

SENATE No. 1218

The Commonwealth of Massachusetts

SENATE, July 18, 1968.

The special committee of the Senate, to whom was referred the House Bill further regulating and eavesdropping (House, No. 4875, printed as amended); and the interim report of the special commission established relative to electronic eavesdropping (Senate, No. 1132), reports the accompanying bill (Senate, No. 1218).

For the committee,

JOSEPH D. WARD

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PRINTED AS AMENDED.

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 communications.—*

6 A. *Preamble.*

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

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

27 The general court further finds that the uncontrolled de-
28 velopment and unrestricted use of modern electronic sur-
29 veillance devices pose grave dangers to the privacy of all
30 citizens of the commonwealth. Therefore, the secret use of
31 such devices by private individuals must be prohibited. The
32 use of such devices by law enforcement officials must be con-
33 ducted under strict judicial supervision and should be limited
34 to the investigation of organized crime.

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

36 1. The term “wire communication” means any communi-
37 cation made in whole or in part through the use of facilities
38 for the transmission of communications by the aid of wire,
39 cable, or other like connection between the point of origin
40 and the point of reception.

41 2. The term “oral communication” means speech, except
42 such speech as is transmitted over the public air waves by
43 radio or other similar device.

44 3. The term “intercepting device” means any device or
45 apparatus which is capable of transmitting, receiving, ampli-
46 fying, or recording a wire or oral communication other than
47 a hearing aid or similar device which is being used to cor-
48 rect subnormal hearing to normal and other than any tele-
49 phone or telegraph instrument, equipment, facility, or a com-
50 ponent thereof, (a) furnished to a subscriber or user by a
51 communications common carrier in the ordinary course of
52 its business under its tariff and being used by the subscriber
53 or user in the ordinary courses of its business; or (b) being
54 used by a communications common carrier in the ordinary
55 course of its business.

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
64 if the officer is a party to such communication or has been

65 given prior authorization to record or transmit the com-
66 munication by such a party and if recorded or transmitted
67 in the course of an investigation of a designated offense as
68 defined herein.

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

74 6. The term "aggrieved person" means any individual who
75 was a party to an intercepted wire or oral communication or
76 who was named in the warrant authorizing the interception,
77 or who would otherwise have standing to complain that his
78 personal or property interest or privacy was invaded in the
79 course of an interception.

80 7. The term "designated offense" shall include the follow-
81 ing offenses in connection with organized crime as defined
82 in the preamble: arson, assault and battery with a dangerous
83 weapon, extortion, bribery, burglary, embezzlement, forgery,
84 gaming in violation of section 17 of chapter 271 of the gen-
85 eral laws, intimidation of a witness or juror, kidnapping,
86 larceny, lending of money or things of value in violation of
87 the general laws, mayhem, murder, any offense involving the
88 possession or sale of a narcotic or harmful drug, perjury,
89 prostitution, robbery, subornation of perjury, any violation
90 of this section, being an accessory to any of the foregoing
91 offenses and conspiracy or attempt or solicitation to com-
92 mit any of the foregoing offenses.

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 conduct
96 investigations of, or to make arrests for the designated of-
97 fenses, and any attorney authorized by law to participate in
98 the prosecution of such 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
105 or in the event of his disability or unavailability any other
106 judge of competent jurisdiction designated by the chief justice.

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

110 13. The term "person" means any individual, partnership,
111 association, joint stock company, trust, or corporation, whether
112 or not any of the foregoing is an officer, agent or employee of
113 the United States, a state, or a political subdivision of a state.

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

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

122 16. The term "exigent circumstances" shall mean the show-
123 ing 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 to 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 any
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 Excepted 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 communications by any
150 means, or attempts to edit, alter or tamper with any tape,
151 transcription or recording of oral or wire communications
152 by any means with the intent to present in any judicial pro-
153 ceeding or proceeding under oath, or who presents such re-
154 cording or permits such recording to be presented in any
155 judicial proceeding or proceeding under oath, without fully
156 indicating the nature of the changes made in the original
157 state of the recording, shall be fined not more than ten thou-
158 sand dollars (\$10,000.00) or imprisoned in the state prison
159 not more than five years or imprisoned in a jail or house of
160 correction not more than two years or both so fined and
161 given one such imprisonment.

162 3. Disclosure or use of wire or oral communications pro-
163 hibited.

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

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

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

175 4. Disclosure of contents of applications, warrants, renew-
176 als, and returns prohibited.

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

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

188 5. Possession of Interception Devices Prohibited.

189 A person who possesses any intercepting device under cir-
190 cumstances evincing an intent to commit an interception not
191 permitted or authorized by this section, or a person who
192 permits an intercepting device to be used or employed for
193 an interception not permitted or authorized by this section,
194 or a person who possesses an interception device knowing
195 that the same is intended to be used to commit an intercep-
196 tion not permitted or authorized by this section, shall be
197 guilty of a misdemeanor punishable by imprisonment in a
198 jail or house of correction for not more than two years or by
199 a fine of not more than five thousand dollars or both.

