of P.L.1968, c.409 (C.2A:156A-17).
37 Such contents and any evidence derived therefrom may be used
38 under subsection b. of section 17 of P.L.1968, c.409
39 (C.2A:156A-17) when authorized or approved by a judge of
40 competent jurisdiction where such judge finds on subsequent
41 application that the contents were otherwise intercepted in
42 accordance with the provisions of this act. Such application shall
43 be made as soon as practicable.

44 (cf: P.L.1968, c.409, s.18)

45 17. Section 19 of P.L.1968, c.409 (C.2A:156A-19) is amended
46 to read as follows:

47 19. Except as specifically authorized pursuant to this act any
48 person who knowingly uses or discloses the existence of an order
49 authorizing interception of a wire, electronic or oral
50 communication or the contents of, or information concerning, an
51 intercepted wire, electronic or oral communication or evidence
52 derived therefrom, is guilty of a crime of the third degree.

53 (cf: P.L.1989, c.85, s.5)

54 18. Section 20 of P.L.1968, c.409 (C.2A:156A-20) is amended

1 to read as follows:

2 20. The contents of any wire, electronic or oral
3 communication intercepted in accordance with the provisions of
4 this act, or evidence derived therefrom, shall not be disclosed in
5 any trial, hearing, or proceeding before any court of this State
6 unless not less than 10 days before the trial, hearing, or
7 proceeding the parties to the action have been served with a copy
8 of the order and accompanying application under which the
9 interception was authorized.

10 The service of inventory, order, and application required by
11 this section may be waived by the court where it finds that the
12 service is not practicable and that the parties will not be
13 prejudiced by the failure to make the service.

14 (cf: P.L.1968, c.409, s.20)

15 19. Section 21 of P.L.1968, c.409 (C.2A:156A-21) is amended
16 to read as follows:

17 21. Any aggrieved person in any trial, hearing, or proceeding in
18 or before any court or other authority of this State may move to
19 suppress the contents of any intercepted wire, electronic or oral
20 communication, or evidence derived therefrom, on the grounds
21 that:

- 22 a. The communication was unlawfully intercepted;
23 b. The order of authorization is insufficient on its face;
24 c. The interception was not made in conformity with the order
25 of authorization or in accordance with the requirements of
26 section 12 of P.L.1968, c.409 (C.2A:156A-12).

27 The motion shall be made at least 10 days before the trial,
28 hearing, or proceeding unless there was no opportunity to make
29 the motion or the moving party was not aware of the grounds for
30 the motion. Motions by coindictees are to be heard in a single
31 consolidated hearing.

32 The court, upon the filing of such motion by the aggrieved
33 person, shall make available to the aggrieved person or his
34 counsel for inspection such portions of the intercepted
35 communication, or evidence derived therefrom, as the court
36 determines to be in the interests of justice. If the motion is
37 granted, the entire contents of all intercepted wire, electronic or
38 oral communications obtained during or after any interception
39 which is determined to be in violation of this act under
40 subsections a., b., or c. [above] of this section, or evidence
41 derived therefrom, shall not be received in evidence in the trial,
42 hearing or proceeding.

43 In addition to any other right to appeal, the State shall have
44 the right to appeal from an order granting a motion to suppress if
45 the official to whom the order authorizing the intercept was
46 granted shall certify to the court that the appeal is not taken for
47 purposes of delay. The appeal shall be taken within the time
48 specified by the Rules of Court and shall be diligently prosecuted.
49 (cf: P.L.1978, c.51, s.7)

50 20. Section 24 of P.L.1968, c.409 (C.2A:156A-24) is amended
51 to read as follows:

52 24. Any person whose wire, electronic or oral communication
53 is intercepted, disclosed or used in violation of this act shall have
54 a civil cause of action against any person who intercepts,

1 discloses or uses or procures any other person to intercept,
2 disclose or use, such communication; and shall be entitled to
3 recover from any such person:

4 a. Actual damages, but not less than liquidated damages
5 computed at the rate of \$100.00 a day for each day of violation,
6 or \$1,000.00, whichever is higher;

7 b. Punitive damages; and

8 c. A reasonable attorney's fee and other litigation costs
9 reasonably incurred.

10 (cf: P.L.1968, c. 409, s.24)

11 21. (New section) Unlawful access to stored communications.

12 a. A person is guilty of a crime of the fourth degree if he (1)
13 knowingly accesses without authorization a facility through which
14 an electronic communication service is provided or exceeds an
15 authorization to access that facility, and (2) thereby obtains,
16 alters, or prevents authorized access to a wire or electronic
17 communication while that communication is in electronic storage.

18 b. A person is guilty of a crime of the third degree if, for the
19 purpose of commercial advantage, private commercial gain, or
20 malicious destruction or damage, he (1) knowingly accesses
21 without authorization a facility through which an electronic
22 communication service is provided or exceeds an authorization to
23 access that facility, and (2) thereby obtains, alters, or prevents
24 authorized access to a wire or electronic communication while
25 that communication is in electronic storage.

26 c. This section does not apply to conduct authorized: (1) by
27 the person or entity providing a wire or electronic communication
28 service; or (2) by a user of that service with respect to a
29 communication of or intended for that user; or (3) by section 10
30 of P.L.1968, c.409 (C.2A:156A-10), section 13 of P.L.1968, c.409
31 (C.2A:156A-13), or by section 23 or 24 of P.L. , c.
32 (C. . . .) (now pending before the Legislature as this bill).

33 22. (New section) Disclosure of contents.

34 a. (1) Except as provided in subsection b. of this section, a
35 person or entity providing an electronic communication service to
36 the public shall not knowingly divulge to any person or entity the
37 contents of a communication while in electronic storage by that
38 service; and

39 (2) Except as provided in subsection b. of this section, a person
40 or entity providing remote computing service to the public shall
41 not knowingly divulge to any person or entity the contents of any
42 communication which is carried or maintained on that service:

43 (a) on behalf of, and received by means of electronic
44 transmission from, or created by means of computer processing
45 of communications received by means of electronic transmission
46 from, a subscriber or customer of the service; and

47 (b) solely for the purpose of providing storage or computer
48 processing services to the subscriber or customer, if the provider
49 is not authorized to access the contents of any such
50 communication for the purpose of providing any services other
51 than storage or computer processing.

52 b. A person or entity may divulge the contents of a
53 communication:

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

- 1 or an agent of the addressee or intended recipient;
- 2 (2) as authorized or required by section 4 of P.L.1968, c.409
3 (C.2A:156A-4), section 17 of P.L.1968, c.409 (C.2A:156A-17),
4 section 18 of P.L.1968, c.409 (C.2A:156A-18) or section 23 of
5 P.L. , c. (C.) (now pending before the Legislature
6 as this bill);
- 7 (3) with the lawful consent of the originator or an addressee or
8 intended recipient of the communication, or the subscriber in the
9 case of a remote computing service;
- 10 (4) to a person employed or authorized or whose facilities are
11 used to forward the communication to its destination;
- 12 (5) as may be necessarily incident to the rendition of the
13 service or to the protection of the rights or property of the
14 provider; or
- 15 (6) to a law enforcement agency, if the contents were
16 inadvertently obtained by the provider and appear to pertain to
17 the commission of a crime.
- 18 23. (New section) Requirements for access.
- 19 a. An investigative or law enforcement officer, but no other
20 governmental entity, may require the disclosure by a provider of
21 wire or electronic communication service of the contents of an
22 electronic communication that is in electronic storage in an
23 electronic communication system for 180 days or less, only
24 pursuant to a warrant.
- 25 b. A governmental entity may require the disclosure by a
26 provider of wire or electronic communication service of the
27 contents of an electronic communication, that has been in
28 electronic storage in an electronic communication system for
29 more than 180 days or may require the provider of a remote
30 computing service to disclose the contents of any electronic
31 communication that is held or maintained on that service as
32 provided in subsection c. of this section as follows:
- 33 (1) without notice to the subscriber or the customer if a law
34 enforcement officer obtains a warrant; or
- 35 (2) with prior notice from the governmental entity to the
36 subscriber or customer, if the governmental entity uses an
37 administrative subpoena authorized by a federal or State statute
38 or a grand jury or trial subpoena or obtains a court order for the
39 disclosure pursuant to the provisions of subsection f. of this
40 section; except that delayed notice may be given pursuant to
41 section 25 of P.L. , c. (C.) (now pending before
42 the Legislature as this bill).
- 43 c. The provisions of subsection b. of this section shall be
44 applicable to an electronic communication that is held or
45 maintained on a remote computing service:
- 46 (1) on behalf of, and received by means of electronic
47 transmission from, or created by means of computer processing
48 of communications received by means of electronic transmission
49 from, a subscriber or customer of such remote computing service;
50 and
- 51 (2) solely for the purpose of providing storage or computer
52 processing services to the subscriber or customer, if the provider
53 is not authorized to access the contents of any such
54 communication for the purpose of providing any services other

1 than storage or computer processing.

2 d. Except as provided in subsection e. of this section, a
3 provider of wire or electronic communication service or remote
4 computing service may disclose a record or other information
5 pertaining to a subscriber or customer of the service to any
6 person other than a governmental entity. This subsection shall
7 not apply to the contents covered by subsections a., b. or c. of
8 this section.

9 e. A provider of wire or electronic communication service or
10 remote computing service shall disclose a record or other
11 information pertaining to a subscriber or customer of the service,
12 other than contents covered by subsections a., b., or c., of this
13 section, to a governmental entity under the following
14 circumstances:

15 (1) the governmental agency uses an administrative subpoena
16 authorized by federal or State statute or a grand jury or trial
17 subpoena; or

18 (2) a law enforcement officer obtains a warrant; or

19 (3) the governmental entity obtains a court order for the
20 disclosure under subsection f. of this section; or

21 (4) the governmental entity obtains the consent of the
22 subscriber or customer to the disclosure.

23 A governmental entity receiving records or information pursuant
24 to this subsection is not required to provide notice to the
25 customer or subscriber.

26 f. A court order for disclosure under subsections b. or e. of
27 this section shall be issued only if the governmental entity shows
28 that there is probable cause to believe the contents of a wire or
29 electronic communication, or the records or other information
30 sought, are relevant to a legitimate law enforcement inquiry. A
31 court issuing an order pursuant to this section, on a motion made
32 promptly by a service provider, may quash or modify the order if
33 the information or records requested are unusually voluminous in
34 nature or compliance with the order would otherwise cause an
35 undue burden on the provider.

36 g. Notwithstanding any other provision of law to the contrary,
37 no service provider, its officers, employees, agents or other
38 specified persons shall be liable in any civil action for damages as
39 a result of providing information, facilities or assistance in
40 accordance with the terms of a court order, warrant, subpoena or
41 certification under this section.

42 24. (New section) Backup preservation.

