

JULY 10?

The Commonwealth of Massachusetts

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

AN ACT FURTHER REGULATING WIRETAPPING AND EAVESDROPPING.

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. Chapter 272 of the General Laws is hereby
2 amended by striking out section 99, as amended by chapter
3 449 of the acts of 1959, and inserting in place thereof the
4 following section:—

5 *Section 99. Interception of wire and oral communica-*
6 *tions.—*

7 *A. Preamble:*

8 The general court finds that organized crime exists within
9 the commonwealth and that the increasing activities of
10 organized crime constitute a grave danger to the public
11 welfare and safety. Organized crime, as it exists in the
12 commonwealth today, consists of a continuing conspiracy
13 among highly organized and disciplined groups to engage in
14 supplying illegal goods and services. In supplying these goods
15 and services organized crime commits unlawful acts and
16 employs brutal and violent tactics. Organized crime is infil-
17 trating legitimate business activities and depriving honest
18 businessmen of the right to make a living.

19 The general court further finds that because organized
20 crime carries on its activities through layers of insulation and
21 behind a wall of secrecy, government has been unsuccessful in
22 curtailing and eliminating it. Normal investigative proce-
23 dures are not effective in the investigation of illegal acts
24 committed by organized crime. Therefore, law enforcement
25 officials must be permitted to use modern methods of elec-
26 tronic surveillance, under strict judicial supervision, when
27 investigating these organized criminal activities.

28 The general court further finds that the uncontrolled
29 development and unrestricted use of modern electronic sur-
30 veillance devices pose grave dangers to the privacy of all

31 citizens of the commonwealth. Therefore, the secret use of
32 such devices by private individuals must be prohibited. The
33 use of such devices by law enforcement officials must be
34 conducted under strict judicial supervision and should be
35 limited to the investigation of organized crime.

36 This section shall be interpreted and applied in accordance
37 with these findings.

38 *B. Definitions.* As used in this section—

39 1. The term “wire communication” means any communica-
40 tion made in whole or in part through the use of facilities for
41 the transmission of communications by the aid of wire, cable,
42 or other like connection between the point of origin and the
43 point of reception.

44 2. The term “oral communications” means speech, except
45 such speech as is transmitted over the public air waves by
46 radio or other similar device.

47 3. The term “intercepting device” means any device or
48 apparatus which is capable of transmitting, receiving, ampli-
49 fying, or recording a wire or oral communication other than a
50 hearing aid or similar device which is being used to correct
51 subnormal hearing to normal and other than any telephone
52 or telegraph instrument, equipment, facility, or a component
53 thereof, furnished to a subscriber or user by, or used by, any
54 communication common carrier in the ordinary course of its
55 business as such carrier.

56 4. The term “interception” means to secretly hear, secretly
57 record, or aid another to secretly hear or secretly record the
58 contents of any wire or oral communication through the use
59 of any intercepting device by any person other than a person
60 given prior authority by all parties to such communication;
61 provided that it shall not constitute an interception for an
62 investigative or law enforcement officer, as defined in this
63 section, to record or transmit a wire or oral communication if
64 such officer is a party to such communication or has been
65 given prior authorization to record or transmit the communi-
66 cation by such a party; provided further that it shall not
67 constitute an interception for an investigative or law enforce-
68 ment officer who is within the range of normal hearing of any
69 oral or wire communication to hear, record or transmit such
70 communication.

71 5. The term "contents," when used with respect to any wire
72 or oral communication, means any information concerning
73 the identity of the parties to such communication or the
74 existence, contents, substance, purport, or meaning of that
75 communication.

76 6. The term "aggrieved person" means any individual who
77 was a party to an intercepted wire or oral communication or
78 who was named in the warrant authorizing the interception,
79 or who would otherwise have standing to complain of the
80 interception.

