

2A:156A-2 et al

LEGISLATIVE HISTORY CHECKLIST

HJSA 2A:156A-2 et al. (Reauthorizes "Wiretapping and Electronic Surveillance Control Act")

LAWS OF 1978 CHAPTER 51

Bill No. A1259

Sponsor(s) Herman and others

Date Introduced April 24, 1978

Committee: Assembly Judiciary, Law, Public Safety & Defense

Senate Judiciary

Amended during passage Yes ~~XX~~ Amendments during passage denoted by asterisks
Date of Passage: Assembly May 11, 1978
Senate June 1, 1978
Date of approval June 23, 1978

Following statements are attached if available:

Sponsor statement	Yes	XX	
Committee Statement:	Assembly	Yes	XX
	Senate	Yes	XX
Fiscal Note	XXX	No	
Veto message	XXX	No	
Message on signing	XXX	No	
Following were printed:			
Reports	XXX	No	
Hearings	XXX	No	

See:

Y3.W74/2: U.S. National Commission for the Review of Federal and
2 St 1 Laws Relating to Wiretapping and Electronic Surveillance.
Staff studies and surveys.
Washington, 1976.

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CHAPTER 51 LAWS OF N. J. 1978
APPROVED 6-23-78

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ASSEMBLY, No. 1259

STATE OF NEW JERSEY

INTRODUCED APRIL 24, 1978

By Assemblymen HERMAN, BATE, THOMPSON, MAYS, BURSTEIN, VAN WAGNER, GORMLEY, Assemblywoman SZABO, Assemblymen RAND, KERN, DOWD, HURLEY, KAVANAUGH, SMITH, STEWART, MATTHEWS and GIRGENTI

Referred to Committee on Judiciary, Law, Public Safety
and Defense

AN ACT to amend the "New Jersey Wiretapping and Electronic Surveillance Control Act," approved January 14, 1969 (P. L. 1968, c. 409).

1 BE IT ENACTED *by the Senate and General Assembly of the State*
2 *of New Jersey:*

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

3 2. As used in this act:

3A a. "Wire communication" means any communication made in
4 whole or in part through the use of facilities for the transmission
5 of communications by wire, cable or other like connection between
6 the point of origin and the point of reception furnished or operated
7 by a telephone, telegraph or radio company for hire as a commu-
8 nication common carrier;

9 b. "Oral communication" means any oral communication uttered
10 by a person exhibiting an expectation that such communication is
11 not subject to interception under circumstances justifying such
12 expectation;

13 c. "Intercept" means the aural acquisition of the contents of any
14 wire or oral communication through the use of any electronic,
15 mechanical, or other device;

16 d. "Intercepting device" means any device or apparatus, *includ-*
17 *ing an induction coil*, that can be used to intercept a wire or oral
18 communication other than

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

19 (1) Any telephone or telegraph instrument, equipment or
20 facility, or any component thereof, furnished to the subscriber or
21 user by a communication common carrier in the ordinary course of
22 its business and being used by the subscriber or user in the
23 ordinary course of its business; or being used by a communication
24 common carrier in the ordinary course of its business, or by an
25 investigative or law enforcement officer in the ordinary course of
26 his duties; or

27 (2) A hearing aid or similar device being used to correct sub-
28 normal hearing to not better than normal;

29 e. "Person" means that term as defined in R. S. 1:1-2 and in-
30 cludes any officer or employee of the State or of a political sub-
31 division thereof;

32 f. "Investigative or law enforcement officer" means any officer
33 of the State of New Jersey or of a political subdivision thereof who
34 is empowered by law to conduct investigations of, or to make
35 arrests for, any offense enumerated in section 8 of this act and any
36 attorney authorized by law to prosecute or participate in the
37 prosecution of any such offense;

38 g. "Contents," when used with respect to any wire or oral com-
39 munication, includes any information concerning the identity of the
40 parties to such communication or the existence, substance, purport,
41 or meaning of that communication;

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

43 i. "Judge," when referring to a judge authorized to receive
44 applications for, and to enter, orders authorizing interceptions of
45 wire or oral communications, means one of the several judges of
46 the Superior Court to be designated from time to time by the Chief
47 Justice of the Supreme Court to receive applications for, and to
48 enter, orders authorizing interceptions of wire or oral communica-
49 tions pursuant to this act;

50 j. "Communication common carrier" means any person engaged
51 as a common carrier for hire, in intrastate, interstate or foreign
52 communication by wire or radio or in intrastate, interstate or
53 foreign radio transmission of energy; but a person engaged in
54 radio broadcasting shall not, while so engaged, be deemed a com-
55 mon carrier;

56 k. "Aggrieved person" means a person who was a party to any
57 intercepted wire or oral communication or a person against whom
58 the interception was directed.

59 l. "*In-progress trace*" means the determination of the origin of
60 a telephonic communication to a known telephone during an inter-
61 ception.

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

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

4 a. An operator of a switchboard, or an officer, agent or employee
5 of a communication common carrier, whose facilities are used in
6 the transmission of a wire communication, to intercept, disclose or
7 use that communication in the normal course of his employment
8 while engaged in any activity which is a necessary incident to the
9 rendition of his service or to the protection of the rights or property
10 of the carrier of such communication. No communication common
11 carrier shall utilize service observing or random monitoring except
12 for mechanical or service quality control checks;

13 b. Any investigative or law enforcement officer to intercept a
14 wire or oral communication, where such officer is a party to the
15 communication or where another officer who is a party to the com-
16 munication requests or requires him to make such interception;

17 c. Any [investigative or law enforcement officer or any] person
18 acting at the direction of an investigative or law enforcement officer
19 to intercept a wire or oral communication, where such person is a
20 party to the communication or one of the parties to the communi-
21 cation has given prior consent to such interception; provided, how-
22 ever, that no such interception shall be made unless the Attorney
23 General or his designee or a county prosecutor within his authority
24 determines that there exists a reasonable suspicion that evidence
25 of criminal conduct will be derived from such interception; or

26 d. A person not acting under color of law to intercept a wire or
27 oral communication, where such person is a party to the com-
28 munication or one of the parties to the communication has given
29 prior consent to such interception unless such communication is
30 intercepted or used for the purpose of committing any criminal or
31 tortious act in violation of the Constitution or laws of the United
32 States or of this State or for the purpose of committing any other
33 injurious act. *The fact that such person is the subscriber to a*
34 *particular telephone does not constitute consent effective to au-*
35 *thorize interception of communications among parties not includ-*
36 *ing such person on that telephone. Any person who unlawfully*
37 *intercepts or uses such communication as provided in this para-*
38 *graph shall be subject to the civil liability established in section 24*
39 *of this act (C. 2A:156A-24), in addition to any other criminal or*
40 *civil liability imposed by law.*

1 3. Section 8 of P. L. 1968, c. 409 *[(C. 2A:156-8)]*
2 *(C. 2A:156A-8)* is amended to read as follows:

3 8. The Attorney General, a county prosecutor or ***with the*
 3A *approval of the Attorney General, except in those investigations*
 3B *directly involving possible misconduct by officials and employees*
 3C *of the Department of Law and Public Safety,*** the chairman of
 4 the State Commission of Investigation when authorized by a
 5 majority of the members of that commission, or a person designated
 6 to act for such an official and to perform his duties in and during
 7 his actual absence or disability, may authorize, in writing, an
 8 ex parte application to a judge designated to receive the same for
 9 an order authorizing the interception of a wire or oral communica-
 10 tion by the investigative or law enforcement officers or agency
 11 having responsibility for an investigation when such interception
 12 may provide evidence of the commission of the offense of murder,
 13 kidnapping, gambling, robbery, bribery, extortion, loansharking,
 14 ***mayhem,*** violations of section 19 of the "New Jersey Con-
 15 trolled Dangerous Substances Act," P. L. 1970, c. 226 (C.
 16 24:21-19) ***[.]*** **except possession of 84 grams or less of mari-*
 17 *huana, violations of sections 112 through 116, inclusive, of the*
 18 *"Casino Control Act," P. L. 1977, c. 110 (C. 5:12-112 through*
 19 *116),* arson, burglary, embezzlement, escape, forgery, receiving*
 20 *stolen property punishable by imprisonment for more than 1 year,*
 21 *alteration of motor vehicle identification numbers, or larceny*
 22 *punishable by imprisonment for more than 1 year, unlawful manu-*
 23 *facture, purchase, use, or transfer of firearms, or unlawful posses-*
 24 *sion or use of bombs or explosives, or any conspiracy to commit any*
 25 *of the foregoing offenses or which may provide evidence aiding in*
 26 *the apprehension of the perpetrator or perpetrators of any of the*
 27 *foregoing offenses.*

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

3 11. If the facilities from which a wire communication is to be
 4 intercepted are public, no order shall be issued unless the court,
 5 in addition to the matters provided in section 10 above, determines
 6 that there is a special need to intercept wire communications over
 7 such facilities.

8 If the facilities from which, or the place where, the wire or oral
 9 communications are to be intercepted are being used, or are about
 10 to be used, or are leased to, listed in the name of, or commonly
 11 used by, a licensed physician, a licensed practicing psychologist,
 12 an attorney-at-law, a practicing clergyman or a newspaperman
 13 or is a place used primarily for habitation by a husband and wife,
 14 no order shall be issued unless the court, in addition to the matters
 15 provided in section 10 above, determines that there is a special need

16 to intercept wire or oral communications over such facilities or in
 17 such places. Special need as used in this section shall require in
 18 addition to the matters required by section 10 of this act, a showing
 19 that the licensed physician, licensed practicing psychologist,
 20 attorney-at-law, practicing clergyman or newspaperman is person-
 21 ally engaging in or was engaged in over a period of time as a part
 22 of a continuing criminal activity or is committing, has or had
 23 committed or is about to commit an offense as provided in section 8
 24 of the act or that the public facilities *or the place used primarily for*
 25 *habitation by a husband and wife* are being regularly used by some-
 26 one who is personally engaging in or was engaged in over a period
 27 of time as a part of a continuing criminal activity or is committing,
 28 has or had committed or is about to commit such an offense. No
 29 otherwise privileged wire or oral communication intercepted in
 30 accordance with, or in violation of, the provisions of this act, shall
 31 lose its privileged character.