43 a. (1) A governmental entity acting pursuant to section 23 of
44 P.L., c. (C.) (now pending before the Legislature
45 as this bill) may include in a subpoena or court order a
46 requirement that the service provider to whom the request is
47 directed create a backup copy of the contents of the electronic
48 communication sought in order to preserve those
49 communications. Without notifying the subscriber or customer of
50 the subpoena or court order, the service provider shall create the
51 backup copy as soon as practicable, consistent with its regular
52 business practices, but in no event later than within two business
53 days after receipt by the provider of the subpoena or court order
54 and shall confirm to the governmental entity that the backup

1 copy has been made.

2 (2) Notice to the subscriber or customer shall be made by the
3 governmental entity within three days after receipt of
4 confirmation that the backup copy has been made, unless the
5 notice is delayed pursuant to section 25 of P.L. , c.
6 (C.) (now pending before the Legislature as this bill).

7 (3) The service provider shall not destroy or permit the
8 destruction of the backup copy until either the delivery of the
9 information or the resolution of all proceedings, including any
10 appeals, concerning the subpoena or court order, whichever is
11 later.

12 (4) The service provider shall release the backup copy to the
13 requesting the governmental entity if, 14 days after the entity's
14 notice to the subscriber or customer, the provider has not
15 received written notice from the subscriber or customer that
16 either the subscriber or customer has filed a motion to quash the
17 subpoena or vacate the order pursuant to subsection b. of this
18 section or initiated proceedings to challenge the request of the
19 entity.

20 (5) A governmental entity may require the creation of a
21 backup copy if in its sole discretion the entity determines that
22 there is reason to believe that notification as to the existence of
23 the subpoena or court order required under section 23 of
24 P.L. , c. (C.) (now pending before the Legislature
25 as this bill), may result in destruction of or tampering with
26 evidence. This determination is not subject to challenge by the
27 subscriber, customer or service provider.

28 b. Within 14 days after notice by the governmental entity to
29 the subscriber or customer under paragraph (2) of subsection a. of
30 this section the subscriber or customer may file a motion to
31 quash the subpoena or vacate the court order, copies to be served
32 upon the entity and written notice of the challenge to be given to
33 the service provider. A motion to vacate a court order shall be
34 filed in the court which issued the order. A motion to quash a
35 subpoena shall be filed in the court which has authority to
36 enforce the subpoena. The motion or application shall contain an
37 affidavit or sworn statement stating that the applicant is a
38 customer of or subscriber to the service from which the contents
39 of electronic communications maintained for the applicant have
40 been sought and shall contain the applicant's reasons for
41 believing that the records sought are not relevant to a legitimate
42 law enforcement inquiry or that there has not been substantial
43 compliance with the provisions of sections 21 through 27 of
44 P.L. , c. , (C.)(now pending before the Legislature as
45 this bill).

46 c. Service shall be made upon the governmental entity by
47 delivering or mailing by registered or certified mail a copy of the
48 papers to the person, office or department specified in the notice
49 which the customer received pursuant to paragraph (2) of
50 subsection a. of this section.

51 d. If the court finds that the subscriber or customer has
52 properly complied with subsections b. and c. of this section, the
53 court shall order the governmental entity to file a sworn
54 response, which may be filed in camera if it includes the reasons

1 which make in camera review appropriate. If the court is unable
2 to determine the motion or application on the basis of the initial
3 allegations and responses, the court may conduct such additional
4 proceedings as it deems appropriate. All such proceedings shall
5 be completed and the motion or application decided as soon as
6 practicable after the filing of the entity's response.

7 e. If the court finds that the applicant is not the subscriber or
8 customer for whom the communications sought by the
9 governmental entity are maintained, or that there is reason to
10 believe that the law enforcement inquiry is legitimate and that
11 the communications sought are relevant to that inquiry, it shall
12 deny the motion or application and order the process enforced. If
13 the court finds that the applicant is the subscriber or customer
14 for whom the communications sought are maintained, and that
15 there is not reason to believe that the communications sought are
16 relevant to a legitimate law enforcement inquiry, or that there
17 has not been substantial compliance with the provisions of
18 sections 21 through 27 of P.L. ,c. (C.)(now pending before
19 the Legislature as this bill.), it shall order the process quashed.

20 f. A court order denying a motion or application under this
21 section shall not be deemed a final order, and no interlocutory
22 appeal may be taken therefrom. The governmental entity shall
23 have the right to appeal from an order granting a motion or
24 application under this section.

25 25. (New section) Delayed notice.

26 a. Court orders. A governmental entity acting pursuant to
27 subsection b. of section 23 of P.L. , c. (C.) (now
28 pending before the Legislature as this bill) may, where a court
29 order is sought, include in the application a request for an order
30 delaying the notification required pursuant to section 23 of
31 P.L. , c. (C.) (now pending before the Legislature
32 as this bill) for a period not to exceed 90 days. The court shall
33 grant the request if there is reason to believe that notification of
34 the existence of the court order may have an adverse result as
35 defined in subsection f. of this section .

36 b. Subpoenas. A governmental entity acting pursuant to
37 section 23 of P.L. , c. (C.) (now pending before
38 the Legislature as this bill) may, where an administrative
39 subpoena authorized by a federal or State statute or grand jury or
40 trial subpoena is used, delay the notification required pursuant to
41 subsection b. of section 23 of P.L. , c. (C.) (now
42 pending before the Legislature as this bill) for a period not to
43 exceed 90 days upon the execution of a written certification of a
44 supervisory official that there is reason to believe that
45 notification of the existence of the subpoena may have an
46 adverse result as defined in subsection f. of this section. The
47 governmental entity shall maintain a true copy of a certification
48 under this subsection.

49 c. Extensions of the delay of notification provided for in
50 subsections a. and b. of this section of up to 90 days each may be
51 granted by the court upon request or by certification by a
52 supervisory official in the case of a subpoena.

53 d. Upon expiration of the period of delay of notification, or,
54 where applicable upon expiration of the final extension of the

1 period of delay of notification, the governmental entity shall
2 serve upon, or deliver by registered or first class mail to, the
3 customer or subscriber a copy of the process or request together
4 with notice which:

5 (1) states with reasonable specificity the nature of the law
6 enforcement inquiry; and

7 (2) informs the customer or subscriber:

8 (a) that information maintained for the customer or subscriber
9 by the provider named in the process or request was supplied to
10 or requested by the governmental entity and the date on which
11 the supplying or request took place;

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

13 (c) the identity of the supervisory official or the court which
14 made the certification or determination pursuant to which that
15 delay was made; and

16 (d) the statutory provision authorizing the delay.

17 e. A governmental entity acting pursuant to section 23 of
18 P.L. , c. (C.) (now pending before the Legislature
19 as this bill), when it is not required to notify the subscriber or
20 customer, or when it may delay notice pursuant to this section,
21 may apply to a court for an order commanding a service provider
22 to whom a warrant, subpoena or court order is directed, not to
23 notify any other person of the existence of the warrant, subpoena
24 or court order for such period as the court deems appropriate.
25 The court shall enter the order if there is reason to believe that
26 notification of the existence of the warrant, subpoena or court
27 order may have an adverse result as defined in subsection f. of
28 this section.

29 f. An adverse result is:

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

31 (2) flight from prosecution;

32 (3) destruction of or tampering with evidence;

33 (4) intimidation of potential witnesses; or

34 (5) other serious jeopardy to an investigation or undue delay of
35 a trial.

36 g. As used in this section, the term "supervisory official"
37 means the administrative or law enforcement officer in charge of
38 the investigation or the prosecuting attorney or assistant
39 prosecuting attorney.

40 26. (New section) Cost reimbursement.

41 a. Except as otherwise provided in subsection c. of this
42 section, a governmental entity obtaining the contents of
43 communications, records or other information under sections 22,
44 23 or 24 of P.L. , c. (C.) (now pending before the
45 Legislature as this bill) shall reimburse the person or provider for
46 such costs as are reasonably necessary and which have been
47 directly incurred in searching for, assembling, reproducing and
48 otherwise providing the information. Reimbursable costs shall
49 include, but shall not be limited to, any costs due to necessary
50 disruption of normal operations of any electronic communication
51 service or remote computing service in which the information
52 may be stored.

53 b. The amount of the reimbursement provided for in subsection
54 a. of this section shall be as mutually agreed upon by a

1 governmental entity and the service provider. In the absence of
2 agreement, reimbursement shall be determined by the court
3 which issued the order for production of the information or, if no
4 court order was issued, then by the court before which a criminal
5 prosecution relating to the information would be brought.

6 c. The requirement of subsection a. of this section does not
7 apply with respect to records or other information maintained by
8 a communication common carrier which relates to telephone toll
9 records and telephone listings obtained under section 23 of
10 P.L. , c. (C.) (now pending before the Legislature
11 as this bill). The court may, however, order reimbursement as
12 described in subsection a. of this section if the court determines
13 the information required is voluminous or otherwise causes an
14 undue burden on the provider.

15 27. (New section) Civil action.

16 a. Except as provided in subsection g. of section 23 of
17 P.L. , c. (C.) (now pending before the Legislature
18 as this bill), any service provider, subscriber or customer
19 aggrieved by any violation of sections 21, 22, 23, 24 or 25 of
20 P.L. , c. (C.) (now pending before the Legislature
21 as this bill) may recover, in a civil action, such relief as may be
22 appropriate from the person or entity which knowingly or
23 purposefully engaged in the conduct constituting the violation.

24 b. In a civil action under this section, appropriate relief may
25 include:

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

28 (2) damages under subsection c. of this section; and

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

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

36 d. A civil action under this section may not be commenced
37 later than two years after the date upon which the claimant first
38 discovered or had a reasonable opportunity to discover the
39 violation.

40 28. (New section) It shall be a complete defense to any civil
41 or criminal action brought pursuant to sections 21, 22, 23, 24, 25
42 and 27 of P.L. , c. (C.) (now pending before the
43 Legislature as this bill) that the person made good faith reliance
44 on:

45 a. a court warrant or order, a grand jury or trial subpoena, a
46 legislative authorization or a statutory authorization;

47 b. a request of an investigative or law enforcement officer
48 under section 13 of P.L.1968, c.409 (C.2A:156A-13); or

49 c. a good faith determination that section 4 of P.L.1968, c.409
50 (C.2A:156A-4) permitted the conduct which is the subject of the
51 complaint.

52 29. (New section) Exclusivity of remedies.

53 The remedies and sanctions described in sections 21 and 27 of
54 P.L. , c. (C.) (now pending before the Legislature

1 as this bill) are the only judicial remedies and sanctions for
2 nonconstitutional violations of sections 21, 22, 23, 24 and 25 of
3 P.L., c.(C.) (now pending before the Legislature
4 as this bill).

5 30. This act shall take effect immediately and shall expire on
6 July 1, 1994.