81 7. The term "designated offense" shall include the offenses
82 of arson, assault and battery with a dangerous weapon,
83 extortion, bribery, burglary, counterfeiting, embezzlement,
84 evasion of income taxation, forgery, gaming, intimidating a
85 witness or juror, kidnapping, larceny, lending of money or
86 thing of value in violation of the laws of the commonwealth,
87 mayhem, murder, any offense involving the possession or sale
88 of narcotics or drugs, perjury, prostitution, rape, robbery,
89 subornation of perjury, being an accessory to any of the
90 foregoing offenses and conspiracy or attempt or solicitation to
91 commit any of the foregoing offenses in connection with
92 organized crime as defined in the preamble.

93 8. The term "investigative or law enforcement officer"
94 means any officer of the United States, a state or a political
95 subdivision of a state, who is empowered by law to make
96 arrests for, the designated offenses, and any attorney autho-
97 rized by law to participate in the prosecution of such
98 offenses.

99 9. The term "judge of competent jurisdiction" means any
100 justice of the superior court of the commonwealth.

101 10. The term "chief justice" means the chief justice of the
102 superior court of the commonwealth.

103 11. The term "issuing judge" means any justice of the
104 superior court who shall issue a warrant as provided herein or
105 in the event of his disability or unavailability any other judge
106 of competent jurisdiction designated by the chief justice.

107 12. The term "communication common carrier" means any
108 person engaged as a common carrier in providing or operating
109 wire communication facilities.

110 13. The term "person" means any individual, partnership,
111 association, joint stock company, trust, or corporation,

112 whether or not any of the foregoing is an officer, agent or
113 employee of the United States, a state, or a political subdivi-
114 sion of a state.

115 14. The terms "sworn" or "under oath" as they appear in
116 this section mean on oath or by affirmation of a statement
117 subscribed to under the pains and penalties of perjury.

118 15. The terms "applicant attorney general" or "applicant
119 district attorney" mean the attorney general of the Common-
120 wealth or a district attorney of the Commonwealth who has
121 made application for a warrant pursuant to this section.

122 16. The term "exigent circumstances" means the showing
123 of special facts to the issuing judge as to the nature of the
124 investigation for which a warrant is sought pursuant to this
125 section which require secrecy in order to obtain the informa-
126 tion desired from the interception sought to be authorized.

127 *C. Offenses.*

128 1. *Interception, oral communications prohibited.*

129 Except as otherwise specifically provided in this section
130 any person who—

131 willfully commits an interception, attempts to commit, an
132 interception, or procures any other person to commit an
133 interception or attempt to commit an interception of any
134 wire or oral communication shall be fined not more than ten
135 thousand dollars, or imprisoned in the state prison not more
136 than five years, or imprisoned in a jail or house of correction
137 not more than two and one half years or both so fined and
138 given one such imprisonment.

139 Proof of the installation of any intercepting device by any
140 person under circumstances evincing an intent to commit an
141 interception which is not authorized or permitted by this
142 section, shall be prima facie evidence of a violation of this
143 subparagraph.

144 2. *Editing of tape recordings in judicial proceeding pro-*
145 *hibited.*

146 Except as otherwise specifically provided in this section
147 any person who—

148 willfully edits, alters or tampers with any tape, transcrip-
149 tion or recording of oral or wire communication by any
150 means, or attempts to edit, alter or tamper with any tape,
151 transcription or recording of oral or wire communication by

152 any means with the intent to present in any judicial proceed-
 153 ing or proceeding under oath or who presents such recording
 154 or permits such recording to be presented in any judicial
 155 proceeding or proceeding under oath without fully indicating
 156 the nature of the changes made in the original state of the
 157 recording shall be fined not more than ten thousand dollars or
 158 imprisoned in the state prison not more than five years or
 159 imprisoned in a jail or house of correction not more than two
 160 years or both so fined and given one such imprisonment.