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

3 12. Each order authorizing the interception of any wire or oral
 4 communication shall state:

5 a. The judge is authorized to issue the order;

6 b. The identity of, or a particular description of, the person, if
 7 known, whose communications are to be intercepted;

8 c. The character and location of the particular communication
 9 facilities as to which, or the particular place of the communication
 10 as to which, authority to intercept is granted;

11 d. A particular description of the type of the communication to
 12 be intercepted and a statement of the particular offense to which
 13 it relates;

14 e. The identity of the investigative or law enforcement officers or
 15 agency to whom the authority to intercept a wire or oral communi-
 16 cation is given and the identity of whoever authorized the appli-
 17 cation; and

18 f. The period of time during which such interception is autho-
 19 rized, including a statement as to whether or not the interception
 20 shall automatically terminate when the described communication
 21 has been first obtained.

22 No order entered under this section shall authorize the inter-
 23 ception of any wire or oral communication for a period of time in
 24 excess of that necessary under the circumstances. Every order
 25 entered under this section shall require that such interception begin
 26 and terminate as soon as practicable and be conducted in such a
 27 manner as to minimize or eliminate the interception of such com-

28 munications not otherwise subject to interception under this act
 29 by making reasonable efforts, whenever possible, to reduce the
 30 hours of interception authorized by said order. In no case shall an
 31 order entered under this section authorize the interception of wire
 32 or oral communications for any period exceeding 20 days. Exten-
 33 sions or renewals of such an order may be granted for two addi-
 34 ditional periods of not more than 10 days. No extension or renewal
 35 shall be granted unless an application for it is made in accordance
 36 with this section, and the court makes the findings required by
 37 sections 10, 11 and this section.

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

44 An order authorizing the interception of a wire or oral com-
 45 munication shall, upon request of the applicant, direct that a
 46 communication common carrier shall furnish the applicant forth-
 47 with all information, facilities and technical assistance necessary to
 48 accomplish the interception unobtrusively and with a minimum of
 49 interference with the services that such carrier is affording the
 50 person whose communications are to be intercepted.

51 *The obligation of a communication common carrier under such*
 52 *an order may include but is not limited to conducting**, for good*
 53 *cause shown,** an in-progress trace during an interception **pro-*
 54 *vided, however, that a county prosecutor must receive the approval*
 55 *of the Attorney General or his designee prior to requesting an*
 56 *order which includes an in-progress trace**.* Any communication
 57 common carrier furnishing such facilities or technical assistance
 58 shall be compensated therefor by the applicant at the prevailing
 59 rates. Said carrier shall be immune from civil liability for any
 60 assistance rendered to the applicant pursuant to this section.

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

3 16. Within a reasonable time but not later than 90 days after the
 4 termination of the period of the order or of extensions or renewals
 5 thereof, or the date of the denial of an order applied for under
 6 section 13, the issuing or denying judge shall cause to be served on
 7 the [person] ~~persons~~ named in the order or application, *persons*
 8 *arrested as a result of the interception of their conversations,*
 9 *persons indicted as a result of the interception of their conversa-*
 10 *tions, persons whose conversations were intercepted and against*

11 *whom indictments are likely to be returned, persons whose con-*
 12 *versations were intercepted and who are potential witnesses to*
 13 *criminal activities, and such other parties to the intercepted com-*
 14 *munications as the judge may in his discretion determine to be in*
 15 *the interest of justice, an inventory which shall include:*

16 a. Notice of the entry of the order or the application for an order
 17 denied under section 13;

18 b. The date of the entry of the order or the denial of an order
 19 applied for under section 13;

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

21 d. The fact that during the period wire or oral communications
 22 were or were not intercepted.

23 The court, upon filing of a motion, may in its discretion make
 24 available to such [person] *persons* or [his] *their* [attorney]
 25 *attorneys* for inspection such portions of the intercepted com-
 26 munications, applications and orders as the court determines to
 27 be in the interest of justice. On an ex parte showing of good cause
 28 to the court the serving of the [inventory] *inventories* required
 29 by this section may be postponed.

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

3 21. Any aggrieved person in any trial, hearing, or proceeding in
 4 or before any court or other authority of this State may move to
 5 suppress the contents of any intercepted wire or oral communica-
 6 tion, or evidence derived therefrom, on the grounds that:

7 a. The communication was unlawfully intercepted;

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

9 c. The interception was not made in conformity with the order
 10 of authorization or in accordance with the requirements of section
 11 12.

12 The motion shall be made at least 10 days before the trial, hear-
 13 ing, or proceeding unless there was no opportunity to make the
 14 motion or the moving party was not aware of the grounds for the
 15 motion. *Motions by coindictes are to be heard in a single con-*
 16 *solidated hearing.*

17 The court, upon the filing of such motion by the aggrieved
 18 person, shall make available to the aggrieved person or his counsel
 19 for inspection such portions of the intercepted communication, or
 20 evidence derived therefrom, as the court determines to be in the
 21 interests of justice. If the motion is granted, the entire contents of
 22 all intercepted wire or oral communications obtained during or
 23 after any interception which is determined to be in violation of this
 24 act under subsections a., b., or c. above, or evidence derived there-

25 from, shall not be received in evidence in the trial, hearing or
26 proceeding.

27 In addition to any other right to appeal, the State shall have the
28 right to appeal from an order granting a motion to suppress if the
29 official to whom the order authorizing the intercept was granted
30 shall certify to the court that the appeal is not taken for purposes
31 of delay. The appeal shall be taken within the time specified by the
32 Rules of Court and shall be diligently prosecuted.

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

3 23. a. In addition to reports required to be made by applicants
4 pursuant to Federal law, all judges of the Superior Court autho-
5 rized to issue orders pursuant to this act shall make annual reports
6 on the operation of this act to the Administrative Director of the
7 Courts. The reports by the judges shall contain (1) the number
8 of applications made; (2) the number of orders issued; (3) the
9 effective periods of such orders; (4) the number and duration of
10 any renewals thereof; (5) the crimes in connection with which the
11 conversations were sought; (6) the names of the applicants; and
12 (7) such other and further particulars as the Administrative Direc-
13 tor of the Courts may require.

14 b. In addition to reports required to be made by applicants pur-
15 suant to Federal Law, the Attorney General shall make annual
16 reports on the operation of this act to the Administrative Director
17 of the Courts. The reports by the Attorney General shall contain
18 (1) the number of applications made; (2) the number of orders
19 issued; (3) the effective periods of such orders; (4) the number
20 and duration of any renewals thereof; (5) the crimes in connection
21 with which the conversations were sought; (6) the name of the
22 applicants; (7) the number of indictments resulting from each
23 application; (8) the crime or crimes which each indictment charges;
24 and (9) the disposition of each indictment.

25 c. *In addition to reports required to be made by applicants pur-*
26 *suant to Federal law, the Attorney General shall receive and main-*
27 *tain records of all interceptions authorized pursuant to section 4 b.*
28 *(C. 2A:156A-4) and shall include such information in his annual*
29 *report to the Governor and the Legislature. It shall be the obliga-*
30 *tion of all law enforcement agencies in the State to file with the*
31 *Attorney General on forms prescribed by the Attorney General in-*
32 *formation pertinent to the operation of section 4 b. The in-*
33 *formation on the forms shall include, but not be limited to (1) the name*
34 *of the investigative or law enforcement officer making the intercep-*
35 *tion; (2) the law enforcement agency employing the officer in-*

36 *involved in the interception; (3) the character of the investigation or*
 37 *activity involved; and (4) the results of such activity.*

38 **[c.] d.** In addition to reports and records otherwise required by
 39 law, the Attorney General and the county prosecutor shall main-
 40 tain records of all interceptions authorized by them pursuant to
 41 section 4 c., on forms prescribed by the Attorney General. Such
 42 records shall include the name of the person requesting the autho-
 43 rization, the reasons for the request, and the results of any
 44 authorized interception. The Attorney General shall require that
 45 copies of such records maintained by county prosecutors be filed
 46 with him periodically and he shall report annually to the Governor
 47 and Legislature on the operation of section 4 c.

48 **[d.] e.** The Chief Justice of the Supreme Court and the Attorney
 49 General shall annually report to the Governor and the Legislature
 50 on such aspects of the operation of this act as they respectively
 51 deem appropriate including any recommendations they may care
 52 to make as to legislative changes or improvements to effectuate the
 53 purposes of this act and to assure and protect individual rights.**

1 ****[8.]** **9.**** Section 28 of P. L. 1968, c. 409 is amended to
 1A read as follows:

2 28. This act shall take effect January 1, 1969 and remain in effect
 3 until July 1, **[1978]** 1983.

1 ****[9.]** **10.**** This act shall take effect immediately.

ASSEMBLY, No. 1259

STATE OF NEW JERSEY

INTRODUCED APRIL 24, 1978

By Assemblymen HERMAN, BATE, THOMPSON, MAYS, BURSTEIN, VAN WAGNER, GORMLEY, Assemblywoman SZABO, Assemblymen RAND, KERN, DOWD, HURLEY, KAVANAUGH, SMITH, STEWART, MATTHEWS and GIRGENTI

Referred to Committee on Judiciary, Law, Public Safety
and Defense

AN ACT to amend the "New Jersey Wiretapping and Electronic Surveillance Control Act," approved January 14, 1969 (P. L. 1968, c. 409).

