

185 bound to inquire whether the trustee has power to act or is
 186 properly exercising the power; and a third person, without
 187 actual knowledge that the trustee is exceeding his powers
 188 or improperly exercising them, is fully protected in dealing
 189 with the trustee as if the trustee possessed and properly exer-
 190 cised the powers he purports to exercise. A third person is
 191 not bound to assure the proper application of trust assets
 192 paid or delivered to the trustee.

193 *Section 8.* Except as specifically provided in the trust, the
 194 provisions of this chapter apply to any trust established after
 195 the effective date of this chapter and to any trust asset ac-
 196 quired by the trustee after the effective date of this chapter.

197 *Section 9.* This chapter shall be construed to effectuate its
 198 general purpose to make uniform the law of those states
 199 which enact it.

200 *Section 10.* If any provision of this chapter or the applica-
 201 tion thereof to any person or circumstance is held invalid,
 202 the invalidity does not affect other provisions or applications
 203 of this chapter which can be given effect without the invalid
 204 provision or application, and to this end the provisions of
 205 this chapter are severable.

By Mr. Backman of Brookline, petition of Jack H. Backman for legislation
 relative to eavesdropping and for the creation of a commission on electronic sur-
 veillance and wiretapping. The Judiciary.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Sixty-Eight.

AN ACT RELATING TO EAVESDROPPING AND CREATING A COMMISSION ON ELECTRONIC SURVEILLANCE AND WIRETAPPING.

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

1 SECTION 1. Section ninety-nine of chapter two hundred and
 2 seventy-two of the General Laws is hereby repealed.

1 SECTION 2. The General Laws are hereby amended by in-
 2 serting after chapter 272 the following chapter:—

CHAPTER 272A.

EAVESDROPPING AND ELECTRONIC SURVEILLANCE.

5 *Section 1.* Whoever, except in accordance with an order is-
 6 sued as provided herein, secretly or without the consent of
 7 either a sender or receiver, overhears, or attempts secretly, or
 8 without the consent of either a sender or receiver, to overhear,
 9 or to aid, authorize, employ, procure, or permit, or to have
 10 any other person secretly, or without the consent of either a
 11 sender or receiver, to overhear any spoken words at any place
 12 by using any electronic recording device, or a wireless tap
 13 or electronic tap, or however otherwise described, or any simi-
 14 lar device or arrangement, or by tapping any wire to intercept
 15 telephone communications, shall be guilty of the crime of
 16 eavesdropping and shall be punished by imprisonment for not
 17 more than two years or by a fine of not more than one thousand
 18 dollars, or both.

19 *Section 2. (a)* Such order may be issued and shall be signed

20 by any justice of the supreme judicial or superior court upon
21 application made by either a district attorney or the attorney
22 general of the commonwealth to any justice of the supreme
23 judicial court or of the superior court for an ex parte order
24 allowing such officer to order an electronic eavesdrop or a
25 wiretap of a given communication when there are reasonable
26 grounds to believe that

27 (1) the electronic eavesdrop or wiretap requested is neces-
28 sary to save human life; or

29 (2) in the case of a wiretap, the communication itself is an
30 element of the crime alleged; or

31 (3) the communication intercepted will contain evidence of
32 homicide, extortion, kidnapping, armed robbery, rape, or ar-
33 son; or

34 (4) the security of the commonwealth or the public safety
35 is endangered.

36 (b) An application under subsection (a) shall be accompa-
37 nied by an affidavit personally signed by a district attorney or
38 by the attorney general of the commonwealth. Where those
39 officials are unavailable and delay would endanger either hu-
40 man life or the public safety, the affidavit may be signed by
41 the highest ranking official available.

42 The affidavit shall contain the following:

43 (1) a full and complete statement of the facts and circum-
44 stances relied on by the applicant, including but not limited to
45 the crime or crimes involved, the information expected to be
46 obtained, the results of previous investigation which led to the
47 application, and the sources of the information leading to the
48 application, unless such sources are confidential;

49 (2) the precise location and the nature of the premises which
50 are to be eavesdropped upon, or of the wire to be tapped, and
51 the identity of the person or persons whose conversations are
52 to be overheard or intercepted. In the case of eavesdropping,
53 the affidavit shall specify as precisely as possible the building
54 or the particular rooms in a building to be bugged. In the case
55 of a telephone, the affidavit shall specify the number of the
56 line, and the names of the individuals to whom the phone is
57 listed, as well as those who are known regularly to use the
58 phone;

59 (3) a statement of all previous applications in the same

60 matter which involved the same premises, facilities or indi-
61 viduals, and the action taken by the court on each application;
62 and

63 (4) an allegation that all other methods of investigation
64 have proven to be or will be inadequate or impracticable and
65 that there is reasonable cause to believe that eavesdropping
66 or a wiretap will be successful.

67 (c) If the court is not satisfied that the application sub-
68 stantially complies with the requirements of subsections
69 (a) and (b) above, it may require the applicant to furnish
70 additional information in support of the application.

71 (d) If the court is satisfied that the application substan-
72 tially complies with subsections (a) and (b), it may enter
73 an ex parte order granting leave to the applicant to eaves-
74 drop or to wiretap in conformance with the terms of the or-
75 der.