161 3. *Disclosure, or use of wire or oral communications pro-*
 162 *hibited.*

163 Except as otherwise specifically provided in this section
 164 any person who—

165 (a) willfully discloses or attempts to disclose to any person
 166 the contents of any wire or oral communication, knowing
 167 that the information was obtained through interception; or

168 (b) willfully uses or attempts to use the contents of any
 169 wire or oral communication, knowing that the information
 170 was obtained through interception shall be guilty of a mis-
 171 demeanor punishable by imprisonment in a jail or a house of
 172 correction for not more than two years or by a fine of not
 173 more than five thousand dollars or both.

174 4. *Disclosure of contents of applications, warrants, re-*
 175 *newals, and returns prohibited.*

176 Except as otherwise specifically provided in this section
 177 any person who—

178 Willfully discloses to any person any information concern-
 179 ing or contained in the application for, the granting or denial
 180 of orders for interception, renewals, notice or return on an ex
 181 parte order granted pursuant to this section, or the contents
 182 of any document, tape, or recording kept in accordance with
 183 paragraph N, shall be guilty of a misdemeanor punishable by
 184 imprisonment in a jail or a house of correction for not more
 185 than two years or by a fine of not more than five thousand
 186 dollars or both.

187 5. *Possession of Interception Devices Prohibited.*

188 A person who possesses any intercepting device under
 189 circumstances evincing an intent to commit an interception
 190 not permitted or authorized by this section, or a person who
 191 permits an intercepting device to be used or employed for an
 192 interception not permitted or authorized by this section, or a

193 person who possesses an intercepting device knowing that the
 194 same is intended to be used to commit an interception not
 195 permitted or authorized by this section, shall be guilty of a
 196 misdemeanor punishable by imprisonment in a jail or house
 197 of correction for not more than two years or by a fine of not
 198 more than five thousand dollars or both.

199 The installation of any such intercepting device by such
 200 person or with his permission or at his direction shall be
 201 prima facie evidence of possession as required by this sub-
 202 paragraph.

203 6. Any person who permits or on behalf of any other
 204 person commits or attempts to commit, or any person who
 205 participates in a conspiracy to commit, or any accessory to a
 206 person who commits a violation of subparagraphs one
 207 through five of paragraph C of this section shall be punished
 208 in the same manner as is provided for the respective offenses
 209 as described in subparagraphs one through five of paragraph
 210 C.

211 D. *Exemptions.*

212 1. *Permitted interception of wire or oral communica-*
 213 *tions.*

214 It shall not be a violation of this section—(a) for an
 215 operator of a switchboard, or an officer, employee, or agent of
 216 any communication common carrier, whose facilities are used
 217 in the transmission of a wire communication, to intercept,
 218 disclose, or use that communication in the normal course of
 219 his employment while engaged in any activity which is a
 220 necessary incident to the rendition of service or to the
 221 protection of the rights or property of the carrier of such
 222 communication, or which is necessary to prevent the use of
 223 such facilities in violation of section fourteen A of chapter
 224 two hundred and sixty-nine of the General Laws: Provided,
 225 That said communication common carriers shall not utilize
 226 service observing or random monitoring except for mechani-
 227 cal or service quality control checks and that when such ser-
 228 vice observing or service quality control checks are made the
 229 subscriber shall be notified and alerted by use of a beep signal.

230 (b) for persons to possess an office intercommunication
 231 system which is used in the ordinary course of their business
 232 or to use such office intercommunication system in the
 233 ordinary course of their business.

234 (c) for investigative and law enforcement officers of the
235 United States of America to violate the provisions of this
236 section if acting pursuant to authority of the laws of the
237 United States and within the scope of their authority.

238 (d) for any person duly authorized to make specified
239 interceptions by a warrant issued pursuant to this section.

240 2. *Permitted disclosure and use of intercepted wire or oral*
241 *communications.*

242 (a) Any investigative or law enforcement officer, who, by
243 any means authorized by this section, has obtained knowl-
244 edge of the contents of any wire or oral communication, or
245 evidence derived therefrom may disclose such contents or
246 evidence in the proper performance of his official duties.