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2 *of New Jersey:*

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2 read as follows:

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6 the point of origin and the point of reception furnished or operated
7 by a telephone, telegraph or radio company for hire as a commu-
8 nication common carrier;

9 b. "Oral communication" means any oral communication uttered
10 by a person exhibiting an expectation that such communication is
11 not subject to interception under circumstances justifying such
12 expectation;

13 c. "Intercept" means the aural acquisition of the contents of any
14 wire or oral communication through the use of any electronic,
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17 *ing an induction coil*, that can be used to intercept a wire or oral
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19 (1) Any telephone or telegraph instrument, equipment or
20 facility, or any component thereof, furnished to the subscriber or
21 user by a communication common carrier in the ordinary course of

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

22 its business and being used by the subscriber or user in the
23 ordinary course of its business; or being used by a communication
24 common carrier in the ordinary course of its business, or by an
25 investigative or law enforcement officer in the ordinary course of
26 his duties; or

27 (2) A hearing aid or similar device being used to correct sub-
28 normal hearing to not better than normal;

29 e. "Person" means that term as defined in R. S. 1:1-2 and in-
30 cludes any officer or employee of the State or of a political sub-
31 division thereof;

32 f. "Investigative or law enforcement officer" means any officer
33 of the State of New Jersey or of a political subdivision thereof who
34 is empowered by law to conduct investigations of, or to make
35 arrests for, any offense enumerated in section 8 of this act and any
36 attorney authorized by law to prosecute or participate in the
37 prosecution of any such offense;

38 g. "Contents," when used with respect to any wire or oral com-
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40 parties to such communication or the existence, substance, purport,
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43 i. "Judge," when referring to a judge authorized to receive
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45 wire or oral communications, means one of the several judges of
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47 Justice of the Supreme Court to receive applications for, and to
48 enter, orders authorizing interceptions of wire or oral communica-
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52 communication by wire or radio or in intrastate, interstate or
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54 radio broadcasting shall not, while so engaged, be deemed a com-
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57 intercepted wire or oral communication or a person against whom
58 the interception was directed.

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60 a telephonic communication to a known telephone during an inter-
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7 use that communication in the normal course of his employment
8 while engaged in any activity which is a necessary incident to the
9 rendition of his service or to the protection of the rights or property
10 of the carrier of such communication. No communication common
11 carrier shall utilize service observing or random monitoring except
12 for mechanical or service quality control checks;

13 b. Any investigative or law enforcement officer to intercept a
14 wire or oral communication, where such officer is a party to the
15 communication or where another officer who is a party to the com-
16 munication requests or requires him to make such interception;

17 c. Any [investigative or law enforcement officer or any] person
18 acting at the direction of an investigative or law enforcement officer
19 to intercept a wire or oral communication, where such person is a
20 party to the communication or one of the parties to the communi-
21 cation has given prior consent to such interception; provided, how-
22 ever, that no such interception shall be made unless the Attorney
23 General or his designee or a county prosecutor within his authority
24 determines that there exists a reasonable suspicion that evidence
25 of criminal conduct will be derived from such interception; or

26 d. A person not acting under color of law to intercept a wire or
27 oral communication, where such person is a party to the com-
28 munication or one of the parties to the communication has given
29 prior consent to such interception unless such communication is
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38 graph shall be subject to the civil liability established in section 24
39 of this act (C. 2A:156A-24), in addition to any other criminal or
40 civil liability imposed by law.

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

3 8. The Attorney General, a county prosecutor or the chairman of
4 the State Commission of Investigation when authorized by a

5 majority of the members of that commission, or a person designated
6 to act for such an official and to perform his duties in and during
7 his actual absence or disability, may authorize, in writing, an
8 ex parte application to a judge designated to receive the same for
9 an order authorizing the interception of a wire or oral communica-
10 tion by the investigative or law enforcement officers or agency
11 having responsibility for an investigation when such interception
12 may provide evidence of the commission of the offense of murder,
13 kidnapping, gambling, robbery, bribery, extortion, loansharking,
14 violations of section 19 of the "New Jersey Controlled Dangerous
15 Substances Act," P. L. 1970, c. 226 (C. 24:21-19), arson, burglary,
16 embezzlement, *escape*, forgery, receiving stolen property punish-
17 able by imprisonment for more than 1 year, alteration of motor
18 vehicle identification numbers, or larceny punishable by imprison-
19 ment for more than 1 year, unlawful manufacture, purchase, use, or
20 transfer of firearms, or unlawful possession or use of bombs or
21 explosives, or any conspiracy to commit any of the foregoing
22 offenses or which may provide evidence aiding in the apprehension
23 of the perpetrator or perpetrators of any of the foregoing offenses.

1 4. Section 11 of P. L. 1968, c. 409 (C. 2A:156A-11) is amended to
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7 such facilities.

8 If the facilities from which, or the place where, the wire or oral
9 communications are to be intercepted are being used, or are about
10 to be used, or are leased to, listed in the name of, or commonly
11 used by, a licensed physician, a licensed practicing psychologist,
12 an attorney-at-law, a practicing clergyman, or a newspaperman,
13 or is a place used primarily for habitation by a husband and wife,
14 no order shall be issued unless the court, in addition to the matters
15 provided in section 10 above, determines that there is a special need
16 to intercept wire or oral communications over such facilities or in
17 such places. Special need as used in this section shall require in
18 addition to the matters required by section 10 of this act, a showing
19 that the licensed physician, licensed practicing psychologist,
20 attorney-at-law, practicing clergyman or newspaperman is person-
21 ally engaging in or was engaged in over a period of time as a part
22 of a continuing criminal activity or is committing, has or had
23 committed or is about to commit an offense as provided in section 8
24 of the act or that the public facilities *or the place used primarily for*

25 *habitation by a husband and wife* are being regularly used by some-
26 one who is personally engaging in or was engaged in over a period
27 of time as a part of a continuing criminal activity or is committing,
28 has or had committed or is about to commit such an offense. No
29 otherwise privileged wire or oral communication intercepted in
30 accordance with, or in violation of, the provisions of this act, shall
31 lose its privileged character.

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

3 12. Each order authorizing the interception of any wire or oral
4 communication shall state:

5 a. The judge is authorized to issue the order;

6 b. The identity of, or a particular description of, the person, if
7 known, whose communications are to be intercepted;

8 c. The character and location of the particular communication
9 facilities as to which, or the particular place of the communication
10 as to which, authority to intercept is granted;

11 d. A particular description of the type of the communication to
12 be intercepted and a statement of the particular offense to which
13 it relates;

14 e. The identity of the investigative or law enforcement officers or
15 agency to whom the authority to intercept a wire or oral communi-
16 cation is given and the identity of whoever authorized the appli-
17 cation; and

18 f. The period of time during which such interception is autho-
19 rized, including a statement as to whether or not the interception
20 shall automatically terminate when the described communication
21 has been first obtained.

22 No order entered under this section shall authorize the inter-
23 ception of any wire or oral communication for a period of time in
24 excess of that necessary under the circumstances. Every order
25 entered under this section shall require that such interception begin
26 and terminate as soon as practicable and be conducted in such a
27 manner as to minimize or eliminate the interception of such com-
28 munications not otherwise subject to interception under this act
29 by making reasonable efforts, whenever possible, to reduce the
30 hours of interception authorized by said order. In no case shall an
31 order entered under this section authorize the interception of wire
32 or oral communications for any period exceeding 20 days. Exten-
33 sions or renewals of such an order may be granted for two addi-
34 tional periods of not more than 10 days. No extension or renewal
35 shall be granted unless an application for it is made in accordance
36 with this section, and the court makes the findings required by
37 sections 10, 11 and this section.

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

44 An order authorizing the interception of a wire or oral com-
45 munication shall, upon request of the applicant, direct that a
46 communication common carrier shall furnish the applicant forth-
47 with all information, facilities and technical assistance necessary to
48 accomplish the interception unobtrusively and with a minimum of
49 interference with the services that such carrier is affording the
50 person whose communications are to be intercepted.

51 *The obligation of a communication common carrier under such*
52 *an order may include but is not limited to conducting an in-progress*
53 *trace during an interception. Any communication common carrier*
54 *furnishing such facilities or technical assistance shall be compen-*
55 *sated therefor by the applicant at the prevailing rates. Said carrier*
56 *shall be immune from civil liability for any assistance rendered to*
57 *the applicant pursuant to this section.*

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

3 16. Within a reasonable time but not later than 90 days after the
4 termination of the period of the order or of extensions or renewals
5 thereof, or the date of the denial of an order applied for under
6 section 13, the issuing or denying judge shall cause to be served on
7 the [person] *persons* named in the order or application, *persons*
8 *arrested as a result of the interception of their conversations,*
9 *persons indicted as a result of the interception of their conversa-*
10 *tions, persons whose conversations were intercepted and against*
11 *whom indictments are likely to be returned, persons whose con-*
12 *versations were intercepted and who are potential witnesses to*
13 *criminal activities, and such other parties to the intercepted com-*
14 *munications as the judge may in his discretion determine to be in*
15 *the interest of justice, an inventory which shall include:*

16 a. Notice of the entry of the order or the application for an order
17 denied under section 13;

18 b. The date of the entry of the order or the denial of an order
19 applied for under section 13;

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

21 d. The fact that during the period wire or oral communications
22 were or were not intercepted.

23 The court, upon filing of a motion, may in its discretion make
24 available to such [person] *persons* or [his] *their* [attorney]
25 *attorneys* for inspection such portions of the intercepted com-
26 munications, applications and orders as the court determines to
27 be in the interest of justice. On an ex parte showing of good cause
28 to the court the serving of the [inventory] *inventories* required
29 by this section may be postponed.

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

3 21. Any aggrieved person in any trial, hearing, or proceeding in
4 or before any court or other authority of this State may move to
5 suppress the contents of any intercepted wire or oral communica-
6 tion, or evidence derived therefrom, on the grounds that:
7 a. The communication was unlawfully intercepted;
8 b. The order of authorization is insufficient on its face;
9 c. The interception was not made in conformity with the order
10 of authorization or in accordance with the requirements of section
11 12.

12 The motion shall be made at least 10 days before the trial, hear-
13 ing, or proceeding unless there was no opportunity to make the
14 motion or the moving party was not aware of the grounds for the
15 motion. *Motions by coindictes are to be heard in a single con-*
16 *solidated hearing.*

17 The court, upon the filing of such motion by the aggrieved
18 person, shall make available to the aggrieved person or his counsel
19 for inspection such portions of the intercepted communication, or
20 evidence derived therefrom, as the court determines to be in the
21 interests of justice. If the motion is granted, the entire contents of
22 all intercepted wire or oral communications obtained during or
23 after any interception which is determined to be in violation of this
24 act under subsections a., b., or c. above, or evidence derived there-
25 from, shall not be received in evidence in the trial, hearing or
26 proceeding.

27 In addition to any other right to appeal, the State shall have the
28 right to appeal from an order granting a motion to suppress if the
29 official to whom the order authorizing the intercept was granted
30 shall certify to the court that the appeal is not taken for purposes
31 of delay. The appeal shall be taken within the time specified by the
32 Rules of Court and shall be diligently prosecuted.