7

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STATEMENT

10

11 In 1986, the Federal Electronic Surveillance Act was amended
12 to include "electronic communication" as a protected form of
13 communications. Previously, the statute had afforded protection
14 to "wire" and "oral" communications but not to "electronic"
15 communications. A provision in the federal statute made the
16 prohibition against intercepting electronic communications
17 applicable to the states as of October 21, 1988. Consequently,
18 since that time, New Jersey law enforcement officers have not
19 been permitted to intercept electronic communications.

20 The purpose of the proposed amendments to the New Jersey
21 Wiretapping and Electronic Surveillance Control Act is to expand
22 the scope of permissible interceptions under the New Jersey
23 statute to include electronic communications.

24 The capacity to intercept electronic communications will be a
25 significant aid to law enforcement authorities in the ongoing
26 battle against organized crime and narcotics traffickers. One of
27 the forms of electronic communication which the amendments
28 include is the digital or voice transmission to a beeper (pager).
29 At the present time, the interception of such transmissions is
30 impermissible. Persons involved in organized crime and narcotics
31 trafficking rely heavily on the use of such beepers (paggers) to
32 conduct their illegal activities. Therefore, the ability to
33 intercept such communications will significantly assist New
34 Jersey law enforcement personnel in the ongoing war against
35 organized crime and drug dealers.

36

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40 Amends and supplements the "New Jersey Wiretapping and
41 Electronic Surveillance Act."

ASSEMBLY, No. 130
STATE OF NEW JERSEY

INTRODUCED JUNE 15, 1992

By Assemblywoman CRECCO

1 **AN ACT** concerning wiretapping and electronic surveillance,
2 amending and supplementing P.L. 1968, c.409.

3

4 BE IT ENACTED *by the Senate and General Assembly of the*
5 *State of New Jersey:*

6 1. Section 2 of P.L. 1968, c.409 (C.2A:156A-2) is amended to
7 read as follows:

8 2. As used in this act:

9 a. "Wire communication" means any [communication] aural
10 transfer made in whole or in part through the use of facilities for
11 the transmission of communications by the aid of wire, cable or
12 other like connection between the point of origin and the point of
13 reception, including the use of such connection in a switching
14 station, furnished or operated by [a telephone, telegraph or radio
15 company for hire as a communication common carrier] any person
16 engaged in providing or operating such facilities for the
17 transmission of intrastate, interstate or foreign communication.
18 "Wire communication" includes any electronic storage of such
19 communication, and the radio portion of a cordless telephone
20 communication that is transmitted between the cordless
21 telephone handset and the base unit;

22 b. "Oral communication" means any oral communication
23 uttered by a person exhibiting an expectation that such
24 communication is not subject to interception under circumstances
25 justifying such expectation, but does not include any electronic
26 communication;

27 c. "Intercept" means the aural or other acquisition of the
28 contents of any wire, electronic or oral communication through
29 the use of any electronic, mechanical, or other device;

30 d. ["Intercepting device"] "Electronic, mechanical or other
31 device" means any device or apparatus, including an induction
32 coil, that can be used to intercept a wire, electronic or oral
33 communication other than;

34 (1) Any telephone or telegraph instrument, equipment or
35 facility, or any component thereof, furnished to the subscriber or
36 user by a [communication common carrier] provider of wire or
37 electronic communication service in the ordinary course of its
38 business and being used by the subscriber or user in the ordinary
39 course of its business; or [being used by a communication common
40 carrier] furnished by such subscriber or user for connection to the
41 facilities of such service and used in the ordinary course of its
42 business; or being used by a provider of wire or electronic
43 communication service in the ordinary course of its business, or
44 by an investigative or law enforcement officer in the ordinary
45 course of his duties; or

EXPLANATION--Matter enclosed in bold-faced brackets [thus] in the
above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

- 1 (2) A hearing aid or similar device being used to correct
2 subnormal hearing to not better than normal;
- 3 e. "Person" means that term as defined in R.S.1:1-2 and
4 includes any officer or employee of the State or of a political
5 subdivision thereof;
- 6 f. "Investigative or law enforcement officer" means any
7 officer of the State of New Jersey or of a political subdivision
8 thereof who is empowered by law to conduct investigations of, or
9 to make arrests for, any offense enumerated in section 8 of [this
10 act] P.L.1968, c.409 (C.2A:156A-8) and any attorney authorized
11 by law to prosecute or participate in the prosecution of any such
12 offense;
- 13 g. "Contents," when used with respect to any wire, electronic
14 or oral communication, includes any information concerning the
15 identity of the parties to such communication or the existence,
16 substance, purport, or meaning of that communication;
- 17 h. "Court of competent jurisdiction" means the Superior Court;
- 18 i. "Judge," when referring to a judge authorized to receive
19 applications for, and to enter, orders authorizing interceptions of
20 wire, electronic or oral communications, means one of the
21 several judges of the Superior Court to be designated from time
22 to time by the Chief Justice of the Supreme Court to receive
23 applications for, and to enter, orders authorizing interceptions of
24 wire, electronic or oral communications pursuant to this act;
- 25 j. "Communication common carrier" means any person
26 engaged as a common carrier for hire, in intrastate, interstate or
27 foreign communication by wire or radio or in intrastate,
28 interstate or foreign radio transmission of energy; but a person
29 engaged in radio broadcasting shall not, while so engaged, be
30 deemed a common carrier;
- 31 k. "Aggrieved person" means a person who was a party to any
32 intercepted wire, electronic or oral communication or a person
33 against whom the interception was directed[.];
- 34 l. "In-progress trace" means the determination of the origin of
35 a telephonic communication to a known telephone during an
36 interception[.];
- 37 m. "Electronic communication" means any transfer of signs,
38 signals, writing, images, sounds, data, or intelligence of any
39 nature transmitted in whole or in part by a wire, radio,
40 electromagnetic, photoelectric or photo-optical system that
41 affects interstate, intrastate or foreign commerce, but does not
42 include:
- 43 (1) Any wire or oral communication;
44 (2) Any communication made through a tone-only paging
45 device; or
46 (3) Any communication from a tracking device;
- 47 n. "User" means any person or entity who:
48 (1) Uses an electronic communication service; and
49 (2) Is duly authorized by the provider of such service to engage
50 in such use;
- 51 o. "Electronic communication system" means any wire, radio,
52 electromagnetic, photo-optical or photoelectronic facilities for
53 the transmission of electronic communications, and any computer
54 facilities or related electronic equipment for the electronic

- 1 storage of such communications;
2 p. "Electronic communication service" means any service
3 which provides to the users thereof the ability to send or receive
4 wire or electronic communications;
5 q. "Electronic storage" means:
6 (1) Any temporary, intermediate storage of a wire or
7 electronic communication incidental to the electronic
8 transmission thereof; and
9 (2) Any storage of such communication by an electronic
10 communication service for purpose of backup protection of the
11 communication;
12 r. "Readily accessible to the general public" means, with
13 respect to a radio communication, that such communication is
14 not:
15 (1) Scrambled or encrypted;
16 (2) Transmitted using modulation techniques whose essential
17 parameters have been withheld from the public with the intention
18 of preserving the privacy of such communication;
19 (3) Carried on a subcarrier or other signal subsidiary to a radio
20 transmission;
21 (4) Transmitted over a communication system provided by a
22 common carrier, unless the communication is a tone-only paging
23 system communication; or
24 (5) Transmitted on frequencies allocated under part 25,
25 subpart D, E, or F of part 74, or part 94 of the Rules of the
26 Federal Communications Commission, unless, in the case of a
27 communication transmitted on a frequency allocated under part
28 74 that is not exclusively allocated to broadcast auxiliary
29 services, the communication is a two-way voice communication
30 by radio;
31 s. "Remote computing service" means the provision to the
32 public of computer storage or processing services by means of an
33 electronic communication system;
34 t. "Aural transfer" means a transfer containing the human
35 voice at any point between and including the point of origin and
36 the point of reception;
37 u. "Tracking device" means an electronic or mechanical
38 device which permits the tracking of the movement of a person
39 or device.
40 (cf: P.L.1978, c. 51, s.1)
41 2. Section 3 of P.L. 1968, c.409 (C.2A:156A-3) is amended to
42 read as follows:
43 3. Except as otherwise specifically provided in this act, any
44 person who:
45 a. Purposely intercepts, endeavors to intercept, or procures
46 any other person to intercept or endeavor to intercept any wire,
47 electronic or oral communication; or
48 b. Purposely discloses or endeavors to disclose to any other
49 person the contents of any wire, electronic or oral
50 communication, or evidence derived therefrom, knowing or
51 having reason to know that the information was obtained through
52 the interception of a wire, electronic or oral communication; or
53 c. Purposely uses or endeavors to use the contents of any wire,
54 electronic or oral communication, or evidence derived therefrom,

1 knowing or having reason to know, that the information was
2 obtained through the interception of a wire, electronic or oral
3 communication;

4 shall be guilty of a crime of the third degree. Subsections b.
5 and c. of this section shall not apply to the contents of any wire,
6 electronic or oral communication, or evidence derived therefrom,
7 that has become common knowledge or public information.

8 (cf: P.L.1989, c.85, s.1)

9 3. Section 4 of P.L.1968, c.409 (C.2A:156A-4) is amended to
10 read as follows:

11 4. It shall not be unlawful under this act for:

12 a. An operator of a switchboard, or an officer, agent or
13 employee of a [communication common carrier] provider of wire
14 or electronic communication service, whose facilities are used in
15 the transmission of a wire or electronic communication, to
16 intercept, disclose or use that communication in the normal
17 course of his employment while engaged in any activity which is a
18 necessary incident to the rendition of his service or to the
19 protection of the rights or property of the [carrier of such
20 communication] provider of that service. No [communication
21 common carrier] provider of wire or electronic communication
22 service shall utilize service observing or random monitoring
23 except for mechanical or service quality control checks;

24 b. Any investigative or law enforcement officer to intercept a
25 wire, electronic or oral communication, where such officer is a
26 party to the communication or where another officer who is a
27 party to the communication requests or requires him to make
28 such interception;

29 c. Any person acting at the direction of an investigative or law
30 enforcement officer to intercept a wire, electronic or oral
31 communication, where such person is a party to the
32 communication or one of the parties to the communication has
33 given prior consent to such interception; provided, however, that
34 no such interception shall be made unless the Attorney General or
35 his designee or a county prosecutor within his authority
36 determines that there exists a reasonable suspicion that evidence
37 of criminal conduct will be derived from such interception; [or]

38 d. A person not acting under color of law to intercept a wire,
39 electronic or oral communication, where such person is a party to
40 the communication or one of the parties to the communication
41 has given prior consent to such interception unless such
42 communication is intercepted or used for the purpose of
43 committing any criminal or tortious act in violation of the
44 Constitution or laws of the United States or of this State or for
45 the purpose of committing any other injurious act. The fact that
46 such person is the subscriber to a particular telephone does not
47 constitute consent effective to authorize interception of
48 communications among parties not including such person on that
49 telephone. Any person who unlawfully intercepts or uses such
50 communication as provided in this paragraph shall be subject to
51 the civil liability established in section 24 of [this act] P.L.1968,
52 c.409 (C.2A:156A-24), in addition to any other criminal or civil
53 liability imposed by law;

54 e. Any person to intercept or access an electronic

1 communication made through an electronic communication
2 system that is configured so that such electronic communication
3 is readily accessible to the general public;

4 f. Any person to intercept any radio communication which is
5 transmitted:

6 (1) by any station for the use of the general public, or that
7 relates to ships, aircraft, vehicles, or persons in distress;

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

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

14 (4) by any marine or aeronautical communications system;

15 g. Any person to engage in any conduct which:

16 (1) is prohibited by section 633 of the Communications Act of
17 1934; or

18 (2) is excepted from the application of section 705(a) of the
19 Communications Act of 1934 by section 705(b) of that Act;

20 h. Any person to intercept any wire or electronic
21 communication the transmission of which is causing harmful
22 interference to any lawfully operating station or consumer
23 electronic equipment, to the extent necessary to identify the
24 source of such interference; or for other users of the same
25 frequency to intercept any radio communication made through a
26 system that utilizes frequencies monitored by individuals engaged
27 in the provision or the use of such system, if such communication
28 is not scrambled or encrypted; or

29 i. A provider of wire or electronic communication service to
30 record the fact that a wire or electronic communication was
31 initiated or completed in order to protect such provider, another
32 provider furnishing service toward the completion of the wire or
33 electronic communication, or a user of that service, from
34 fraudulent, unlawful or abusive use of such service.