247 (b) Any investigative or law enforcement officer, who, by
248 any means authorized by this section has obtained knowledge
249 of the contents of any wire or oral communication, or
250 evidence derived therefrom may use such contents or evi-
251 dence in the proper performance of his official duties.

252 (c) Any person who has obtained, by any means autho-
253 rized by this section, knowledge of the contents of any wire or
254 oral communication, or evidence derived therefrom, may,
255 subject to the applicable rules of evidence, disclose such
256 contents while giving testimony under oath or affirmation in
257 any criminal proceeding in any court of the United States or
258 of any state or in any Federal or state grand jury pro-
259 ceeding.

260 (d) The contents of any wire or oral communication
261 intercepted pursuant to a warrant in accordance with the
262 provisions of this section, or evidence derived therefrom, may
263 otherwise be disclosed only upon a showing of good cause
264 before a judge of competent jurisdiction.

265 E. *Warrants: when issuable:*

266 A warrant may issue only:

267 1. Upon a sworn application in conformity with this
268 section; and

269 2. Upon a showing by the applicant that there is probable
270 cause to believe that a designated offense has been, is being,
271 or is about to be committed and that evidence of the
272 commission of such an offense may thus be obtained or that
273 information which will aid in the apprehension of a person

274 who the applicant has probable cause to believe has com-
275 mitted, is committing, or is about to commit a designated
276 offense may thus be obtained; and

277 3. Upon a showing by the applicant that normal investiga-
278 tive procedures have been tried and have failed or reasonably
279 appear unlikely to succeed if tried.

280 F. *Warrants: application.*

281 1. Application. The attorney general, any assistant
282 attorney general specially designated by the attorney general,
283 any district attorney, or any assistant district attorney
284 specially designated by the district attorney may apply ex
285 parte to a judge of competent jurisdiction for a warrant to
286 intercept wire or oral communications. Each application ex
287 parte for a warrant must be in writing, subscribed and sworn
288 to by the applicant authorized by this subparagraph.

289 2. The application must contain the following:

290 (a) A statement of facts establishing probable cause to
291 believe that a particularly described designated offense has
292 been, is being, or is about to be committed; and

293 (b) A statement of facts establishing probable cause to
294 believe that oral or wire communications of a particularly
295 described person will constitute evidence of such designated
296 offense or will aid in the apprehension of a person who the
297 applicant has probable cause to believe has committed, is
298 committing, or is about to commit a designated offense;
299 and

300 (c) That oral or wire communications of the particularly
301 described person or persons will occur in a particularly
302 described place and premises or over particularly described
303 telephone or telegraph lines; and

304 (d) A particular description of the nature of the oral or
305 wire communications sought to be intercepted; and

306 (e) A statement that the oral or wire communications
307 sought are material to a particularly described investigation
308 or prosecution and that such communications are not legally
309 privileged; and

310 (f) A statement of the period of time for which the
311 interception is required to be maintained. If practicable, the
312 application should designate hours of the day or night during
313 which the communications may be reasonably expected to

314 occur. If the nature of the investigation is such that the
315 authorization for the interception should not automatically
316 terminate when the described communications have been first
317 obtained, the application must specifically state facts estab-
318 lishing probable cause to believe that additional communica-
319 tions of the same nature will occur thereafter; and

320 (g) If it is reasonably necessary to make a secret entry
321 upon a private place or premises in order to install an
322 intercepting device to effectuate the purposes of the applica-
323 tion, a statement to such effect; and

324 (h) If a prior application has been submitted or a warrant
325 previously obtained for the interception of oral or wire
326 communications, a statement fully disclosing the date, court,
327 applicant, execution, results, and present status thereof;
328 and

329 (i) If there is good cause for requiring the postponement of
330 service pursuant to paragraph L, subparagraph 2, a descrip-
331 tion of such circumstances, including reasons for the appli-
332 cant's belief that secrecy is essential to obtaining the evidence
333 or information sought.