1 8. Section 28 of P. L. 1968, c. 409 is amended to read as follows:

2 28. This act shall take effect January 1, 1969 and remain in effect
3 until July 1, [1978] 1983.

1 9. This act shall take effect immediately.

STATEMENT

This bill reauthorizes the "New Jersey Wiretapping and Electronic Surveillance Control Act" first enacted by P. L. 1968, c. 409, and reauthorized and amended by P. L. 1975, c. 131.

Section 1 of the bill makes clear that an induction coil, which is a microphone attached to a telephone by means of a suction cup, falls within the meaning of "intercepting device" as defined. The new term "in-progress trace" is defined for the purposes of the amendment to N. J. S. A. 2A:156A-12.

N. J. S. A. 2A:156A-4b does not require authorization by the Attorney General or a county prosecutor for a law enforcement officer to intercept a conversation where a law enforcement officer is a party to the intercepted conversation. As now written, N. J. S. A. 2A:156-4c appears to contradict the previous subsection, an appearance, however, which is totally inconsistent with the specific language and Legislative intent of subsection 4b. Section 2 of the bill, therefore, amends subsection 4c to eliminate the ambiguity.

Section 2 of the bill also provides that interspousal and other private but nonconsensual interceptions do not fall within exceptions to the prohibitions of the act by making clear that subscription to a particular telephone does not constitute consent to interceptions.

Section 3 of the bill adds the crime of escape to the list of crimes for which evidence may be obtained by means of electronic surveillance. The Federal Omnibus Crime Control and Safe Streets Act, which authorizes states to conduct electronic surveillance, permits surveillance to gather evidence of escape, and apparently the word "escape" was inadvertently omitted from the final draft of P. L. 1968, c. 409.

N. J. S. A. 2A:156A-11 requires that law enforcement authorities must establish "special need" in order to obtain a court order authorizing electronic surveillance in certain situations. One of those situations involves surveillance of "a place used primarily for habitation by a husband and wife." The 1975 amendment which defined special need, however, failed to include the aforementioned phrase. Section 4 of the bill corrects this deficiency.

Section 5 of the bill codifies a decision of the Appellate Division of Superior Court which authorizes a court to order a telephone company to conduct an in-progress trace. Although N. J. S. A. 2A:156A-12, includes language that empowers a court to direct

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a communication common carrier to “furnish the applicant forthwith all information, facilities and technical assistance necessary to accomplish the interception unobtrusively . . .,” the authority of a court to compel such a common carrier to trace a phone conversation during an interception is not explicitly stated in the statute. By including this specific obligation of the common carrier in the statute, the holding in *In re In-Progress Trace Wire Communication*, 138 N. J. Super. 404 (App. Div. 1975), certif. granted 70 N. J. 144 (1976), would be engrafted on to the statute. That decision held that “even without express statutory authority . . . the [telephone] company can be compelled to make a trace . . .” 138 N. J. Super. at 407.

Without the assistance of communication common carriers, it is impossible for law enforcement officials to determine the telephone facilities from which an incoming call has been placed. However, when an in-progress trace by such a carrier is coupled with an authorized wiretap, the identity of the speakers may more readily be determined. This is an indispensable aid to law enforcement because information concerning the identity of the speakers is often essential to the adequate and thorough investigation of criminal activity. Only a communication carrier can accomplish a trace because it uses equipment and techniques wholly under its control and within its expertise.

Section 6 of the bill clarifies the categories of individuals who must be furnished with certain information concerning court authorized interceptions. The listed categories are consistent with the decision in *United States v. Donovan*, — U. S. —, 97 S. Ct. 658 (1977), which requires the prosecutor to inform the judge of the class or classes of individuals whose conversations have been intercepted. Moreover, the amendment proposed by Section 5 is consistent with the current New Jersey practice and the constitutional requirements of notice enunciated in *Katz v. United States*, 389 U. S. 347 (1967), and *Berger v. New York*, 388 U. S. 41, (1967).

Section 7 of the bill amends N. J. S. A. 2A:156A-21 to require that all motions to suppress by co-indictees be consolidated for consideration in a single hearing. The amendment thus incorporates the policy enunciated by the New Jersey Supreme Court in *State v. Gonzalez*, 75 N. J. 181 (1977).

ASSEMBLY JUDICIARY, LAW, PUBLIC SAFETY AND
DEFENSE COMMITTEE

STATEMENT TO
ASSEMBLY, No. 1259

with Assembly committee amendments

STATE OF NEW JERSEY

DATED: MAY 4, 1978

This bill reauthorizes the "New Jersey Wiretapping and Electronic Surveillance Control Act" first enacted by P. L. 1968, c. 409, and reauthorized and amended by P. L. 1975, c. 131.

The committee heard testimony from the Attorney General, Chairman of the Casino Control Commission, the Directors of the Divisions of Gaming Enforcement and Criminal Justice, the Superintendent of State Police, and the Executive Director of the State Commission of Investigation, which emphasized the additional need for continued authorization of wiretaps and electronic surveillance with the advent of casino gaming in Atlantic City. Both the Attorney General and the Director of the Division of Criminal Justice testified as to the internal safeguards within the Department of Law and Public Safety which require several layers of approvals before an order for electronic surveillance is brought before a judge for authorization. It should be noted that no evidence of abuses by law enforcement authorities operating under the "New Jersey Wiretapping and Electronic Surveillance Control Act" was substantiated.

Further, Chief Justice Hughes noted in a letter to the committee, which described the process by which he designates those Superior Court judges who authorize wiretaps, that his impression of the manner in which these judges hear such applications indicated that "appropriate care is taken in preserving the two values involved, namely privacy and the needs of law enforcement."

Section 1 of the bill makes clear that an induction coil, which is a microphone attached to a telephone by means of a suction cup, falls within the meaning of "intercepting device" as defined. The new term "in-progress trace" is defined for the purposes of the amendment to N. J. S. A. 2A:156A-12.

N. J. S. A. 2A:156A-4b does not require authorization by the Attorney General or a county prosecutor for a law enforcement officer

to intercept a conversation where a law enforcement officer is a party to the intercepted conversation. As now written, N. J. S. A. 2A:156-4c appears to contradict the previous subsection, an appearance, however, which is totally inconsistent with the specific language and legislative intent of subsection 4b. Section 2 of the bill, therefore, amends subsection 4c to eliminate the ambiguity.

Section 2 of the bill also provides that interspousal and other private but nonconsensual interceptions do not fall within exceptions to the prohibitions of the act by making clear that subscription to a particular telephone does not constitute consent to interceptions.

Section 3 of the bill adds the crime of escape to the list of crimes for which evidence may be obtained by means of electronic surveillance. The Federal Omnibus Crime Control and Safe Streets Act, which authorizes states to conduct electronic surveillance, permits surveillance to gather evidence of escape, and apparently the word "escape" was inadvertently omitted from the final draft of P. L. 1968, c. 409. The committee amended the bill to include certain violations of the Casino Control Act, P. L. 1977, c. 110, as offenses for which evidence may be obtained by means of electronic surveillance, after hearing testimony by various law enforcement officials concerning the need for electronic surveillance techniques to monitor activities relating to casino gaming. These offenses would also fall within the scope of the authorization of Title III of the Federal Omnibus Crime Control and Safe Streets Act of 1968 (18 U. S. C. A. § 2510-§ 2520). The committee further amended the bill to provide that electronic surveillance could not be authorized for the offense of possession of three ounces or less of marihuana.

N. J. S. A. 2A:156A-11 requires that law enforcement authorities must establish "special need" in order to obtain a court order authorizing electronic surveillance in certain situations. One of those situations involves surveillance of "a place used primarily for habitation by a husband and wife." The 1975 amendment which defined special need, however, failed to include the aforementioned phrase. Section 4 of the bill corrects this deficiency.

Section 5 of the bill authorizes the court to order a telephone company to conduct an in-progress trace. Although section 12 of P. L. 1968, c. 409 (C. 2A:156A-12) includes language that empowers a court to direct a communication common carrier to "furnish the applicant forthwith all information, facilities and technical assistance necessary to accomplish the interception unobtrusively . . . ," the authority of a court to compel such a common carrier to trace a phone conversation during an interception is not explicitly stated in the statute. By includ-

ing this specific obligation of the common carrier in the statute, the bill corrects a deficiency which the Supreme Court found in present law in their decision *In the Matter of an In-Progress Trace*, N. J., decided April 28, 1978. The court held that without an express statutory authorization, the telephone company could not be compelled to make such a trace.

Without the assistance of communication common carriers, it is impossible for law enforcement officials to determine the telephone facilities from which an incoming call has been placed. However, when an in-progress trace by such a carrier is coupled with an authorized wiretap, the identity of the speakers may more readily be determined. This is an indispensable aid to law enforcement because information concerning the identity of the speakers is often essential to the adequate and thorough investigation of criminal activity. Only a communication carrier can accomplish a trace because it uses equipment and techniques wholly under its control and within its expertise.

Section 6 of the bill clarifies the categories of individuals who must be furnished with certain information concerning court authorized interceptions. The listed categories are consistent with the decision in *United States v. Donovan*, U. S., 97 S. Ct. 658 (1977), which requires the prosecutor to inform the judge of the class or classes of individuals whose conversations have been intercepted. Moreover, the amendment proposed by section 5 is consistent with the current New Jersey practice and the constitutional requirements of notice enunciated in *Katz v. United States*, 389 U. S. 347 (1967), and *Berger v. New York*, 388 U. S. 41 (1967).

Section 7 of the bill amends N. J. S. A. 2A:156A-21 to require that all motions to suppress by co-indictees be consolidated for consideration in a single hearing. The amendment thus incorporates the policy enunciated by the New Jersey Supreme Court in *State v. Gonzalez*, 75 N. J. 181 (1977).

Section 8 provides that the "New Jersey Wiretapping and Electronic Surveillance Control Act" will remain in effect until July 1, 1983.

ASSEMBLY COMMITTEE AMENDMENTS TO
ASSEMBLY, No. 1259

STATE OF NEW JERSEY

ADOPTED MAY 4, 1978

Amend page 3, section 3, line 1, omit "(C. 2A:156-8)", insert "(C. 2A:156A-8)".