35 (cf: P.L.1978, c.51, s.2).

36 4. Section 5 of P.L.1968, c.409 (C.2A:156A-5) is amended to
37 read as follows:

38 5. Except as otherwise specifically provided in section 6 of
39 [this act] P.L.1968, c.409 (C.2A:156A-6), any person who:

40 a. Purposely possesses an [intercepting] electronic, mechanical
41 or other device, knowing or having reason to know that the design
42 of such device renders it primarily useful for the purpose of the
43 surreptitious interception of a wire, electronic or oral
44 communication;

45 b. Purposely sells an [intercepting] electronic, mechanical or
46 other device, knowing or having reason to know that the design of
47 such device renders it primarily useful for the purpose of the
48 surreptitious interception of a wire, electronic or oral
49 communication;

50 c. Purposely distributes an [intercepting] electronic,
51 mechanical or other device, knowing or having reason to know
52 that the design of such device renders it primarily useful for the
53 purpose of the surreptitious interception of a wire, electronic or
54 oral communication;

1 d. Purposely manufactures or assembles an [intercepting]
2 electronic, mechanical or other device, knowing or having reason
3 to know that the design of such device renders it primarily useful
4 for the purpose of the surreptitious interception of a wire,
5 electronic or oral communication; or

6 e. Purposely places in any newspaper, magazine, handbill, or
7 other publication any advertisement of any [intercepting]
8 electronic, mechanical or other device, knowing or having reason
9 to know that the design of such device renders it primarily useful
10 for the purpose of the surreptitious interception of a wire,
11 electronic or oral communication or of any [intercepting]
12 electronic, mechanical or other device where such advertisement
13 promotes the use of such device for the purpose of the
14 surreptitious interception of a wire, electronic or oral
15 communication;

16 shall be guilty of a crime of the third degree.

17 (cf: P.L.1989, c.85, s.2)

18 5. Section 6 of P.L. 1968, c.409 (C.2A:156A-6) is amended to
19 read as follows:

20 6. It shall not be unlawful under this act for:

21 a. A [communication common carrier] provider of wire or
22 electronic communication service, or an officer, agent or
23 employee of, or a person under contract with [a communication
24 common carrier, in the usual course of the communication
25 common carrier's business] such a provider of wire or electronic
26 communication service in the normal course of the business of
27 providing that wire or electronic communication service; or

28 b. A person under contract with the United States, a state or a
29 political subdivision thereof, or an officer, agent or employee of
30 a state or a political subdivision thereof; to possess, sell,
31 distribute, manufacture or assemble any [intercepting] electronic,
32 mechanical or other device, while acting in furtherance of the
33 appropriate activities of the United States, a state or a political
34 subdivision thereof or a [communication common carrier]
35 provider of wire or electronic communication service.

36 (cf: P.L.1975, c. 131, s.3)

37 6. Section 7 of P.L.1968, c.409 (C.2A:156A-7) is amended to
38 read as follows:

39 7. Any [intercepting] electronic, mechanical or other device
40 possessed, used, sent, distributed, manufactured, or assembled in
41 violation of this act [is hereby declared to be a nuisance and] may
42 be seized and forfeited to the State pursuant to chapter 64 of
43 Title 2C of the New Jersey Statutes.

44 (cf: P.L.1968, c.409, s.7)

45 7. Section 8 of P.L.1968, c.409 (C.2A:156A-8) is amended to
46 read as follows:

47 8. The Attorney General, [a] county prosecutor [or with the
48 approval of the Attorney General, except in those investigations
49 directly involving possible misconduct by officials and employees
50 of the Department of Law and Public Safety, the chairman of the
51 State Commission of Investigation when authorized by a majority
52 of the members of that commission,] or a person designated to
53 act for such an official and to perform his duties in and during his
54 actual absence or disability, may authorize, in writing, an ex

1 parte application to a judge designated to receive the same for an
2 order authorizing the interception of a wire, or electronic or oral
3 communication by the investigative or law enforcement officers
4 or agency having responsibility for an investigation when such
5 interception may provide evidence of the commission of the
6 offense of murder, kidnapping, gambling, robbery, bribery, a
7 violation of paragraph (1) or (2) of subsection b. of N.J.S.2C:12-1,
8 a violation of N.J.S.2C:21-19 punishable by imprisonment for
9 more than one year, terroristic threats, violations of
10 N.J.S.2C:35-3, N.J.S.2C:35-4 and N.J.S.2C:35-5, violations of
11 sections 112 through 116, inclusive, of the "Casino Control Act,"
12 P.L.1977, c.110 (C.5:12-112 through 5:12-116), arson, burglary,
13 theft and related offenses punishable by imprisonment for more
14 than one year, escape, forgery, alteration of motor vehicle
15 identification numbers, unlawful manufacture, purchase, use, or
16 transfer of firearms, unlawful possession or use of destructive
17 devices or explosives, racketeering or a violation of subsection g.
18 of N.J.S.2C:5-2, leader of organized crime, organized criminal
19 activity directed toward the unlawful transportation, storage,
20 disposal, discharge, release, abandonment or disposition of any
21 harmful, hazardous, toxic, destructive, or polluting substance,
22 violations of subsection b. of N.J.S.2C:24-4 or any conspiracy to
23 commit any of the foregoing offenses or which may provide
24 evidence aiding in the apprehension of the perpetrator or
25 perpetrators of any of the foregoing offenses.

26 (cf: P.L.1989, c.85, s.3)

27 8. Section 9 of P.L.1968, c.409 (C.2A:156A-9) is amended to
28 read as follows:

29 9. Each application for an order of authorization to intercept a
30 wire, electronic or oral communication shall be made in writing
31 upon oath or affirmation and shall state:

32 a. The authority of the applicant to make such application;

33 b. The identity and qualifications of the investigative or law
34 enforcement officers or agency for whom the authority to
35 intercept a wire, electronic or oral communication is sought and
36 the identity of whoever authorized the application.

37 c. A particular statement of the facts relied upon by the
38 applicant, including: (1) The identity of the particular person, if
39 known, committing the offense and whose communications are to
40 be intercepted; (2) The details as to the particular offense that
41 has been, is being, or is about to be committed; (3) The particular
42 type of communication to be intercepted; and a showing that
43 there is probable cause to believe that such communication will
44 be communicated on the wire or electronic communication
45 [facility] facilities involved or at the particular place where the
46 oral communication is to be intercepted; (4) [The] Except as
47 provided in subsection g. of this section, the character and
48 location of the particular wire or electronic communication
49 facilities involved or the particular place where the oral
50 communication is to be intercepted; (5) A statement of the period
51 of time for which the interception is required to be maintained; if
52 the character of the investigation is such that the authorization
53 for interception should not automatically terminate when the
54 described type of communication has been first obtained, a

1 particular statement of facts establishing probable cause to
2 believe that additional communications of the same type will
3 occur thereafter; (6) A particular statement of facts showing that
4 other normal investigative procedures with respect to the offense
5 have been tried and have failed or reasonably appear to be
6 unlikely to succeed if tried or to be too dangerous to employ;

7 d. Where the application is for the renewal or extension of an
8 order, a particular statement of facts showing the results thus far
9 obtained from the interception, or a reasonable explanation of
10 the failure to obtain such results;

11 e. A complete statement of the facts concerning all previous
12 applications, known to the individual authorizing and to the
13 individual making the application, made to any court for
14 authorization to intercept a wire, electronic or oral
15 communication involving any of the same facilities or places
16 specified in the application or involving any person whose
17 communication is to be intercepted, and the action taken by the
18 court on each such application; and

19 f. Such additional testimony or documentary evidence in
20 support of the application as the judge may require.

21 g. An application need not meet the requirements of paragraph
22 (4) of subsection c. of this section if:

23 (1) with respect to the application for an interception of an
24 oral communication:

25 (a) the application is approved by the Attorney General or
26 county prosecutor or a person designated to act for such an
27 official and to perform his duties in and during his actual absence
28 or disability; and

29 (b) the application contains a full and complete statement as
30 to why specification is not practical and identifies the person
31 committing the offense and whose communications are to be
32 intercepted; and

33 (c) the judge finds that such specification is not practical.

34 (2) with respect to the application for an interception of a
35 wire or electronic communication:

36 (a) the application is approved by the Attorney General or
37 county prosecutor or a person designated to act for such an
38 official and to perform his duties in and during his actual absence
39 or disability; and

40 (b) the application identifies the person believed to be
41 committing the offense and whose communications are to be
42 intercepted and the applicant makes a showing of a purpose, on
43 the part of that person, to thwart interception by changing
44 facilities; and

45 (c) the judge finds that such purpose has been adequately
46 shown.

47 An interception of a communication under an order issued in
48 conformity with this subsection shall not begin until the facilities
49 from which, or the place where, the communication is to be
50 intercepted is ascertained by the person implementing the
51 interception order. A provider of wire or electronic
52 communication service that has received an order as provided for
53 in this subsection may make a motion that the court modify or
54 quash the order on the ground that the provider's assistance with

1 respect to the interception cannot be performed in a timely or
2 reasonable fashion. The court upon notice to the Attorney
3 General or county prosecutor shall decide such a motion
4 expeditiously.