334 3. Allegations of fact in the application may be based
335 either upon the personal knowledge of the applicant or upon
336 information and belief. If the applicant personally knows the
337 fact alleged, it must be so stated. If the facts establishing
338 such probable cause are derived in whole or part from
339 the statements of persons other than the applicant, the
340 sources of such information and belief must be either dis-
341 closed or described; and the application must contain facts
342 establishing the existence and reliability of any informant, or
343 the reliability of the information supplied by him. The
344 application must also state, so far as possible, the basis of the
345 informant's knowledge or belief. If the applicant's informa-
346 tion and belief is derived from tangible evidence or recorded
347 oral evidence, a copy or detailed description thereof should be
348 annexed to or included in the application. Affidavits of
349 persons other than the applicant may be submitted in con-
350 junction with the application if they tend to support any fact
351 or conclusion alleged therein. Such accompanying affidavits
352 may be based either on personal knowledge of the affiant or
353 information and belief, with the source thereof, and reason
354 therefor, specified.

355 *G. Warrants; application to whom made.*

356 Application for a warrant authorized by this section must
357 be made to a judge of competent jurisdiction in the county
358 where the interception is to occur, or the county where the
359 office of the applicant is located, or in the event that there is
360 no judge of competent jurisdiction sitting in said county at
361 such time to a judge of competent jurisdiction sitting in
362 Suffolk County; except that for these purposes the office of
363 the attorney general shall be deemed to be located in Suffolk
364 County.

365 *H. Warrants; application how determined.*

366 1. If the application conforms to paragraph F, the issuing
367 judge may examine under oath any person for the purpose of
368 determining whether probable cause exists for the issuance of
369 the warrant pursuant to paragraph E. A verbatim transcript
370 of every such interrogation or examination must be taken and
371 a transcription of the same sworn to by the stenographer
372 shall be attached to the application and be deemed a part
373 thereof.

374 2. If satisfied that probable cause exists for the issuance of
375 a warrant the judge may grant the application and issue a
376 warrant in accordance with paragraph I. The application and
377 an attested copy of the warrant shall be retained by the
378 issuing judge and transported to the chief justice of the
379 superior court in accordance with the provisions of paragraph
380 N of this section.

381 3. If the application does not conform to paragraph F, or if
382 the judge is not satisfied that probable cause has been shown
383 sufficient for the issuance of a warrant, the application must
384 be denied.

385 *I. Warrants; form and content.*

386 A warrant must contain the following:

387 1. The subscription and title of the issuing judge; and
388 2. The date of issuance, the date of effect, and termination
389 date which in no event shall exceed thirty days from the date
390 of effect. The warrant shall permit interception of oral or wire
391 communications for a period not to exceed fifteen days. If
392 physical installation of a device is necessary, the thirty-day
393 period shall begin upon the date of installation. If the
394 effective period of the warrant is to terminate upon the
395 acquisition of particular oral or wire communications the
396 warrant shall so provide; and

397 3. A particular description of the person and the place,
398 premises or telephone or telegraph line upon which intercep-
399 tion may be conducted; and

400 4. A particular description of the nature of the oral or wire
401 communications to be obtained by the interception including
402 a statement of the designated offense to which they relate;
403 and

404 5. An express authorization to make secret entry upon a
405 private place or premises to install a specified intercepting
406 device if such entry is necessary to execute the warrant;
407 and

408 6. A statement providing for service of the warrant pur-
409 suant to Paragraph L, except that if there has been a finding
410 of good cause shown requiring the postponement of such
411 service, a statement of such finding together with the basis
412 therefor must be included and an alternative direction for
413 deferred service pursuant to Paragraph L, Subparagraph 2.