Amend page 4, section 3, line 15, after "(C. 24:21-19), insert "except possession of 84 grams or less of marihuana, violations of sections 112 through 116, inclusive, of the 'Casino Control Act,' P. L. 1977, c. 110 (C. 5:12-112 through 116),".

[OFFICIAL COPY REPRINT]
ASSEMBLY, No. 1259

STATE OF NEW JERSEY

INTRODUCED APRIL 24, 1978

By Assemblymen HERMAN, BATE, THOMPSON, MAYS, BURSTEIN, VAN WAGNER, GORMLEY, Assemblywoman SZABO, Assemblymen RAND, KERN, DOWD, HURLEY, KAVANAUGH, SMITH, STEWART, MATTHEWS and GIRGENTI

Referred to Committee on Judiciary, Law, Public Safety
and Defense

AN ACT to amend the "New Jersey Wiretapping and Electronic Surveillance Control Act," approved January 14, 1969 (P. L. 1968, c. 409).

1 BE IT ENACTED *by the Senate and General Assembly of the State*
2 *of New Jersey:*

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

3 2. As used in this act:

3A a. "Wire communication" means any communication made in
4 whole or in part through the use of facilities for the transmission
5 of communications by wire, cable or other like connection between
6 the point of origin and the point of reception furnished or operated
7 by a telephone, telegraph or radio company for hire as a commu-
8 nication common carrier;

9 b. "Oral communication" means any oral communication uttered
10 by a person exhibiting an expectation that such communication is
11 not subject to interception under circumstances justifying such
12 expectation;

13 c. "Intercept" means the aural acquisition of the contents of any
14 wire or oral communication through the use of any electronic,
15 mechanical, or other device;

16 d. "Intercepting device" means any device or apparatus, *includ-*
17 *ing an induction coil*, that can be used to intercept a wire or oral
18 communication other than

19 (1) Any telephone or telegraph instrument, equipment or
20 facility, or any component thereof, furnished to the subscriber 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.

21 user by a communication common carrier in the ordinary course of
 22 its business and being used by the subscriber or user in the
 23 ordinary course of its business; or being used by a communication
 24 common carrier in the ordinary course of its business, or by an
 25 investigative or law enforcement officer in the ordinary course of
 26 his duties; or

27 (2) A hearing aid or similar device being used to correct sub-
 28 normal hearing to not better than normal;

29 e. "Person" means that term as defined in R. S. 1:1-2 and in-
 30 cludes any officer or employee of the State or of a political sub-
 31 division thereof;

32 f. "Investigative or law enforcement officer" means any officer
 33 of the State of New Jersey or of a political subdivision thereof who
 34 is empowered by law to conduct investigations of, or to make
 35 arrests for, any offense enumerated in section 8 of this act and any
 36 attorney authorized by law to prosecute or participate in the
 37 prosecution of any such offense;

38 g. "Contents," when used with respect to any wire or oral com-
 39 munication, includes any information concerning the identity of the
 40 parties to such communication or the existence, substance, purport,
 41 or meaning of that communication;

42 h. "Court of competent jurisdiction" means the Superior Court:

43 i. "Judge," when referring to a judge authorized to receive
 44 applications for, and to enter, orders authorizing interceptions of
 45 wire or oral communications, means one of the several judges of
 46 the Superior Court to be designated from time to time by the Chief
 47 Justice of the Supreme Court to receive applications for, and to
 48 enter, orders authorizing interceptions of wire or oral communica-
 49 tions pursuant to this act;

50 j. "Communication common carrier" means any person engaged
 51 as a common carrier for hire, in intrastate, interstate or foreign
 52 communication by wire or radio or in intrastate, interstate or
 53 foreign radio transmission of energy; but a person engaged in
 54 radio broadcasting shall not, while so engaged, be deemed a com-
 55 mon carrier;

56 k. "Aggrieved person" means a person who was a party to any
 57 intercepted wire or oral communication or a person against whom
 58 the interception was directed.

59 l. "*In-progress trace*" means the determination of the origin of
 60 a telephonic communication to a known telephone during an inter-
 61 ception.

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

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

4 a. An operator of a switchboard, or an officer, agent or employee
5 of a communication common carrier, whose facilities are used in
6 the transmission of a wire communication, to intercept, disclose or
7 use that communication in the normal course of his employment
8 while engaged in any activity which is a necessary incident to the
9 rendition of his service or to the protection of the rights or property
10 of the carrier of such communication. No communication common
11 carrier shall utilize service observing or random monitoring except
12 for mechanical or service quality control checks ;

13 b. Any investigative or law enforcement officer to intercept a
14 wire or oral communication, where such officer is a party to the
15 communication or where another officer who is a party to the com-
16 munication requests or requires him to make such interception ;

17 c. Any [investigative or law enforcement officer or any] person
18 acting at the direction of an investigative or law enforcement officer
19 to intercept a wire or oral communication, where such person is a
20 party to the communication or one of the parties to the communi-
21 cation has given prior consent to such interception ; provided, how-
22 ever, that no such interception shall be made unless the Attorney
23 General or his designee or a county prosecutor within his authority
24 determines that there exists a reasonable suspicion that evidence
25 of criminal conduct will be derived from such interception ; or

26 d. A person not acting under color of law to intercept a wire or
27 oral communication, where such person is a party to the com-
28 munication or one of the parties to the communication has given
29 prior consent to such interception unless such communication is
30 intercepted or used for the purpose of committing any criminal or
31 tortious act in violation of the Constitution or laws of the United
32 States or of this State or for the purpose of committing any other
33 injurious act. *The fact that such person is the subscriber to a*
34 *particular telephone does not constitute consent effective to au-*
35 *thorize interception of communications among parties not includ-*
36 *ing such person on that telephone.* Any person who unlawfully
37 intercepts or uses such communication as provided in this para-
38 graph shall be subject to the civil liability established in section 24
39 of this act (C. 2A :156A-24), in addition to any other criminal or
40 civil liability imposed by law.

1 3. Section 8 of P. L. 1968, c. 409 *[(C. 2A :156-8)]*
2 *(C. 2A :156A-8)* is amended to read as follows :

3 8. The Attorney General, a county prosecutor or the chairman of
4 the State Commission of Investigation when authorized by a

5 majority of the members of that commission, or a person designated
6 to act for such an official and to perform his duties in and during
7 his actual absence or disability, may authorize, in writing, an
8 ex parte application to a judge designated to receive the same for
9 an order authorizing the interception of a wire or oral communica-
10 tion by the investigative or law enforcement officers or agency
11 having responsibility for an investigation when such interception
12 may provide evidence of the commission of the offense of murder,
13 kidnapping, gambling, robbery, bribery, extortion, loansharking,
14 violations of section 19 of the "New Jersey Controlled Dangerous
15 Substances Act," P. L. 1970, c. 226 (C. 24:21-19), *except posses-
15A sion of 84 grams or less of marihuana, violations of sections 112
15B through 116, inclusive, of the "Casino Control Act," P. L. 1977,
15C c. 110 (C. 5:12-112 through 116),* arson, burglary, embezzlement,
16 escape, forgery, receiving stolen property punishable by im-
17 prisonment for more than 1 year, alteration of motor vehicle
18 identification numbers, or larceny punishable by imprison-
19 ment for more than 1 year, unlawful manufacture, purchase, use, or
20 transfer of firearms, or unlawful possession or use of bombs or
21 explosives, or any conspiracy to commit any of the foregoing
22 offenses or which may provide evidence aiding in the apprehension
23 of the perpetrator or perpetrators of any of the foregoing offenses.

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

3 11. If the facilities from which a wire communication is to be
4 intercepted are public, no order shall be issued unless the court,
5 in addition to the matters provided in section 10 above, determines
6 that there is a special need to intercept wire communications over
7 such facilities.

8 If the facilities from which, or the place where, the wire or oral
9 communications are to be intercepted are being used, or are about
10 to be used, or are leased to, listed in the name of, or commonly
11 used by, a licensed physician, a licensed practicing psychologist,
12 an attorney-at-law, a practicing clergyman, or a newspaperman,
13 or is a place used primarily for habitation by a husband and wife,
14 no order shall be issued unless the court, in addition to the matters
15 provided in section 10 above, determines that there is a special need
16 to intercept wire or oral communications over such facilities or in
17 such places. Special need as used in this section shall require in
18 addition to the matters required by section 10 of this act, a showing
19 that the licensed physician, licensed practicing psychologist,
20 attorney-at-law, practicing clergyman or newspaperman is person-
21 ally engaging in or was engaged in over a period of time as a part

22 of a continuing criminal activity or is committing, has or had
23 committed or is about to commit an offense as provided in section 8
24 of the act or that the public facilities *or the place used primarily for*
25 *habitation by a husband and wife* are being regularly used by some-
26 one who is personally engaging in or was engaged in over a period
27 of time as a part of a continuing criminal activity or is committing,
28 has or had committed or is about to commit such an offense. No
29 otherwise privileged wire or oral communication intercepted in
30 accordance with, or in violation of, the provisions of this act, shall
31 lose its privileged character.

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

3 12. Each order authorizing the interception of any wire or oral
4 communication shall state:

5 a. The judge is authorized to issue the order;

6 b. The identity of, or a particular description of, the person, if
7 known, whose communications are to be intercepted;

8 c. The character and location of the particular communication
9 facilities as to which, or the particular place of the communication
10 as to which, authority to intercept is granted;

11 d. A particular description of the type of the communication to
12 be intercepted and a statement of the particular offense to which
13 it relates;

14 e. The identity of the investigative or law enforcement officers or
15 agency to whom the authority to intercept a wire or oral communi-
16 cation is given and the identity of whoever authorized the appli-
17 cation; and

18 f. The period of time during which such interception is autho-
19 rized, including a statement as to whether or not the interception
20 shall automatically terminate when the described communication
21 has been first obtained.