5 (cf: P.L.1975, c.131, s.5)

6 9. Section 10 of P.L.1968, c.409 (C.2A:156A-10) is amended to
7 read as follows:

8 10. Upon consideration of an application, the judge may enter
9 an ex parte order, as requested or as modified, authorizing the
10 interception of a wire, electronic or oral communication, if the
11 court determines on the basis of the facts submitted by the
12 applicant that there is or was probable cause for belief that:

13 a. The person whose communication is to be intercepted is
14 engaging or was engaged over a period of time as a part of a
15 continuing criminal activity or is committing, has or had
16 committed or is about to commit an offense as provided in
17 section 8 of [this act] P.L.1968, c.409 (C.2A:156A-8);

18 b. Particular communications concerning such offense may be
19 obtained through such interception;

20 c. Normal investigative procedures with respect to such
21 offense have been tried and have failed or reasonably appear to
22 be unlikely to succeed if tried or to be too dangerous to employ;

23 d. Except in the case of an application found to meet the
24 requirements of subsection g. of section 9 of P.L.1968, c.409
25 (C.2A:156A-9), [The] the facilities from which, or the place
26 where, the wire, electronic or oral communications are to be
27 intercepted, are or have been used, or are about to be used, in
28 connection with the commission of such offense, or are leased to,
29 listed in the name of, or commonly used by, such individual;

30 e. The investigative or law enforcement officers or agency to
31 be authorized to intercept the wire, electronic or oral
32 communication are qualified by training and experience to
33 execute the interception sought; and

34 f. In the case of an application, other than a renewal or
35 extension, for an order to intercept a communication of a person
36 or on a facility which was the subject of a previous order
37 authorizing interception, the application is based upon new
38 evidence or information different from and in addition to the
39 evidence or information offered to support the prior order,
40 regardless of whether such evidence was derived from prior
41 interceptions or from other sources.

42 As part of the consideration of an application in which there is
43 no corroborative evidence offered, the judge shall inquire in
44 camera as to the identity of any informants or any other
45 additional information concerning the basis upon which the
46 investigative or law enforcement officer or agency has applied
47 for the order of authorization which the judge finds relevant in
48 order to determine if there is probable cause pursuant to this
49 section.

50 (cf: P.L.1975, c. 131, s.6)

51 10. Section 11 of P.L.1968, c.409 (C.2A:156A-11) is amended
52 to read as follows:

53 11. If the facilities from which a wire or electronic
54 communication is to be intercepted are public, no order shall be

1 issued unless the court, in addition to the matters provided in
2 section 10 [above] of P.L.1968, c.409 (C.2A:156A-10), determines
3 that there is a special need to intercept wire or electronic
4 communications over such facilities.

5 If the facilities from which, or the place where, the wire,
6 electronic or oral communications are to be intercepted are being
7 used, or are about to be used, or are leased to, listed in the name
8 of, or commonly used by, a licensed physician, a licensed
9 practicing psychologist, an attorney-at-law, a practicing
10 clergyman, or a newspaperman, or is a place used primarily for
11 habitation by a husband and wife, no order shall be issued unless
12 the court, in addition to the matters provided in section 10
13 [above] of P.L.1968, c.409 (C.2A:156A-10), determines that there
14 is a special need to intercept wire, electronic or oral
15 communications over such facilities or in such places. Special
16 need as used in this section shall require in addition to the
17 matters required by section 10 of [this act] P.L.1968, c.409
18 (C.2A:156A-10), a showing that the licensed physician, licensed
19 practicing psychologist, attorney-at-law, practicing clergyman or
20 newspaperman is personally engaging in or was engaged in over a
21 period of time as a part of a continuing criminal activity or is
22 committing, has or had committed or is about to commit an
23 offense as provided in section 8 of [the act] P.L.1968, c.409
24 (C.2A:156A-8) or that the public facilities or the place used
25 primarily for habitation by a husband and wife are being regularly
26 used by someone who is personally engaging in or was engaged in
27 over a period of time as a part of a continuing criminal activity
28 or is committing, has or had committed or is about to commit
29 such an offense. No otherwise privileged wire, electronic or oral
30 communication intercepted in accordance with, or in violation of,
31 the provisions of this act, shall lose its privileged character.

32 (cf: P.L.1978, c. 51, s.4)

33 11. Section 12 of P.L.1968, c.409 (C.2A:156A-12) is amended
34 to read as follows:

35 12. Each order authorizing the interception of any wire,
36 electronic or oral communication shall state:

- 37 a. The judge is authorized to issue the order;
- 38 b. The identity of, or a particular description of, the person, if
39 known, whose communications are to be intercepted;
- 40 c. The character and location of the particular communication
41 facilities as to which, or the particular place of the
42 communication as to which, authority to intercept is granted, or,
43 in the case of an application meeting the requirements of
44 subsection g. of section 9 of P.L.1968, c.409 (C.2A:156A-9) that
45 specification is not practical or that the purpose to thwart
46 interception by changing facilities has been shown;
- 47 d. A particular description of the type of the communication
48 to be intercepted and a statement of the particular offense to
49 which it relates;
- 50 e. The identity of the investigative or law enforcement
51 officers or agency to whom the authority to intercept a wire,
52 electronic or oral communication is given and the identity of
53 whoever authorized the application; and
- 54 f. The period of time during which such interception is

1 authorized, including a statement as to whether or not the
2 interception shall automatically terminate when the described
3 communication has been first obtained.

4 No order entered under this section shall authorize the
5 interception of any wire, electronic or oral communication for a
6 period of time in excess of that necessary under the
7 circumstances. Every order entered under this section shall
8 require that such interception begin and terminate as soon as
9 practicable and be conducted in such a manner as to minimize or
10 eliminate the interception of such communications not otherwise
11 subject to interception under this act by making reasonable
12 efforts, whenever possible, to reduce the hours of interception
13 authorized by said order. Except as provided below in subsection
14 g. of this section, no order entered under this section shall
15 authorize the interception of wire, electronic or oral
16 communications for any period exceeding 20 days. Extensions or
17 renewals of such an order may be granted for two additional
18 periods of not more than 10 days. No extension or renewal shall
19 be granted unless an application for it is made in accordance with
20 this section, and the court makes the findings required by
21 sections 10[,] and 11 of P.L.1968, c.409 (C.2A:156A-10 and
22 2A:156A-11)and by this section.

23 g. Orders entered under this section to provide evidence of
24 racketeering in violation of N.J.S.2C:41-2, leader of organized
25 crime in violation of subsection g. of N.J.S.2C:5-2, or leader of
26 narcotics trafficking network in violation of N.J.S.2C:35-3, may
27 authorize the interception of wire, electronic or oral
28 communications for a period not to exceed 30 days and extensions
29 or renewals of any order may be granted for additional periods of
30 not more than 30 days, without limitation on the number of
31 extension or renewal orders; provided, however, that orders
32 authorized pursuant to this subsection shall not exceed six months.

33 h. Whenever an order authorizing an interception is entered,
34 the order may require reports to be made to the judge who issued
35 the order showing what progress has been made toward
36 achievement of the authorized objective and the need for
37 continued interception. Such reports shall be made at such
38 intervals as the court may require.

39 An order authorizing the interception of a wire, electronic or
40 oral communication shall, upon request of the applicant, direct
41 that a [communication common carrier] provider of wire or
42 electronic communication service shall furnish the applicant
43 forthwith all information, facilities and technical assistance
44 necessary to accomplish the interception unobtrusively and with a
45 minimum of interference with the services that such [carrier]
46 provider is affording the person whose communications are to be
47 intercepted.

48 The obligation of a [communication common carrier] provider
49 of wire or electronic communication service under such an order
50 may include but is not limited to [conducting,] for good cause
51 shown, [an in-progress trace during an interception; provided,
52 however, that a county prosecutor must receive the approval of
53 the Attorney General or his designee prior to requesting an order
54 which includes an in-progress trace] the provision of technical

1 assistance and equipment and utilization of any available
2 technological features which the provider offers to its
3 subscribers. Any [communication common carrier] provider of
4 wire or electronic communication service furnishing such
5 facilities or [technical] assistance shall be compensated therefor
6 by the applicant at the prevailing rates. Said [carrier] provider
7 shall be immune from civil liability for any assistance rendered to
8 the applicant pursuant to this section.

9 (cf: P.L.1989, c.85, s.4)

10 12. Section 13 of P.L.1968, c.409 (C.2A:156A-13) is amended
11 to read as follows:

12 13. Whenever, upon informal application by an authorized
13 applicant, a judge determines there are grounds upon which an
14 order could be issued pursuant to this act, and that an emergency
15 situation exists [with respect to] that involves: a. the
16 investigation of conspiratorial activities of organized crime,
17 related to an offense designated in section 8 of [this act,]
18 P.L.1968, c.409 (C.2A:156A-8); or b. immediate danger of death
19 or serious bodily injury to any person, dictating authorization for
20 immediate interception of wire, electronic or oral communication
21 before an application for an order could with due diligence be
22 submitted to him and acted upon, the judge may grant verbal
23 approval for such interception without an order, conditioned upon
24 the filing with him, within 48 hours thereafter, of an application
25 for an order which, if granted, shall recite the verbal approval
26 and be retroactive to the time of such verbal approval. Such
27 interception shall immediately terminate when the
28 communication sought is obtained or when the application for an
29 order is denied. In the event no application for an order is made,
30 the content of any wire, electronic or oral communication
31 intercepted shall be treated as having been obtained in violation
32 of this act.

33 In the event no application is made or an application made
34 pursuant to this section is denied, the court shall require the
35 wire, tape or other recording of the intercepted communication
36 to be delivered to, and sealed by, the court and such evidence
37 shall be retained by the court in accordance with section 14 of
38 P.L.1968, c.409 (C.2A:156A-14) and the same shall not be used or
39 disclosed in any legal proceeding except in a civil action brought
40 by an aggrieved person pursuant to section 24 of P.L.1968, c.409
41 (C.2A:156A-24) or as otherwise authorized by court order.
42 Failure to effect delivery of any such wire, tape or other
43 recording shall be punishable as contempt by the court directing
44 such delivery. Evidence of verbal authorization to intercept an
45 oral, electronic or wire communication shall be a defense to any
46 charge against the investigating or law enforcement officer for
47 engaging in unlawful interception.

48 (cf: P.L.1968, c. 409, s.13)

49 13. Section 14 of P.L.1968, c.409 (C.2A:156A-14) is amended
50 to read as follows:

51 14. Any wire, electronic or oral communication intercepted in
52 accordance with this act shall, if practicable, be recorded by
53 tape, wire or other comparable method. The recording shall be
54 done in such a way as will protect it from editing or other

1 alteration. Immediately upon the expiration of the order or
2 extensions or renewals thereof, the tapes, wires or other
3 recordings shall be transferred to the judge issuing the order and
4 sealed under his direction. Custody of the tapes, wires or other
5 recordings shall be maintained wherever the court directs. They
6 shall not be destroyed except upon an order of such court and in
7 any event shall be kept for 10 years. Duplicate tapes, wires or
8 other recordings may be made for disclosure or use pursuant to
9 subsection a. of section 17 of [this act] P.L.1968, c.409
10 (C.2A:156A-17). The presence of the seal provided by this
11 section, or a satisfactory explanation for its absence, shall be a
12 prerequisite for the disclosure of the contents of any wire,
13 electronic or oral communication, or evidence derived therefrom,
14 under subsection b. of section 17 of [this act] P.L.1968, c.409
15 (C.2A:156A-17).