414 *J. Warrants; renewals.*

415 1. Any time prior to the expiration of a warrant or a
416 renewal thereof, the applicant may apply to the issuing judge
417 for a renewal thereof with respect to the same person, place,
418 premises or telephone or telegraph line. An application for
419 renewal must incorporate the warrant sought to be renewed
420 together with the application therefor and any accompanying
421 papers upon which it was issued. The application for renewal
422 must set forth the results of the interceptions thus far
423 conducted. In addition it must set forth present grounds for
424 extension in conformity with paragraph F.

425 2. Upon such application, the judge may issue an order
426 renewing the warrant and extending the authorization for a
427 period not exceeding fifteen days from the entry thereof. Such
428 an order shall specify the grounds for the issuance thereof. An
429 attested copy of the order shall be retained by the issuing
430 judge to be transported to the chief justice in accordance
431 with the provisions of subparagraph N of this section.

432 *K. Warrants; manner and time of execution.*

433 1. A warrant may be executed pursuant to its terms
434 anywhere in the commonwealth.

435 2. Such warrant may be executed by the authorized appli-
436 cant personally or by any investigative or law enforcement
437 officer of the commonwealth designated by him for the
438 purpose.

439 3. The warrant may be executed according to its terms
440 during the hours specified therein, and for the period therein
441 authorized or a part thereof. Unless specifically otherwise
442 ordered, the authorization shall terminate upon acquisition of
443 the oral or wire communications described in the warrant.
444 Upon termination of the authorization in the warrant and
445 any renewals thereof, the interception must cease at once,
446 and any device installed for the purpose of the interception
447 must be removed as soon thereafter as practicable. Entry
448 upon private premises for the removal of such device is
449 deemed to be authorized by the warrant.

450 *L. Warrants; service thereof.*

451 1. Prior to the execution of a warrant authorized by this
452 section or any renewal thereof, an attested copy of the
453 warrant or the renewal, must, except as otherwise provided in
454 subparagraph 2 of this paragraph, be served upon a person
455 whose oral or wire communications are to be obtained, and if
456 an intercepting device is to be installed upon the owner,
457 lessee, or occupant of the place or premises, or upon the
458 subscriber to the telephone or owner or lessee of the telegraph
459 line described in the warrant.

460 2. If the application specifically alleges exigent circum-
461 stances requiring the postponement of service and the issuing
462 judge finds that such circumstances exist, the warrant may
463 provide that an attested copy thereof may be served within
464 thirty days after the expiration of the warrant or, in case of
465 any renewals thereof, within thirty days after the expiration
466 of the last renewal; except that upon a showing of important
467 special facts which set forth the need for continued secrecy to
468 the satisfaction of the issuing judge said judge may direct
469 that the attested copy of the warrant be served on such
470 parties as are required by this section at such time as may be
471 appropriate in the circumstances but in no event may he
472 order it to be served beyond a longer period of time than the
473 longest statute of limitations of any designated offense named
474 in the warrant.

475 3. The attested copy of the warrant shall be served on any
476 person required by this section by leaving the same at his
477 usual place of abode, or in hand, or if this is not possible by
478 mailing the same by certified or registered mail to his last
479 known place of abode. A return of service shall be made to the

480 issuing judge, except, that if such service is postponed as pro-
481 vided in subparagraph 2 of paragraph L, return shall be made
482 to the chief justice. The return of service shall be deemed a
483 part of the return of the warrant and attached thereto.

484 *M. Warrant; return.*

485 Within twenty-one days after termination of the warrant
486 or the last renewal thereof, a return must be made thereon to
487 the judge issuing the warrant by the applicant therefor,
488 containing the following:

489 (a) a statement of the nature and location of the com-
490 munications facilities, if any, and premises or places where
491 the interceptions were made; and

492 (b) the periods of time during which such interceptions
493 were made; and

494 (c) the names of the parties to the communications inter-
495 cepted if known; and

496 (d) the original recording of the oral or wire communica-
497 tions intercepted, if any; and

498 (e) a statement attested under the pains and penalties of
499 perjury by each person who heard oral or wire communica-
500 tions as a result of the interception authorized by the warrant
501 which was not recorded stating everything that was over-
502 heard to the best of their recollection at the time of the
503 execution of the statement.