22 No order entered under this section shall authorize the inter-
23 ception of any wire or oral communication for a period of time in
24 excess of that necessary under the circumstances. Every order
25 entered under this section shall require that such interception begin
26 and terminate as soon as practicable and be conducted in such a
27 manner as to minimize or eliminate the interception of such com-
28 munications not otherwise subject to interception under this act
29 by making reasonable efforts, whenever possible, to reduce the
30 hours of interception authorized by said order. In no case shall an
31 order entered under this section authorize the interception of wire
32 or oral communications for any period exceeding 20 days. Exten-
33 sions or renewals of such an order may be granted for two addi-

34 ditional periods of not more than 10 days. No extension or renewal
35 shall be granted unless an application for it is made in accordance
36 with this section, and the court makes the findings required by
37 sections 10, 11 and this section.

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

44 An order authorizing the interception of a wire or oral com-
45 munication shall, upon request of the applicant, direct that a
46 communication common carrier shall furnish the applicant forth-
47 with all information, facilities and technical assistance necessary to
48 accomplish the interception unobtrusively and with a minimum of
49 interference with the services that such carrier is affording the
50 person whose communications are to be intercepted.

51 *The obligation of a communication common carrier under such*
52 *an order may include but is not limited to conducting an in-progress*
53 *trace during an interception. Any communication common carrier*
54 *furnishing such facilities or technical assistance shall be compen-*
55 *sated therefor by the applicant at the prevailing rates. Said carrier*
56 *shall be immune from civil liability for any assistance rendered to*
57 *the applicant pursuant to this section.*

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

3 16. Within a reasonable time but not later than 90 days after the
4 termination of the period of the order or of extensions or renewals
5 thereof, or the date of the denial of an order applied for under
6 section 13, the issuing or denying judge shall cause to be served on
7 the **[person]** *persons* named in the order or application, *persons*
8 *arrested as a result of the interception of their conversations,*
9 *persons indicted as a result of the interception of their conversa-*
10 *tions, persons whose conversations were intercepted and against*
11 *whom indictments are likely to be returned, persons whose con-*
12 *versations were intercepted and who are potential witnesses to*
13 *criminal activities, and such other parties to the intercepted com-*
14 *munications as the judge may in his discretion determine to be in*
15 *the interest of justice, an inventory which shall include:*

16 a. Notice of the entry of the order or the application for an order
17 denied under section 13;

18 b. The date of the entry of the order or the denial of an order
19 applied for under section 13;

20 c. The period of authorized or disapproved interception; and
21 d. The fact that during the period wire or oral communications
22 were or were not intercepted.

23 The court, upon filing of a motion, may in its discretion make
24 available to such [person] *persons* or [his] *their* [attorney]
25 *attorneys* for inspection such portions of the intercepted com-
26 munications, applications and orders as the court determines to
27 be in the interest of justice. On an ex parte showing of good cause
28 to the court the serving of the [inventory] *inventories* required
29 by this section may be postponed.

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

3 21. Any aggrieved person in any trial, hearing, or proceeding in
4 or before any court or other authority of this State may move to
5 suppress the contents of any intercepted wire or oral communica-
6 tion, or evidence derived therefrom, on the grounds that:

7 a. The communication was unlawfully intercepted;

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

9 c. The interception was not made in conformity with the order
10 of authorization or in accordance with the requirements of section
11 12.

12 The motion shall be made at least 10 days before the trial, hear-
13 ing, or proceeding unless there was no opportunity to make the
14 motion or the moving party was not aware of the grounds for the
15 motion. *Motions by coindictes are to be heard in a single con-*
16 *solidated hearing.*

17 The court, upon the filing of such motion by the aggrieved
18 person, shall make available to the aggrieved person or his counsel
19 for inspection such portions of the intercepted communication, or
20 evidence derived therefrom, as the court determines to be in the
21 interests of justice. If the motion is granted, the entire contents of
22 all intercepted wire or oral communications obtained during or
23 after any interception which is determined to be in violation of this
24 act under subsections a., b., or c. above, or evidence derived there-
25 from, shall not be received in evidence in the trial, hearing or
26 proceeding.

27 In addition to any other right to appeal, the State shall have the
28 right to appeal from an order granting a motion to suppress if the
29 official to whom the order authorizing the intercept was granted
30 shall certify to the court that the appeal is not taken for purposes
31 of delay. The appeal shall be taken within the time specified by the
32 Rules of Court and shall be diligently prosecuted.

- 1 8. Section 28 of P. L. 1968, c. 409 is amended to read as follows:
 - 2 28. This act shall take effect January 1, 1969 and remain in effect
 - 3 until July 1, **[1978]** 1983.
 - 1 9. This act shall take effect immediately.
-

SENATE JUDICIARY COMMITTEE

STATEMENT TO

ASSEMBLY, No. 1259

[OFFICIAL COPY REPRINT]

STATE OF NEW JERSEY

DATED: MAY 22, 1978

This bill reauthorizes the "New Jersey Wiretapping and Electronic Surveillance Control Act" first enacted by P. L. 1968, c. 409, and reauthorized and amended by P. L. 1975, c. 131.

Section 1 of the bill makes clear that an induction coil, which is a microphone attached to a telephone by means of a suction cup, falls within the meaning of "intercepting device" as defined. The new term "in-progress trace" is defined for the purposes of the amendment to N. J. S. A. 2A:156A-12 found in section 5 of the bill.

Section 2 of the bill seeks to eliminate an ambiguity in the present statute. N. J. S. A. 2A:156A-4b does not require authorization by the Attorney General or a county prosecutor for a law enforcement officer to intercept a conversation where a law enforcement officer is a party to the intercepted conversation. As now written, N. J. S. A. 2A:156-4c appears to contradict the previous subsection, an appearance, however, which is totally inconsistent with the specific language and legislative intent of subsection 4b. Section 2 of the bill, therefore, amends subsection 4c to remove that ambiguity.

Section 2 of the bill also provides that interspousal and other private but nonconsensual interceptions do not fall within exceptions to the prohibitions of the act by making clear that subscription to a particular telephone does not constitute consent to interceptions.

Section 3 of the bill adds the crime of escape to the list of crimes for which evidence may be obtained by means of electronic surveillance. The Federal Omnibus Crime Control and Safe Streets Act, which authorizes states to conduct electronic surveillance, permits surveillance to gather evidence of escape, and apparently the word "escape" was inadvertently omitted from the final draft of P. L. 1968, c. 409. Also, the Assembly Judiciary Committee amended sections 3 of the bill to include certain violations of the Casino Control Act, P. L. 1977, c. 110, as offenses for which evidence may be obtained by means of electronic

surveillance and to exclude possession of three ounces or less of marihuana as an offense for which electronic surveillance could be authorized.

By Senate Committee amendments, section 3 was amended to include mayhem among those crimes for which evidence may be obtained by means of electronic surveillance and to require that the State Commission of Investigation cannot seek a court authorization for a wiretap without the approval of the Attorney General, except in those investigations directly involving possible misconduct by officials and employees of the Department of Law and Public Safety.

Section 4 corrects a technical deficiency in the present statutes. N. J. S. A. 2A:156A-11 requires that law enforcement authorities must establish "special need" in order to obtain a court order authorizing electronic surveillance in certain situations. One of those situations involves surveillance of "a place used primarily for habitation by a husband and wife." The 1975 amendment which defined special need, however, failed to include the aforementioned phrase. Section 4 cures this deficiency.

Section 5 of the bill authorizes the court to order a telephone company to conduct an in-progress trace. Although section 12 of P. L. 1968, c. 409 (C. 2A:156A-12) includes language that empowers a court to direct a communication common carrier to "furnish the applicant forthwith all information, facilities and technical assistance necessary to accomplish the interception unobtrusively . . .," the authority of a court to compel such a common carrier to trace a phone conversation during an interception is not explicitly stated in the statute. By including this specific obligation of the common carrier in the statute, the bill corrects a deficiency which the Supreme Court found in present law in their decision *In the Matter of an In-Progress Trace*, N. J., decided April 28, 1978. The court held that without an express statutory authorization, the telephone company could not be compelled to make such a trace. The Senate Judiciary Committee amended section 5 to require that such an in-progress trace could only be ordered for good cause shown and to insure that county prosecutors were not unduly burdening the telephone company to require that any application for any in-progress trace by county prosecutors must receive the prior approval of the Attorney General or his designee.

Without the assistance of communication common carriers, it is impossible for law enforcement officials to determine the telephone facilities from which an incoming call has been placed. However, when an in-progress trace by such a carrier is coupled with an authorized wiretap, the identity of the speakers may more readily be deter-

mined. This is an indispensable aid to law enforcement because information concerning the identity of the speakers is often essential to the adequate and thorough investigation of criminal activity. Only a communication carrier can accomplish a trace because it uses equipment and techniques wholly under its control and within its expertise.

Section 6 of the bill clarifies the categories of individuals who must be furnished with certain information concerning court authorized interceptions. The listed categories are consistent with the decision in *United States v. Donovan*, U.S., 97 S. Ct. 658 (1977), which requires the prosecutor to inform the judge of the class or classes of individuals whose conversations have been intercepted. Moreover, the amendment proposed by section 5 is consistent with the current New Jersey practice and the constitutional requirements of notice enunciated in *Katz v. United States*, 389 U.S. 347 (1967), and *Berger v. New York*, 388 U.S. 41 (1967).

Section 7 of the bill amends N. J. S. A. 2A:156A-21 to require that all motions to suppress by co-indictes be consolidated for consideration in a single hearing. The amendment thus incorporates the policy enunciated by the New Jersey Supreme Court in *State v. Gonzalez*, 75 N.J. 181 (1977).

Section 8 of the bill was added by Senate Judiciary Committee amendments. Section 8 would require that the Attorney General include in his annual report on wiretapping and electronic surveillance, information on the use of consensual wiretaps by law enforcement officials.

Section 9 provides that the "New Jersey Wiretapping and Electronic Surveillance Control Act" will remain in effect until July 1, 1983.

SENATE COMMITTEE AMENDMENTS TO

ASSEMBLY, No. 1259

[OFFICIAL COPY REPRINT]

STATE OF NEW JERSEY

ADOPTED MAY 25, 1978

Amend page 3, section 3, line 3, after "or", insert "with the approval of the Attorney General, except in those investigations directly involving possible misconduct by officials and employees of the Department of Law and Public Safety,".

Amend page 4, section 3, line 13, after "loansharking," insert "mayhem,".

Amend page 4, section 3, line 15, after "(C. 24:21-19)", omit ",".