16 (cf: P.L.1968, c. 409, s.14)

17 14. Section 16 of P.L.1968, c.409 (C.2A:156A-16) is amended
18 to read as follows:

19 16. Within a reasonable time but not later than 90 days after
20 the termination of the period of the order or of extensions or
21 renewals thereof, or the date of the denial of an order applied for
22 under section 13 of P.L.1968, c.409 (C.2A:156A-13), the issuing
23 or denying judge shall cause to be served on the persons named in
24 the order or application, persons arrested as a result of the
25 interception of their conversations, persons indicted as a result of
26 the interception of their conversations, persons whose
27 conversations were intercepted and against whom indictments are
28 likely to be returned, persons whose conversations were
29 intercepted and who are potential witnesses to criminal
30 activities, and such other parties to the intercepted
31 communications as the judge may in his discretion determine to
32 be in the interest of justice, an inventory which shall include:

33 a. Notice of the entry of the order or the application for an
34 order denied under section 13 of P.L.1968, c.409 (C.2A:156A-13);

35 b. The date of the entry of the order or the denial of an order
36 applied for under section 13 of P.L.1968, c.409 (C.2A:156A-13);

37 c. The period of authorized or disapproved interception; and

38 d. The fact that during the period wire, electronic or oral
39 communications were or were not intercepted.

40 The court, upon filing of a motion, may in its discretion make
41 available to such persons or their attorneys for inspection such
42 portions of the intercepted communications, applications and
43 orders as the court determines to be in the interest of justice.
44 On an ex parte showing of good cause to the court the serving of
45 the inventories required by this section may be postponed.

46 (cf: P.L.1978, c. 51, s.6)

47 15. Section 17 of P.L.1968, c.409 (C.2A:156A-17) is amended
48 to read as follows:

49 17. a. Any investigative or law enforcement officer or other
50 person who, by any means authorized by this act, has obtained
51 knowledge of the contents of any wire, electronic or oral
52 communication, or evidence derived therefrom, may disclose or
53 use such contents or evidence to investigative or law
54 enforcement officers of this or another state, any of its political

1 subdivisions, or of the United States to the extent that such
2 disclosure or use is appropriate to the proper performance of [his]
3 the official duties of the officer making or receiving the
4 disclosure.

5 b. Any person who, by any means authorized by this act, has
6 obtained any information concerning any wire, electronic or oral
7 communication or evidence derived therefrom intercepted in
8 accordance with the provisions of this act, may disclose the
9 contents of such communications or derivative evidence while
10 giving testimony under oath or affirmation in any criminal
11 proceeding in any court of this or another state or of the United
12 States or before any Federal or State grand jury; provided,
13 however, that the contents of any wire, electronic or oral
14 communication may be initially disclosed solely through the use
15 of the testimony of a witness to such communication or the
16 actual recording of the communication.

17 c. The contents of any intercepted wire, electronic or oral
18 communication, or evidence derived therefrom, may otherwise be
19 disclosed or used only upon a showing of good cause before a
20 court of competent jurisdiction.

21 (cf: P.L.1975, c.131, s.9)

22 16. Section 18 of P.L.1968, c.409 (C.2A:156A-18) is amended
23 to read as follows:

24 18. When an investigative or law enforcement officer, while
25 engaged in intercepting wire, electronic or oral communications
26 in the manner authorized herein, intercepts wire, electronic or
27 oral communications relating to offenses other than those
28 specified in the order of authorization, the contents thereof, and
29 evidence derived therefrom, may be disclosed or used as provided
30 in subsection a. of section 17 of P.L.1968, c.409 (C.2A:156A-17).
31 Such contents and any evidence derived therefrom may be used
32 under subsection b. of section 17 of P.L.1968, c.409
33 (C.2A:156A-17) when authorized or approved by a judge of
34 competent jurisdiction where such judge finds on subsequent
35 application that the contents were otherwise intercepted in
36 accordance with the provisions of this act. Such application shall
37 be made as soon as practicable.

38 (cf: P.L.1968, c.409, s.18)

39 17. Section 19 of P.L.1968, c.409 (C.2A:156A-19) is amended
40 to read as follows:

41 19. Except as specifically authorized pursuant to this act any
42 person who knowingly uses or discloses the existence of an order
43 authorizing interception of a wire, electronic or oral
44 communication or the contents of, or information concerning, an
45 intercepted wire, electronic or oral communication or evidence
46 derived therefrom, is guilty of a crime of the third degree.

47 (cf: P.L.1989, c.85, s.5)

48 18. Section 20 of P.L.1968, c.409 (C.2A:156A-20) is amended
49 to read as follows:

50 20. The contents of any wire, electronic or oral
51 communication intercepted in accordance with the provisions of
52 this act, or evidence derived therefrom, shall not be disclosed in
53 any trial, hearing, or proceeding before any court of this State
54 unless not less than 10 days before the trial, hearing, or

1 proceeding the parties to the action have been served with a copy
2 of the order and accompanying application under which the
3 interception was authorized.

4 The service of inventory, order, and application required by
5 this section may be waived by the court where it finds that the
6 service is not practicable and that the parties will not be
7 prejudiced by the failure to make the service.

8 (cf: P.L.1968, c.409, s.20)

9 19. Section 21 of P.L.1968, c.409 (C.2A:156A-21) is amended
10 to read as follows:

11 21. Any aggrieved person in any trial, hearing, or proceeding in
12 or before any court or other authority of this State may move to
13 suppress the contents of any intercepted wire, electronic or oral
14 communication, or evidence derived therefrom, on the grounds
15 that:

16 a. The communication was unlawfully intercepted;

17 b. The order of authorization is insufficient on its face;

18 c. The interception was not made in conformity with the order
19 of authorization or in accordance with the requirements of
20 section 12 of P.L.1968, c.409 (C.2A:156A-12).

21 The motion shall be made at least 10 days before the trial,
22 hearing, or proceeding unless there was no opportunity to make
23 the motion or the moving party was not aware of the grounds for
24 the motion. Motions by coindictees are to be heard in a single
25 consolidated hearing.

26 The court, upon the filing of such motion by the aggrieved
27 person, shall make available to the aggrieved person or his
28 counsel for inspection such portions of the intercepted
29 communication, or evidence derived therefrom, as the court
30 determines to be in the interests of justice. If the motion is
31 granted, the entire contents of all intercepted wire, electronic or
32 oral communications obtained during or after any interception
33 which is determined to be in violation of this act under
34 subsections a., b., or c. [above] of this section, or evidence
35 derived therefrom, shall not be received in evidence in the trial,
36 hearing or proceeding.

37 In addition to any other right to appeal, the State shall have
38 the right to appeal from an order granting a motion to suppress if
39 the official to whom the order authorizing the intercept was
40 granted shall certify to the court that the appeal is not taken for
41 purposes of delay. The appeal shall be taken within the time
42 specified by the Rules of Court and shall be diligently prosecuted.
43 (cf: P.L.1978, c.51, s.7)

44 20. Section 24 of P.L.1968, c.409 (C.2A:156A-24) is amended
45 to read as follows:

46 24. Any person whose wire, electronic or oral communication
47 is intercepted, disclosed or used in violation of this act shall have
48 a civil cause of action against any person who intercepts,
49 discloses or uses or procures any other person to intercept,
50 disclose or use, such communication; and shall be entitled to
51 recover from any such person:

52 a. Actual damages, but not less than liquidated damages
53 computed at the rate of \$100.00 a day for each day of violation,
54 or \$1,000.00, whichever is higher;

- 1 b. Punitive damages; and
- 2 c. A reasonable attorney's fee and other litigation costs
- 3 reasonably incurred.
- 4 (cf: P.L.1968, c.409, s.24)
- 5 21. (New section) Unlawful access to stored communications.
- 6 a. A person is guilty of a crime of the fourth degree if he (1)
- 7 knowingly accesses without authorization a facility through which
- 8 an electronic communication service is provided or exceeds an
- 9 authorization to access that facility, and (2) thereby obtains,
- 10 alters, or prevents authorized access to a wire or electronic
- 11 communication while that communication is in electronic storage.
- 12 b. A person is guilty of a crime of the third degree if, for the
- 13 purpose of commercial advantage, private commercial gain, or
- 14 malicious destruction or damage, he (1) knowingly accesses
- 15 without authorization a facility through which an electronic
- 16 communication service is provided or exceeds an authorization to
- 17 access that facility, and (2) thereby obtains, alters, or prevents
- 18 authorized access to a wire or electronic communication while
- 19 that communication is in electronic storage.
- 20 c. This section does not apply to conduct authorized: (1) by
- 21 the person or entity providing a wire or electronic communication
- 22 service; or (2) by a user of that service with respect to a
- 23 communication of or intended for that user; or (3) by section 10
- 24 of P.L.1968, c.409 (C.2A:156A-10), section 13 of P.L.1968, c.409
- 25 (C.2A:156A-13), or by section 23 or 24 of P.L. , c. (C.)
- 26 (now pending before the Legislature as this bill).
- 27 22. (New section) Disclosure of contents.
- 28 a. (1) Except as provided in subsection b. of this section, a
- 29 person or entity providing an electronic communication service to
- 30 the public shall not knowingly divulge to any person or entity the
- 31 contents of a communication while in electronic storage by that
- 32 service; and
- 33 (2) Except as provided in subsection b. of this section, a person
- 34 or entity providing remote computing service to the public shall
- 35 not knowingly divulge to any person or entity the contents of any
- 36 communication which is carried or maintained on that service:
- 37 (a) on behalf of, and received by means of electronic
- 38 transmission from, or created by means of computer processing
- 39 of communications received by means of electronic transmission
- 40 from, a subscriber or customer of the service; and
- 41 (b) solely for the purpose of providing storage or computer
- 42 processing services to the subscriber or customer, if the provider
- 43 is not authorized to access the contents of any such
- 44 communication for the purpose of providing any services other
- 45 than storage or computer processing.
- 46 b. A person or entity may divulge the contents of a
- 47 communication:
- 48 (1) to an addressee or intended recipient of the communication
- 49 or an agent of the addressee or intended recipient;
- 50 (2) as authorized or required by section 4 of P.L.1968, c.409
- 51 (C.2A:156A-4), section 17 of P.L.1968, c.409 (C.2A:156A-17),
- 52 section 18 of P.L.1968, c.409 (C.2A:156A-18) or section 23 of
- 53 P.L. , c. (C.) (now pending before the Legislature as this
- 54 bill);

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

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

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

9 (6) to a law enforcement agency, if the contents were
10 inadvertently obtained by the provider and appear to pertain to
11 the commission of a crime.

12 23. (New section) Requirements for access.