504 *N. Custody and Secrecy of papers and recordings made*
505 *pursuant to a warrant.*

506 1. The contents of any wire or oral communication inter-
507 cepted pursuant to a warrant issued in accordance with this
508 section shall, if possible be recorded on tape or wire or other
509 similar device. Duplicate recordings may be made for use
510 pursuant to subparagraphs 2(a) and (b) of paragraph D for
511 investigations. Upon examination of the return and a deter-
512 mination that it complies with this section, the issuing judge
513 shall forthwith order that the application, warrant, all
514 renewal orders and the return thereof be transmitted to the
515 chief justice by such persons as he shall designate. Their
516 contents shall not be disclosed except as provided in this
517 section. The application, warrant, the renewal order and the
518 return or any one of them or any part of them may be
519 transferred to any trial court, grand jury proceeding of any
520 jurisdiction by any law enforcement or investigative officer

521 designated by the chief justice and a trial justice may allow
522 them to be disclosed in accordance with paragraph D, sub-
523 paragraph 2, or paragraph O or any other applicable provi-
524 sion of this section. The application, warrant, all renewal
525 orders and the return, shall be stored in a secure place which
526 shall be designated by the chief justice, to which access shall
527 be denied to all persons except the chief justice or such court
528 officers or administrative personnel of the court as he shall
529 designate.

530 2. Any violation of the terms and conditions of any order of
531 the chief justice pursuant to the authority granted in this
532 paragraph shall be punished as a criminal contempt of court
533 in addition to any other punishment authorized by law.

534 3. The application, warrant, renewal and return shall be
535 kept for a period of five years from the date of the issuance of
536 the warrant or the last renewal thereof at which time they
537 shall be destroyed by a person designated by the chief justice.
538 Prior notice of the destruction shall be given to the applicant
539 attorney general or his successor or the applicant district
540 attorney or his successor, and upon a showing of good cause
541 to the chief justice, the application, warrant, renewal, and
542 return may be kept for such additional period as the chief
543 justice shall determine but in no event longer than the
544 longest period of limitation for any designated offense speci-
545 fied in the warrant, after which time they shall be destroyed
546 by a person designated by the chief justice.

547 *O. Introduction of Evidence.*

548 1. In any criminal trial where the commonwealth intends
549 to offer in evidence any portions of the contents of any
550 interception or any evidence derived therefrom, the defen-
551 dant shall be served with a complete copy of each document
552 and item which make up each application, warrant,
553 renewal order, and return pursuant to which the information
554 was obtained, except that he shall be furnished a copy of any
555 recording instead of the original. The service must be made at
556 the arraignment of the defendant or, if a period in excess of
557 thirty days shall elapse prior to the commencement of the trial
558 of the defendant, the service shall be made at least thirty
559 days before the commencement of the criminal trial. Pro-
560 vided, however, that prior to making such service the com-
561 monwealth may apply ex parte, to the trial judge for permis-

562 sion to exclude from such service any portion of such docu-
 563 ments and items which is not relevant to the charge against
 564 the defendant and the disclosure of which would be prejudi-
 565 cial to a current or proposed investigation or prosecution.
 566 Any such ex parte application shall be heard and determined
 567 promptly. The burden shall be upon the commonwealth to
 568 establish that any portion of a document or item which the
 569 commonwealth wishes to exclude from the service required by
 570 this section is not relevant to the charge against the defen-
 571 dant and that disclosure of such portion would be likely to
 572 prejudice a current or proposed investigation or prosecution.
 573 Upon the determination of any such ex parte application the
 574 trial judge shall order the commonwealth to serve upon the
 575 defendant the documents and items required by this section
 576 subject to any exclusion permitted by him.