Amend page 6, section 5, line 52, after "conducting", insert ", for good cause shown,".

Amend page 6, section 5, line 53, after "interception", insert "provided, however, that a county prosecutor must receive the approval of the Attorney General or his designee prior to requesting an order which includes an in-progress trace".

Amend page 7, section 7, after line 32, insert new section 8 as follows:

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

23. a. In addition to reports required to be made by applicants pursuant to Federal law, all judges of the Superior Court authorized to issue orders pursuant to this act shall make annual reports on the operation of this act to the Administrative Director of the Courts. The reports by the judges shall contain (1) the number of applications made; (2) the number of orders issued; (3) the effective periods of such orders; (4) the number and duration of any renewals thereof; (5) the crimes in connection with which the conversations were sought; (6) the names of the applicants; and (7) such other and further particulars as the Administrative Director of the Courts may require.

b. In addition to reports required to be made by applicants pursuant to Federal Law, the Attorney General shall make annual reports on the operation of this act to the Administrative Director of the Courts. The reports by the Attorney General shall contain (1) the number of applications made; (2) the number of orders issued; (3) the effective periods of such orders; (4) the number and duration of any renewals thereof; (5) the crimes in connection with which the conversations were sought; (6) the name of the applicants; (7) the number of indictments resulting

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

from each application; (8) the crime or crimes which each indictment charges; and (9) the disposition of each indictment.

c. In addition to reports required to be made by applicants pursuant to Federal law, the Attorney General shall receive and maintain records of all interceptions authorized pursuant to section 4 b. (C. 2A:156A-4) and shall include such information in his annual report to the Governor and the Legislature. It shall be the obligation of all law enforcement agencies in the State to file with the Attorney General on forms prescribed by the Attorney General information pertinent to the operation of section 4 b. The information on the forms shall include, but not be limited to (1) the name of the investigative or law enforcement officer making the interception; (2) the law enforcement agency employing the officer involved in the interception; (3) the character of the investigation or activity involved; and (4) the results of such activity.

[c.] d. In addition to reports and records otherwise required by law, the Attorney General and the county prosecutor shall maintain records of all interceptions authorized by them pursuant to section 4 c., on forms prescribed by the Attorney General. Such records shall include the name of the person requesting the authorization, the reasons for the request, and the results of any authorized interception. The Attorney General shall require that copies of such records maintained by county prosecutors be filed with him periodically and he shall report annually to the Governor and Legislature on the operation of section 4 c.

[d.] e. The Chief Justice of the Supreme Court and the Attorney General shall annually report to the Governor and the Legislature on such aspects of the operation of this act as they respectively deem appropriate including any recommendations they may care to make as to legislative changes or improvements to effectuate the purposes of this act and to assure and protect individual rights.”.

Amend page 8, section 8, line 1, omit “8.”, insert “9.”.

Amend page 8, section 9, line 1, omit “9.”, insert “10.”.

[SENATE REPRINT]
ASSEMBLY, No. 1259
[OFFICIAL COPY REPRINT]

with Senate committee amendments adopted May 25, 1978

STATE OF NEW JERSEY

INTRODUCED APRIL 24, 1978

By Assemblymen HERMAN, BATE, THOMPSON, MAYS, BURSTEIN, VAN WAGNER, GORMLEY, Assemblywoman SZABO, Assemblymen RAND, KERN, DOWD, HURLEY, KAVANAUGH, SMITH, STEWART, MATTHEWS and GIRGENTI

Referred to Committee on Judiciary, Law, Public Safety
and Defense

AN ACT to amend the "New Jersey Wiretapping and Electronic Surveillance Control Act," approved January 14, 1969 (P. L. 1968, c. 409).

1 BE IT ENACTED *by the Senate and General Assembly of the State*
2 *of New Jersey:*

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

3 2. As used in this act:

3A a. "Wire communication" means any communication made in
4 whole or in part through the use of facilities for the transmission
5 of communications by wire, cable or other like connection between
6 the point of origin and the point of reception furnished or operated
7 by a telephone, telegraph or radio company for hire as a commu-
8 nication common carrier;

9 b. "Oral communication" means any oral communication uttered
10 by a person exhibiting an expectation that such communication is
11 not subject to interception under circumstances justifying such
12 expectation;

13 c. "Intercept" means the aural acquisition of the contents of any
14 wire or oral communication through the use of any electronic,
15 mechanical, or other device;

16 d. "Intercepting device" means any device or apparatus, *includ-*
17 *ing an induction coil*, that can be used to intercept a wire or oral
18 communication other than

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

19 (1) Any telephone or telegraph instrument, equipment or
20 facility, or any component thereof, furnished to the subscriber or
21 user by a communication common carrier in the ordinary course of
22 its business and being used by the subscriber or user in the
23 ordinary course of its business; or being used by a communication
24 common carrier in the ordinary course of its business, or by an
25 investigative or law enforcement officer in the ordinary course of
26 his duties; or

27 (2) A hearing aid or similar device being used to correct sub-
28 normal hearing to not better than normal;

29 e. "Person" means that term as defined in R. S. 1:1-2 and in-
30 cludes any officer or employee of the State or of a political sub-
31 division thereof;

32 f. "Investigative or law enforcement officer" means any officer
33 of the State of New Jersey or of a political subdivision thereof who
34 is empowered by law to conduct investigations of, or to make
35 arrests for, any offense enumerated in section 8 of this act and any
36 attorney authorized by law to prosecute or participate in the
37 prosecution of any such offense;

38 g. "Contents," when used with respect to any wire or oral com-
39 munication, includes any information concerning the identity of the
40 parties to such communication or the existence, substance, purport,
41 or meaning of that communication;

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

43 i. "Judge," when referring to a judge authorized to receive
44 applications for, and to enter, orders authorizing interceptions of
45 wire or oral communications, means one of the several judges of
46 the Superior Court to be designated from time to time by the Chief
47 Justice of the Supreme Court to receive applications for, and to
48 enter, orders authorizing interceptions of wire or oral communica-
49 tions pursuant to this act;

50 j. "Communication common carrier" means any person engaged
51 as a common carrier for hire, in intrastate, interstate or foreign
52 communication by wire or radio or in intrastate, interstate or
53 foreign radio transmission of energy; but a person engaged in
54 radio broadcasting shall not, while so engaged, be deemed a com-
55 mon carrier;

56 k. "Aggrieved person" means a person who was a party to any
57 intercepted wire or oral communication or a person against whom
58 the interception was directed.

59 l. "*In-progress trace*" means the determination of the origin of
60 a telephonic communication to a known telephone during an inter-
61 ception.

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

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

4 a. An operator of a switchboard, or an officer, agent or employee
5 of a communication common carrier, whose facilities are used in
6 the transmission of a wire communication, to intercept, disclose or
7 use that communication in the normal course of his employment
8 while engaged in any activity which is a necessary incident to the
9 rendition of his service or to the protection of the rights or property
10 of the carrier of such communication. No communication common
11 carrier shall utilize service observing or random monitoring except
12 for mechanical or service quality control checks;

13 b. Any investigative or law enforcement officer to intercept a
14 wire or oral communication, where such officer is a party to the
15 communication or where another officer who is a party to the com-
16 munication requests or requires him to make such interception;

17 c. Any [investigative or law enforcement officer or any] person
18 acting at the direction of an investigative or law enforcement officer
19 to intercept a wire or oral communication, where such person is a
20 party to the communication or one of the parties to the communi-
21 cation has given prior consent to such interception; provided, how-
22 ever, that no such interception shall be made unless the Attorney
23 General or his designee or a county prosecutor within his authority
24 determines that there exists a reasonable suspicion that evidence
25 of criminal conduct will be derived from such interception; or

26 d. A person not acting under color of law to intercept a wire or
27 oral communication, where such person is a party to the com-
28 munication or one of the parties to the communication has given
29 prior consent to such interception unless such communication is
30 intercepted or used for the purpose of committing any criminal or
31 tortious act in violation of the Constitution or laws of the United
32 States or of this State or for the purpose of committing any other
33 injurious act. *The fact that such person is the subscriber to a*
34 *particular telephone does not constitute consent effective to au-*
35 *thorize interception of communications among parties not includ-*
36 *ing such person on that telephone.* Any person who unlawfully
37 intercepts or uses such communication as provided in this para-
38 graph shall be subject to the civil liability established in section 24
39 of this act (C. 2A:156A-24), in addition to any other criminal or
40 civil liability imposed by law.

1 3. Section 8 of P. L. 1968, c. 409 *[(C. 2A:156-8)]*
2 *(C. 2A:156A-8)* is amended to read as follows:

3 8. The Attorney General, a county prosecutor or ****with the*
 3A *approval of the Attorney General, except in those investigations*
 3B *directly involving possible misconduct by officials and employees*
 3C *of the Department of Law and Public Safety,*** the chairman of
 4 the State Commission of Investigation when authorized by a
 5 majority of the members of that commission, or a person designated
 6 to act for such an official and to perform his duties in and during
 7 his actual absence or disability, may authorize, in writing, an
 8 ex parte application to a judge designated to receive the same for
 9 an order authorizing the interception of a wire or oral communica-
 10 tion by the investigative or law enforcement officers or agency
 11 having responsibility for an investigation when such interception
 12 may provide evidence of the commission of the offense of murder,
 13 kidnapping, gambling, robbery, bribery, extortion, loansharking,
 14 ***mayhem,*** violations of section 19 of the "New Jersey Con-
 15 trolled Dangerous Substances Act," P. L. 1970, c. 226 (C.
 16 24:21-19) ***[,]*** **except possession of 84 grams or less of mari-*
 17 *huana, violations of sections 112 through 116, inclusive, of the*
 18 *"Casino Control Act," P. L. 1977, c. 110 (C. 5:12-112 through*
 19 *116),* arson, burglary, embezzlement, escape, forgery, receiving*
 20 *stolen property punishable by imprisonment for more than 1 year,*
 21 *alteration of motor vehicle identification numbers, or larceny*
 22 *punishable by imprisonment for more than 1 year, unlawful manu-*
 23 *facture, purchase, use, or transfer of firearms, or unlawful posses-*
 24 *sion or use of bombs or explosives, or any conspiracy to commit any*
 25 *of the foregoing offenses or which may provide evidence aiding in*
 26 *the apprehension of the perpetrator or perpetrators of any of the*
 27 *foregoing offenses.*

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

3 11. If the facilities from which a wire communication is to be
 4 intercepted are public, no order shall be issued unless the court,
 5 in addition to the matters provided in section 10 above, determines
 6 that there is a special need to intercept wire communications over
 7 such facilities.