13 a. An investigative or law enforcement officer may require
14 the disclosure by a provider of wire or electronic communication
15 service of the contents of an electronic communication that is in
16 electronic storage in an electronic communication system for 180
17 days or less, pursuant to a warrant.

18 b. An investigative or law enforcement officer may require
19 the disclosure by a provider of wire or electronic communication
20 service of the contents of an electronic communication, that has
21 been in electronic storage in an electronic communication system
22 for more than 180 days or may require the provider of a remote
23 computing service to divulge the contents of any electronic
24 communication that is held or maintained on that service as
25 provided in subsection c. of this section as follows:

26 (1) without notice to the subscriber or the customer if an
27 investigative or law enforcement officer obtains a warrant; or

28 (2) with prior notice from the investigative or law
29 enforcement officer to the subscriber or customer, if the
30 investigative or law enforcement officer uses an administrative
31 subpoena authorized by a federal or State statute or a grand jury
32 or trial subpoena or obtains a court order for the disclosure
33 pursuant to the provisions of subsection f. of this section; except
34 that delayed notice may be given pursuant to section 25 of
35 P.L. , c. (C.) (now pending before the Legislature as this
36 bill).

37 c. The provisions of subsection b. of this section shall be
38 applicable to an electronic communication that is held or
39 maintained on a remote computing service:

40 (1) on behalf of, and received by means of electronic
41 transmission from, or created by means of computer processing
42 of communications received by means of electronic transmission
43 from, a subscriber or customer of such remote computing service;
44 and

45 (2) solely for the purpose of providing storage or computer
46 processing services to the subscriber or customer, if the provider
47 is not authorized to access the contents of any such
48 communication for the purpose of providing any services other
49 than storage or computer processing.

50 d. Except as provided in subsection e. of this section, a
51 provider of wire or electronic communication service or remote
52 computing service may disclose a record or other information
53 pertaining to a subscriber or customer of the service to any
54 person other than an investigative or law enforcement officer.

1 This subsection shall not apply to the contents covered by
2 subsections a., b. or c. of this section.

3 e. A provider of wire or electronic communication service or
4 remote computing service shall disclose a record or other
5 information pertaining to a subscriber or customer of the service,
6 other than contents covered by subsections a., b., or c., of this
7 section, to an investigative or law enforcement officer under the
8 following circumstances:

9 (1) the investigative or law enforcement officer uses an
10 administrative subpoena authorized by federal or State statute or
11 a grand jury or trial subpoena; or

12 (2) the investigative or law enforcement officer obtains a
13 warrant; or

14 (3) the investigative or law enforcement officer obtains a
15 court order for the disclosure under subsection f. of this section;
16 or

17 (4) the investigative or law enforcement officer obtains the
18 consent of the subscriber or customer to the disclosure.

19 An investigative or law enforcement officer receiving records or
20 information pursuant to this subsection is not required to provide
21 notice to the customer or subscriber.

22 f. A court order for disclosure under subsections b. or e. of
23 this section shall be issued only if the investigative or law
24 enforcement officer shows that there is probable cause to believe
25 the contents of a wire or electronic communication, or the
26 records or other information sought, are relevant to a legitimate
27 investigative or law enforcement inquiry. A court issuing an
28 order pursuant to this section, on a motion made promptly by a
29 service provider, may quash or modify the order if the
30 information or records requested are unusually voluminous in
31 nature or compliance with the order would otherwise cause an
32 undue burden on the provider.

33 g. Notwithstanding any other provision of law to the contrary,
34 no service provider, its officers, employees, agents or other
35 specified persons shall be liable in any civil action for damages as
36 a result of providing information, facilities or assistance in
37 accordance with the terms of a court order, warrant, subpoena or
38 certification under this section.

39 24. (New section) Backup preservation.

40 a. (1) An investigative or law enforcement officer acting
41 pursuant to section 23 of P.L. , c. (C.) (now pending
42 before the Legislature as this bill) may include in a subpoena or
43 court order a requirement that the service provider to whom the
44 request is directed create a backup copy of the contents of the
45 electronic communication sought in order to preserve those
46 communications. Without notifying the subscriber or customer of
47 the subpoena or court order, the service provider shall create the
48 backup copy as soon as practicable, consistent with its regular
49 business practices, but in no event later than within two business
50 days after receipt by the provider of the subpoena or court order
51 and shall confirm to the investigative or law enforcement officer
52 that the backup copy has been made.

53 (2) Notice to the subscriber or customer shall be made by the
54 investigative or law enforcement officer within three days after

1 receipt of confirmation that the backup copy has been made,
2 unless the notice is delayed pursuant to section 25 of P.L. ,
3 c. (C.) (now pending before the Legislature as this bill).

4 (3) The service provider shall not destroy or permit the
5 destruction of the backup copy until either the delivery of the
6 information or the resolution of all proceedings, including any
7 appeals, concerning the subpoena or court order, whichever is
8 later.

9 (4) The service provider shall release the backup copy to the
10 requesting the investigative or law enforcement officer if, 14
11 days after the officer's notice to the subscriber or customer, the
12 provider has not received written notice from the subscriber or
13 customer that either the subscriber or customer has filed a
14 motion to quash the subpoena or vacate the order pursuant to
15 subsection b. of this section or initiated proceedings to challenge
16 the request of the officer.

17 (5) An investigative or law enforcement officer may require
18 the creation of a backup copy if in its sole discretion the officer
19 entity determines that there is reason to believe that notification
20 as to the existence of the subpoena or court order required under
21 section 23 of P.L. , c. (C.) (now pending before the
22 Legislature as this bill), may result in destruction of or tampering
23 with evidence. This determination is not subject to challenge by
24 the subscriber, customer or service provider.

25 b. Within 14 days after notice by the investigative or law
26 enforcement officer to the subscriber or customer under
27 paragraph (2) of subsection a. of this section the subscriber or
28 customer may file a motion to quash the subpoena or vacate the
29 court order, copies to be served upon the officer and written
30 notice of the challenge to be given to the service provider. A
31 motion to vacate a court order shall be filed in the court which
32 issued the order. A motion to quash a subpoena shall be filed in
33 the court which has authority to enforce the subpoena. The
34 motion or application shall contain an affidavit or sworn
35 statement stating that the applicant is a customer of or
36 subscriber to the service from which the contents of electronic
37 communications maintained for the applicant have been sought
38 and shall contain the applicant's reasons for believing that the
39 records sought are not relevant to a legitimate law enforcement
40 inquiry or that there has not been substantial compliance with the
41 provisions of sections 21 through 27 of P.L. , c. (C.)(now
42 pending before the Legislature as this bill).

43 c. Service shall be made upon the investigative or law
44 enforcement officer by delivering or mailing by registered or
45 certified mail a copy of the papers to the person, office or
46 department specified in the notice which the customer received
47 pursuant to paragraph (2) of subsection a. of this section.

48 d. If the court finds that the subscriber or customer has
49 properly complied with subsections b. and c. of this section, the
50 court shall order the investigative or law enforcement officer to
51 file a sworn response, which may be filed in camera if it includes
52 the reasons which make in camera review appropriate. If the
53 court is unable to determine the motion or application on the
54 basis of the initial allegations and responses, the court may

1 conduct such additional proceedings as it deems appropriate. All
2 such proceedings shall be completed and the motion or
3 application decided as soon as practicable after the filing of the
4 officer's response.

5 e. If the court finds that the applicant is not the subscriber or
6 customer for whom the communications sought by the
7 investigative or law enforcement officer are maintained, or that
8 there is reason to believe that the investigative or law
9 enforcement inquiry is legitimate and that the communications
10 sought are relevant to that inquiry, it shall deny the motion or
11 application and order the process enforced. If the court finds
12 that the applicant is the subscriber or customer for whom the
13 communications sought are maintained, and that there is not
14 reason to believe that the communications sought are relevant to
15 a legitimate investigative or law enforcement inquiry, or that
16 there has not been substantial compliance with the provisions of
17 this section, it shall order the process quashed.

18 f. A court order denying a motion or application under this
19 section shall not be deemed a final order, and no interlocutory
20 appeal may be taken therefrom. The investigative or law
21 enforcement officer shall have the right to appeal from an order
22 granting a motion or application under this section.

23 25. (New section) Delayed notice.

24 a. Court orders. An investigative or law enforcement officer
25 acting pursuant to subsection b. of section 23 of P.L. , c.
26 (C.) (now pending before the Legislature as this bill) may,
27 where a court order is sought, include in the application a request
28 for an order delaying the notification required pursuant to section
29 23 of P.L. , c. (C.) (now pending before the Legislature as
30 this bill) for a period not to exceed 90 days. The court shall grant
31 the request if there is reason to believe that notification of the
32 existence of the court order may have an adverse result as
33 defined in subsection f. of this section .

34 b. Subpoenas. An investigative or law enforcement officer
35 acting pursuant to section 23 of P.L. , c. (C.) (now
36 pending before the Legislature as this bill) may, where an
37 administrative subpoena authorized by a federal or State statute
38 or grand jury or trial subpoena is used, delay the notification
39 required pursuant to subsection b. of section 23 of P.L. , c.
40 (C.) (now pending before the Legislature as this bill) for a
41 period not to exceed 90 days upon the execution of a written
42 certification of a supervisory official that there is reason to
43 believe that notification of the existence of the subpoena may
44 have an adverse result as defined in subsection f. of this section.
45 The investigative or law enforcement officer shall maintain a
46 true copy of a certification under this subsection.

47 c. Extensions of the delay of notification provided for in
48 subsections a. and b. of this section of up to 90 days each may be
49 granted by the court upon request or by certification by a
50 supervisory official in the case of a subpoena.

51 d. Upon expiration of the period of delay of notification, or,
52 where applicable upon expiration of the final extension of the
53 period of delay of notification, the investigative or law
54 enforcement officer shall serve upon, or deliver by registered or

1 first class mail to, the customer or subscriber a copy of the
2 process or request together with notice which:

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

5 (2) informs the customer or subscriber:

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

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

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

14 (d) the statutory provision authorizing the delay.

15 e. An investigative or law enforcement officer acting pursuant
16 to section 23 of P.L. , c. (C.) (now pending before the
17 Legislature as this bill), when it is not required to notify the
18 subscriber or customer, or when it may delay notice pursuant to
19 this section, may apply to a court for an order commanding a
20 service provider to whom a warrant, subpoena or court order is
21 directed, not to notify any other person of the existence of the
22 warrant, subpoena or court order for such period as the court
23 deems appropriate. The court shall enter the order if there is
24 reason to believe that notification of the existence of the
25 warrant, subpoena or court order may have an adverse result as
26 defined in subsection f. of this section.

27 f. An adverse result is:

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

29 (2) flight from prosecution;

30 (3) destruction of or tampering with evidence;

31 (4) intimidation of potential witnesses; or

32 (5) other serious jeopardy to an investigation or undue delay of
33 a trial.