577 2. Service shall be made in hand upon the defendant or his
 578 attorney. Return of the service required by this subparagraph
 579 including the date of service shall be entered into the record
 580 of trial of the defendant by the commonwealth and such
 581 return shall be deemed prima facie evidence of the service
 582 described therein. Failure by the commonwealth to make
 583 service as required by this section shall render such evidence
 584 illegally obtained for purposes of the trial against the defen-
 585 dant and such evidence shall not be offered nor received at
 586 the trial notwithstanding the provisions of any other law or
 587 Rules of Court.

588 *P. Suppression of evidence, grounds therefor.*

589 Any aggrieved person who is a defendant in a criminal trial
 590 in a court of the commonwealth may move to suppress the
 591 contents of any intercepted wire or oral communication or
 592 evidence derived therefrom, for the following reasons:

593 1. That the communication was unlawfully intercepted.

594 2. That the communication was not intercepted in accor-
 595 dance with the terms of this section.

596 3. That the application or renewal application fails to set
 597 forth facts sufficient to establish probable cause for the
 598 issuance of a warrant.

599 4. That the interception was not made in conformity with
 600 the warrant.

601 5. That the evidence sought to be introduced was illegally
 602 obtained.

603 6. That the warrant does not conform to the provisions of
 604 this section.

605 *Q. Civil Remedy.*

606 Any aggrieved person whose oral or wire communications
 607 were intercepted, disclosed or used except as permitted or
 608 authorized by this section or whose personal or property
 609 interests or privacy were violated by means of an interception
 610 except as permitted or authorized by this section shall have a
 611 civil cause of action against any person who so intercepts,
 612 discloses or uses such communications or who so violates
 613 personal property or privacy interest and shall be entitled
 614 to recover from any such person—

615 1. actual damages but not less than liquidated damages
 616 computed at the rate of one hundred dollars per day for each
 617 day of violation or one thousand dollars, whichever is
 618 higher;

619 2. punitive damages; and

620 3. reasonable attorney's fees and other litigation disburse-
 621 ments reasonably incurred. Good faith reliance on a warrant
 622 issued under this section shall constitute a complete defense
 623 to an action brought under this paragraph.

624 *R. Annual Report of Interceptions of the General Court.*

625 On the second Friday of January, each year, the attorney
 626 general and each district attorney shall submit a report to the
 627 general court stating (1) the number of applications made for
 628 warrants during the previous year, (2) the name of the
 629 applicant, (3) the number of warrants issued, (4) the effec-
 630 tive period for the warrants, (5) the number and designation
 631 of the offenses for which those applications were sought, and
 632 for each of the designated offenses the following: (a) the
 633 number of renewals, (b) the number of interceptions made
 634 during the previous year, (c) the number of indictments
 635 believed to be obtained as a result of those interceptions, (d)
 636 the number of criminal convictions obtained in trials where
 637 evidence obtained in accordance with the provisions of this
 638 section was introduced. This report shall be a public docu-
 639 ment and be made available to the public at the offices of the
 640 attorney general and district attorneys. In the event of
 641 failure to comply with the provisions of this paragraph any
 642 person may compel compliance by means of an action of
 643 mandamus.

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

1 SECTION 3. Section one hundred of chapter two hundred
2 and seventy-two of the General Laws is hereby repealed.

1 SECTION 4. Section one hundred and one of chapter two
2 hundred and seventy-two of the General Laws is hereby
3 repealed.

1 SECTION 5. Section one hundred and two of chapter two
2 hundred and seventy-two of the General Laws is hereby
3 repealed.

1 SECTION 6. If any provision of this act or application
2 thereof to any person or circumstances is held invalid, such
3 invalidity shall not affect other provisions or applications of
4 the act which can be given effect without the invalid provision
5 or application, and to this end the provisions of this act are
6 declared to be severable.