8 If the facilities from which, or the place where, the wire or oral
 9 communications are to be intercepted are being used, or are about
 10 to be used, or are leased to, listed in the name of, or commonly
 11 used by, a licensed physician, a licensed practicing psychologist,
 12 an attorney-at-law, a practicing clergyman, or a newspaperman,
 13 or is a place used primarily for habitation by a husband and wife,
 14 no order shall be issued unless the court, in addition to the matters
 15 provided in section 10 above, determines that there is a special need

16 to intercept wire or oral communications over such facilities or in
17 such places. Special need as used in this section shall require in
18 addition to the matters required by section 10 of this act, a showing
19 that the licensed physician, licensed practicing psychologist,
20 attorney-at-law, practicing clergyman or newspaperman is person-
21 ally engaging in or was engaged in over a period of time as a part
22 of a continuing criminal activity or is committing, has or had
23 committed or is about to commit an offense as provided in section 8
24 of the act or that the public facilities *or the place used primarily for*
25 *habitation by a husband and wife* are being regularly used by some-
26 one who is personally engaging in or was engaged in over a period
27 of time as a part of a continuing criminal activity or is committing,
28 has or had committed or is about to commit such an offense. No
29 otherwise privileged wire or oral communication intercepted in
30 accordance with, or in violation of, the provisions of this act, shall
31 lose its privileged character.

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

3 12. Each order authorizing the interception of any wire or oral
4 communication shall state:

5 a. The judge is authorized to issue the order;

6 b. The identity of, or a particular description of, the person, if
7 known, whose communications are to be intercepted;

8 c. The character and location of the particular communication
9 facilities as to which, or the particular place of the communication
10 as to which, authority to intercept is granted;

11 d. A particular description of the type of the communication to
12 be intercepted and a statement of the particular offense to which
13 it relates;

14 e. The identity of the investigative or law enforcement officers or
15 agency to whom the authority to intercept a wire or oral communi-
16 cation is given and the identity of whoever authorized the appli-
17 cation; and

18 f. The period of time during which such interception is autho-
19 rized, including a statement as to whether or not the interception
20 shall automatically terminate when the described communication
21 has been first obtained.

22 No order entered under this section shall authorize the inter-
23 ception of any wire or oral communication for a period of time in
24 excess of that necessary under the circumstances. Every order
25 entered under this section shall require that such interception begin
26 and terminate as soon as practicable and be conducted in such a
27 manner as to minimize or eliminate the interception of such com-

28 munications not otherwise subject to interception under this act
29 by making reasonable efforts, whenever possible, to reduce the
30 hours of interception authorized by said order. In no case shall an
31 order entered under this section authorize the interception of wire
32 or oral communications for any period exceeding 20 days. Exten-
33 sions or renewals of such an order may be granted for two addi-
34 ditional periods of not more than 10 days. No extension or renewal
35 shall be granted unless an application for it is made in accordance
36 with this section, and the court makes the findings required by
37 sections 10, 11 and this section.

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

44 An order authorizing the interception of a wire or oral com-
45 munication shall, upon request of the applicant, direct that a
46 communication common carrier shall furnish the applicant forth-
47 with all information, facilities and technical assistance necessary to
48 accomplish the interception unobtrusively and with a minimum of
49 interference with the services that such carrier is affording the
50 person whose communications are to be intercepted.

51 *The obligation of a communication common carrier under such*
52 *an order may include but is not limited to conducting**, for good*
53 *cause shown,** an in-progress trace during an interception **pro-*
54 *vided, however, that a county prosecutor must receive the approval*
55 *of the Attorney General or his designee prior to requesting an*
56 *order which includes an in-progress trace**.* Any communication
57 common carrier furnishing such facilities or technical assistance
58 shall be compensated therefor by the applicant at the prevailing
59 rates. Said carrier shall be immune from civil liability for any
60 assistance rendered to the applicant pursuant to this section.

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

3 16. Within a reasonable time but not later than 90 days after the
4 termination of the period of the order or of extensions or renewals
5 thereof, or the date of the denial of an order applied for under
6 section 13, the issuing or denying judge shall cause to be served on
7 the [person] persons named in the order or application, persons
8 arrested as a result of the interception of their conversations,
9 persons indicted as a result of the interception of their conversa-
10 tions, persons whose conversations were intercepted and against

11 *whom indictments are likely to be returned, persons whose con-*
 12 *versations were intercepted and who are potential witnesses to*
 13 *criminal activities, and such other parties to the intercepted com-*
 14 *munications as the judge may in his discretion determine to be in*
 15 *the interest of justice, an inventory which shall include:*

16 a. Notice of the entry of the order or the application for an order
 17 denied under section 13;

18 b. The date of the entry of the order or the denial of an order
 19 applied for under section 13;

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

21 d. The fact that during the period wire or oral communications
 22 were or were not intercepted.

23 The court, upon filing of a motion, may in its discretion make
 24 available to such [person] *persons* or [his] *their* [attorney]
 25 *attorneys* for inspection such portions of the intercepted com-
 26 munications, applications and orders as the court determines to
 27 be in the interest of justice. On an ex parte showing of good cause
 28 to the court the serving of the [inventory] *inventories* required
 29 by this section may be postponed.

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

3 21. Any aggrieved person in any trial, hearing, or proceeding in
 4 or before any court or other authority of this State may move to
 5 suppress the contents of any intercepted wire or oral communica-
 6 tion, or evidence derived therefrom, on the grounds that:

7 a. The communication was unlawfully intercepted;

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

9 c. The interception was not made in conformity with the order
 10 of authorization or in accordance with the requirements of section
 11 12.

12 The motion shall be made at least 10 days before the trial, hear-
 13 ing, or proceeding unless there was no opportunity to make the
 14 motion or the moving party was not aware of the grounds for the
 15 motion. *Motions by coindictees are to be heard in a single con-*
 16 *solidated hearing.*

17 The court, upon the filing of such motion by the aggrieved
 18 person, shall make available to the aggrieved person or his counsel
 19 for inspection such portions of the intercepted communication, or
 20 evidence derived therefrom, as the court determines to be in the
 21 interests of justice. If the motion is granted, the entire contents of
 22 all intercepted wire or oral communications obtained during or
 23 after any interception which is determined to be in violation of this
 24 act under subsections a., b., or c. above, or evidence derived there-

25 from, shall not be received in evidence in the trial, hearing or
26 proceeding.

27 In addition to any other right to appeal, the State shall have the
28 right to appeal from an order granting a motion to suppress if the
29 official to whom the order authorizing the intercept was granted
30 shall certify to the court that the appeal is not taken for purposes
31 of delay. The appeal shall be taken within the time specified by the
32 Rules of Court and shall be diligently prosecuted.

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

3 23. a. In addition to reports required to be made by applicants
4 pursuant to Federal law, all judges of the Superior Court autho-
5 rized to issue orders pursuant to this act shall make annual reports
6 on the operation of this act to the Administrative Director of the
7 Courts. The reports by the judges shall contain (1) the number
8 of applications made; (2) the number of orders issued; (3) the
9 effective periods of such orders; (4) the number and duration of
10 any renewals thereof; (5) the crimes in connection with which the
11 conversations were sought; (6) the names of the applicants; and
12 (7) such other and further particulars as the Administrative Direc-
13 tor of the Courts may require.

14 b. In addition to reports required to be made by applicants pur-
15 suant to Federal Law, the Attorney General shall make annual
16 reports on the operation of this act to the Administrative Director
17 of the Courts. The reports by the Attorney General shall contain
18 (1) the number of applications made; (2) the number of orders
19 issued; (3) the effective periods of such orders; (4) the number
20 and duration of any renewals thereof; (5) the crimes in connection
21 with which the conversations were sought; (6) the name of the
22 applicants; (7) the number of indictments resulting from each
23 application; (8) the crime or crimes which each indictment charges;
24 and (9) the disposition of each indictment.

25 c. *In addition to reports required to be made by applicants pur-*
26 *suant to Federal law, the Attorney General shall receive and main-*
27 *tain records of all interceptions authorized pursuant to section 4 b.*
28 *(C. 2A:156A-4) and shall include such information in his annual*
29 *report to the Governor and the Legislature. It shall be the obliga-*
30 *tion of all law enforcement agencies in the State to file with the*
31 *Attorney General on forms prescribed by the Attorney General in-*
32 *formation pertinent to the operation of section 4 b. The informa-*
33 *tion on the forms shall include, but not be limited to (1) the name*
34 *of the investigative or law enforcement officer making the intercep-*
35 *tion; (2) the law enforcement agency employing the officer in-*

36 *involved in the interception; (3) the character of the investigation or*
37 *activity involved; and (4) the results of such activity.*

38 **[c.]** *d.* In addition to reports and records otherwise required by
39 law, the Attorney General and the county prosecutor shall main-
40 tain records of all interceptions authorized by them pursuant to
41 section 4 c., on forms prescribed by the Attorney General. Such
42 records shall include the name of the person requesting the autho-
43 rization, the reasons for the request, and the results of any
44 authorized interception. The Attorney General shall require that
45 copies of such records maintained by county prosecutors be filed
46 with him periodically and he shall report annually to the Governor
47 and Legislature on the operation of section 4 c.

48 **[d.]** *e.* The Chief Justice of the Supreme Court and the Attorney
49 General shall annually report to the Governor and the Legislature
50 on such aspects of the operation of this act as they respectively
51 deem appropriate including any recommendations they may care
52 to make as to legislative changes or improvements to effectuate the
53 purposes of this act and to assure and protect individual rights.**

1 ****[8.]**** ****9.**** Section 28 of P. L. 1968, c. 409 is amended to
1A read as follows:

2 28. This act shall take effect January 1, 1969 and remain in effect
3 until July 1, **[1978]** 1983.

1 ****[9.]**** ****10.**** This act shall take effect immediately.