76 (e) An order to eavesdrop shall specify as precisely as
77 possible the building and the particular room or rooms in
78 that building in which permission to eavesdrop is granted.
79 An order to wiretap shall specify the particular wire to be
80 intercepted. A telephone shall be specified by its number.

81 (f) An order entered under subsection (d) above shall
82 describe or identify the person or persons who are authorized
83 to implement it, or the person or persons under whose super-
84 vision it is to be implemented.

85 (g) Such order shall state with particularity the purpose
86 or purposes for which it has been granted and the grounds
87 for the grant of permission.

88 (h) Such order shall be limited to a period of not more
89 than sixty days, but may be renewed for additional periods of
90 thirty days each, provided that the requirements of subsec-
91 tions (a) and (b) above are satisfied. An application for a
92 second or subsequent renewal must be heard by a panel of
93 three judges of the superior court.

94 Section 3. (a) When an order is granted in accordance
95 with section two, it shall be the responsibility of the signer
96 of the application, and all persons connected with implement-
97 ing the order, to see that it is implemented in a way entirely
98 consistent with the provisions of the order, and that utmost
99 respect is given to the constitutional rights and the privacy

100 of those persons whose conversations are overheard or inter-
101 cepted by virtue of the order.

102 (b) When any criminal prosecution is brought which in-
103 volves a defendant who has been the subject of a court order
104 under section two, the state must furnish the defendant with
105 a copy of the order and an accurate transcript of the material
106 proposed to be used as evidence, at least thirty days before
107 the commencement of the trial. If the defendant has any ob-
108 jections to the grounds on which the order was granted, or the
109 manner in which the order was implemented, he must make
110 them known to the court at least ten days before the com-
111 mencement of the trial.

112 (c) Material obtained by means of an eavesdrop or wiretap
113 shall be admissible as evidence in judicial proceedings in the
114 commonwealth only if obtained in a manner consistent with
115 a valid order granted in accordance with the provisions of
116 section two.

117 (d) It shall be unlawful for any person to edit, alter, or
118 tamper with any tape, transcript, or other recording of any
119 kind of any conversation overheard or intercepted by a court
120 order granted under section two, and then to present such
121 material in any judicial proceeding, or any proceeding under
122 oath, without fully indicating the nature of all changes made
123 and the original state of the material. Any violation of this
124 subsection shall be punishable by imprisonment for not more
125 than one year, or by a fine of not more than five hundred dol-
126 lars or both.

127 *Section 4.* (a) No application or order under section two
128 shall be made public by the court, or the applicants, or by
129 any person with knowledge of its existence or contents, until
130 a true indictment is returned against the individual or indi-
131 viduals named as its subjects in the application or order.

132 (b) The court shall seal and keep in the custody of the
133 court as the official record, a true copy of each application
134 and order. The order itself shall be delivered to and retained
135 by the applicant as authority for its implementation.

136 (c) Any tapes, transcripts or other recordings of any kind
137 of conversations intercepted or overhead pursuant to an order
138 granted under section 2 above shall be deemed to be in the
139 custody of the court, but may be kept in the possession of the

140 applicant at the discretion of the court.

141 (d) All such tapes, transcripts or other recordings must be
142 returned to the possession of the court at the conclusion of the
143 trial of a defendant who was the subject of such order for
144 which action the recording is needed as evidence, or at the
145 end of one year from the date of the expiration of the order,
146 whichever is latest.

147 (e) All such tapes, transcripts or other recordings shall
148 be destroyed by the court five years after the date on which
149 they are returned to the possession of the court under para-
150 graph (d) above, unless, prior to the expiration of such period,
151 the supreme judicial court, for good cause shown, issue a
152 stop-order, which may delay the destruction of any such re-
153 cordings for a period not to exceed five years.

154 *Section 5.* A commission on electronic surveillance shall be
155 created. Its members shall consist of the chief judge of the
156 supreme judicial court, who shall be the chairman; the gov-
157 ernor, or his appointed representative; the attorney general;
158 a representative appointed by the Massachusetts Bar Asso-
159 ciation; and a member of the faculty of a Massachusetts law
160 school, to be appointed by the chairman. The commission shall
161 meet at least once every year following the passage of this
162 section and by the end of the fifth year after passage, it shall
163 file a written report to the general court giving its evaluation
164 of how well the provisions hereof have been carried out in
165 practice, and recommending any changes it believes will im-
166 prove the functioning of these parts. The commission shall
167 have subpoena power, including the power to inspect all ap-
168 plications and orders under section two.

169 *Section 6.* Any person damaged by a violation of this chap-
170 ter may, in an action of tort, recover his damages from the
171 person liable therefor, together with costs of suit and rea-
172 sonable attorney's fees. In no event shall the damages as-
173 sessed under this section be less than five hundred dollars.

174 *Section 7.* If any provision of this act or the application
175 thereof to any person or circumstances is held invalid, the
176 invalidity shall not affect other provisions or applications
177 of the act which can be given effect without the invalid pro-
178 visions or applications, and to this end the provisions of this
179 act are severable.