34 g. As used in this section, the term "supervisory official"
35 means the administrative or law enforcement officer in charge of
36 the investigation or the prosecuting attorney or assistant
37 prosecuting attorney.

38 26. (New section) Cost reimbursement.

39 a. Except as otherwise provided in subsection c. of this
40 section, an investigative or law enforcement officer obtaining the
41 contents of communications, records or other information under
42 sections 22, 23 or 24 of P.L. , c. (C.) (now pending before
43 the Legislature as this bill) shall reimburse the person or provider
44 for such costs as are reasonably necessary and which have been
45 directly incurred in searching for, assembling, reproducing and
46 otherwise providing the information. Reimbursable costs shall
47 include, but shall not be limited to, any costs due to necessary
48 disruption of normal operations of any electronic communication
49 service or remote computing service in which the information
50 may be stored.

51 b. The amount of the reimbursement provided for in subsection
52 a. of this section shall be as mutually agreed upon by an
53 investigative or law enforcement officer and the service
54 provider. In the absence of agreement, reimbursement shall be

1 determined by the court which issued the order for production of
2 the information or, if no court order was issued, then by the court
3 before which a criminal prosecution relating to the information
4 would be brought.

5 c. The requirement of subsection a. of this section does not
6 apply with respect to records or other information maintained by
7 a communication common carrier which relates to telephone toll
8 records and telephone listings obtained under section 23 of
9 P.L. , c. (C.) (now pending before the Legislature as this
10 bill). The court may, however, order reimbursement as described
11 in subsection a. of this section if the court determines the
12 information required is voluminous or otherwise causes an undue
13 burden on the provider.

14 27. (New section) Civil action.

15 a. Except as provided in subsection g. of section 23 of P.L. ,
16 c. (C.) (now pending before the Legislature as this bill),
17 any service provider, subscriber or customer aggrieved by any
18 violation of sections 21, 22, 23, 24 or 25 of P.L. , c. (C.)
19 (now pending before the Legislature as this bill) may recover, in a
20 civil action, such relief as may be appropriate from the person or
21 entity which knowingly or purposefully engaged in the conduct
22 constituting the violation.

23 b. In a civil action under this section, appropriate relief may
24 include:

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

27 (2) damages under subsection c. of this section; and

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

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

35 d. A civil action under this section may not be commenced
36 later than two years after the date upon which the claimant first
37 discovered or had a reasonable opportunity to discover the
38 violation.

39 28. (New section) It shall be a complete defense to any civil
40 or criminal action brought pursuant to sections 21, 22, 23, 24, 25
41 and 27 of P.L. , c. (C.) (now pending before the
42 Legislature as this bill) that the person made good faith reliance
43 on:

44 a. a court warrant or order, a grand jury or trial subpoena, a
45 legislative authorization or a statutory authorization;

46 b. a request of an investigative or law enforcement officer
47 under section 13 of P.L.1968, c.409 (C.2A:156A-13); or

48 c. a good faith determination that section 4 of P.L.1968, c.409
49 (C.2A:156A-4) permitted the conduct which is the subject of the
50 complaint.

51 29. (New section) Exclusivity of remedies.

52 The remedies and sanctions described in sections 21 and 27 of
53 P.L. , c. (C.) (now pending before the Legislature as this
54 bill) are the only judicial remedies and sanctions for

1 nonconstitutional violations of sections 21, 22, 23, 24 and 25 of
2 P.L. , c. (C.) (now pending before the Legislature as
3 this bill).

4 30. This act shall take effect immediately and shall expire on
5 July 1, 1994.

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STATEMENT

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10 In 1986, the Federal Electronic Surveillance Act was amended
11 to include "electronic communication" as a protected form of
12 communications. Previously, the statute had afforded protection
13 to "wire" and "oral" communications but not to "electronic"
14 communications. A provision in the federal statute made the
15 prohibition against intercepting electronic communication
16 applicable to the states as of October 21, 1988. Consequently,
17 since that time, New Jersey law enforcement officers have not
18 been permitted to intercept electronic communications.

19 The purpose of the proposed amendments to the New Jersey
20 Wiretapping and Electronic Surveillance Control Act is to expand
21 the scope of permissible interceptions under the New Jersey
22 statute to include electronic communications.

23 The capacity to intercept electronic communications will be a
24 significant aid to law enforcement authorities in the ongoing
25 battle against organized crime and narcotics traffickers. One of
26 the forms of electronic communication which the amendments
27 include is the digital or voice transmission to a beeper (pager).
28 At the present time, the interception of such transmissions is
29 impermissible. Persons involved in organized crime and narcotics
30 trafficking rely heavily on the use of such beepers (paggers) to
31 conduct their illegal activities. Therefore, the ability to
32 intercept such communications will significantly assist New
33 Jersey law enforcement personnel in the ongoing war against
34 organized crime and drug dealers.

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39 Amends and supplements the "New Jersey Wiretapping and
40 Electronic Surveillance Act."

ASSEMBLY JUDICIARY, LAW AND
PUBLIC SAFETY COMMITTEE

STATEMENT TO

ASSEMBLY COMMITTEE SUBSTITUTE FOR

ASSEMBLY, Nos. 130 and 1587

STATE OF NEW JERSEY

DATED: SEPTEMBER 21, 1992

The Assembly Judiciary, Law and Public Safety Committee reports favorably an Assembly Committee Substitute for Assembly Bills Nos. 130 and 1587.

This committee substitute would expand the scope of New Jersey's "Wiretapping and Electronic Surveillance Act," to permit the interception of "electronic communications." Electronic communications includes digital or voice transmission to a beeper, a pager, fax machines, electronic mail service and computers. Under current federal law, "electronic communications" are a form of protected communications. Consequently, at the present time, New Jersey law enforcement officers are not permitted to intercept electronic communications.

The substitute would also establish new procedures for interception under certain circumstances. Currently, any application for interception must provide the location of the particular wire or electronic communication facility or the particular place where the oral communication is to be intercepted. Under the provisions of the substitute, an application need not describe the location of the facility if: (1) the application is approved by the Attorney General or the county prosecutor; (2) the application identifies the person believed to be committing the offense and the application demonstrates a purpose on the part of the defendant to thwart interception by changing locations or in the case of an oral communication the application states that specification is not practical and identifies the person committing the offense; and (3) the court finds that conditions set forth in the application meet this criteria.

Under present law, a court may grant verbal approval for interception without an order, if the judge determines that an emergency exists in an investigation involving the conspiratorial activities of organized crime. The substitute would also permit courts to grant approvals for interception in emergency situations when there is immediate danger of death or serious bodily injury. Additionally, the substitute would supplement the existing law by making it a crime of the fourth degree to knowingly access, without authorization, a facility housing electronic communications and to obtain, alter or prevent authorized access to a wire or electronic communication. The substitute would make it a crime of the third degree to knowingly access, without authorization, a facility for the purpose of commercial advantage, private commercial gain and malicious destruction or

damage. Crimes of the fourth degree are punishable by a term of imprisonment not to exceed 18 months, a fine of \$7,500 or both. Crimes of the third degree are punishable by a term of imprisonment of three to five years, a fine of \$7,500 or both.

The substitute generally prohibits providers of remote or electronic communication services from disclosing the content of communications. The substitute does, however, outline the circumstances under which disclosure of the contents of the communications would be permitted. The substitute would also establish procedures for law enforcement officers and governmental entities with regard to obtaining disclosure of information from a provider of electronic communications service. Service providers who cooperate with law enforcement officers or governmental entities pursuant to the substitute's provisions would be granted immunity.

The substitute would also authorize a governmental entity to petition the court for an order which would require service providers to create a backup copy of the contents of the electronic communication sought in order to preserve the communication. Under the substitute, governmental entities would be required to reimburse service providers for reasonable costs associated with the retrieval of information. The substitute also establishes a civil remedy for providers, subscribers or customers seeking relief from the person or entity who violated the provisions of the "Wiretapping and Electronic Surveillance Act." It would be a complete defense to a suit brought under this provision that the person relied on a court order, a subpoena or a law enforcement officer's request.

974.201

BC01



OFFICE OF THE GOVERNOR NEWS RELEASE

CN-001
Contact:

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TRENTON, N.J. 08625

Release:

Thursday
Jan. 28, 1993

GOVERNOR FLORIO SIGNS LAW TARGETING HIGH-TECH CRIMINALS

Gives Law Enforcement Tools To Tap Electronic Communications

New Jersey's law enforcement officials will now have the legal tools to fight high-tech criminals under legislation signed today by Governor Jim Florio, aimed at rooting out the criminal use of electronic communications.

The legislation extends the state's wiretapping law to cover electronic communications such as fax, beeper and computer-to-computer transmissions. These communication tools are commonly used by drug dealers and other criminals, and police in New Jersey have been unable to get court orders to intercept these communications.

"This law is long overdue. Our first wiretap law was enacted in 1969, back when the world of drug-dealing was like the 'French Connection.' Today, criminals depend on an electronic connection," said Governor Florio. "The world of communications is changing with incredible speed and criminals are quick to seize every advantage they can get. We've got to root out drug dealers and bookies who use electronic pagers to operate from pay phones and to send coded messages to their accomplices."

Under the provisions of the bill:

- **Police can get a court order to tap any phone that a particular suspect uses.** Under current state law, the police can only get a wiretap order by specifying the phone to be tapped. Drug dealers and organized crime figures are aware that they can avoid detection by placing calls from randomly-selected public phones. Law enforcement officials will now be able to seek a court order to use a "roving bug" to tap into various public phone lines being used by criminals.
- **Emergency, oral court orders can be authorized for an interception if police can show immediate danger of death or serious injury,** instead of having to prove an organized crime conspiracy as current law requires.

WIRETAPPING FACT SHEET

- Current state wiretapping statute allow state law enforcement officials to obtain court orders to intercept telephone calls or to place a "body wire" on an informant.
- In 1986, federal law was changed to allow wiretaps of electronic communications, such as fax, beeper and computer-to-computer transmissions.
- The 1986 federal law required states to adopt comparable statutes by October, 1988. Otherwise, the state thereafter could not intercept electronic communications without authorizing state legislation. The change was not made in New Jersey.
- From 1986 through 1991, 747 court orders have been obtained to conduct wiretaps in 341 investigations. The number of court orders is higher than the number of investigations because one investigation may involve the tapping of several phones, which would result in several court orders.
- For that same period, 1,860 indictments have resulted from wiretaps in those investigations, and 70 percent of those indictments were for narcotics offenses.
- Of those 1,860 indictments, 1,306 involved narcotics offenses, 348 were gambling offenses, and the remaining 183 involved offenses for theft (61), bribery (31), racketeering (63), forgery (23), murder (17), perjury (1), kidnapping (2) and other various offenses (8).
- Of those indictments obtained within the last five years and which have been disposed of by the courts, successful prosecutions were obtained in 90 percent of the cases.
- According to the New Jersey Attorney General's Office, most illegal drug rings employ the use of electronic beepers.