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

204 6. Any person who permits or on behalf of any other per-
205 son commits or attempts to commit, or any person who parti-
206 cipates in a conspiracy to commit or to attempt to commit,
207 or any accessory to a person who commits a violation of sub-
208 paragraphs 1 through 5 of paragraph C of this section shall
209 be punished in the same manner as is provided for the respec-
210 tive offenses as described in subparagraphs 1 through 5 of
211 paragraph C.

212 D. Exemptions.

213 1. Permitted interception of wire or oral communications.

214 It shall not be a violation of this section —

215 a. for an operator of a switchboard, or an officer, employee,
216 or agent of any communication common carrier, whose fa-

217 cilities are used in the transmission of a wire communication,
 218 to intercept, disclose, or use that communication in the
 219 normal course of his employment while engaged in any ac-
 220 tivity which is a necessary incident to the rendition of serv-
 221 ice or to the protection of the rights or property of the car-
 222 rier of such communication, or which is necessary to prevent
 223 the use of such facilities in violation of section fourteen A
 224 of chapter two hundred and sixty-nine of the general laws:
 225 Provided, That said communication common carriers shall
 226 not utilize service observing or random monitoring except
 227 for mechanical or service quality control checks.

228 b. for persons to possess an office intercommunication
 229 system which is used in the ordinary course of their business
 230 or to use such office intercommunication system in the or-
 231 dinary course of their business.

232 c. for investigative and law enforcement officers of the
 233 United States of America to violate the provisions of this sec-
 234 tion if acting pursuant to authority of the laws of the United
 235 States and within the scope of their authority.

236 d. for any person duly authorized to make specified inter-
 237 ceptions by a warrant issued pursuant to this section.

238 2. Permitted disclosure and use of intercepted wire or
 239 oral communications.

240 a. Any investigative or law enforcement officer, who, by
 241 any means authorized by this section, has obtained knowledge
 242 of the contents of any wire or oral communication, or evidence
 243 derived therefrom may disclose such contents or evidence in
 244 the proper performance of his official duties.

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

250 c. Any person who has obtained, by any means authorized
 251 by this section, knowledge of the contents of any wire or oral
 252 communication, or evidence derived therefrom, may disclose
 253 such contents while giving testimony under oath or affirma-
 254 tion in any criminal proceeding in any court of the United

255 States or of any state or in any Federal or state grand jury
 256 proceeding.

257 d. The contents of any wire or oral communication inter-
 258 cepted pursuant to a warrant in accordance with the provi-
 259 sions of this section, or evidence derived therefrom, may
 260 otherwise be disclosed only upon a showing of good cause
 261 before a judge of competent jurisdiction.

262 e. No otherwise privileged wire or oral communication
 263 intercepted in accordance with, or in violation of, the provi-
 264 sions of this section shall lose its privileged character.

265 E. *Warrants.* When issuable.

266 A warrant may issue only:

267 1. Upon a sworn application in conformity with this sec-
 268 tion; 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 commis-
 272 sion of such an offense may thus be obtained or that infor-
 273 mation which will aid in the apprehension of a person who
 274 the applicant has probable cause to believe has committed, is
 275 committing, or is about to commit a designated offense may
 276 thus be obtained; and

277 3. Upon a showing by the applicant that normal investi-
 278 gative procedures have been tried and have failed or reason-
 279 ably appear unlikely to succeed if tried.

280 F. *Warrants.* Application.

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

289 2. The application must contain the following:

290 a. A statement of facts established probable cause to be-
 291 lieve 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 be-
294 lieve that oral or wire communications of a particularly de-
295 scribed person will constitute evidence of such designated of-
296 fense 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; and

299 c. That the oral or wire communications of the particu-
300 larly described person or persons will occur in a particularly
301 described place and premises or over particularly described
302 telephone or telegraph lines; and

303 d. A particular description of the nature of the oral or
304 wire communications sought to be overhead; and

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

309 f. A statement of the period of time for which the inter-
310 ception is required to be maintained. If practicable, the ap-
311 plication should designate hours of the day or night during
312 which the oral or wire communications may be rea-
313 sonably expected to occur. If the nature of the investigation
314 is such that the authorization for the interception should not
315 automatically terminate when the described oral or wire
316 communications have been first obtained, the application
317 must specifically state facts establishing probable cause to be-
318 lieve that additional oral or wire communications of the same
319 nature will occur thereafter; and

320 g. If it is reasonably necessary to make a secret entry
321 upon a private place and premises in order to install an inter-
322 cepting device to effectuate the interception, a statement to
323 such effect; and

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

328 i. If there is good cause for requiring the postponement
329 of service pursuant to paragraph L, subparagraph 2, a de-
330 scription of such circumstances, including reasons for the ap-

331 plicant's belief that secrecy is essential to obtaining the evi-
332 dence or information sought.

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

354 G. *Warrants.* Application to whom made.

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

364 H. *Warrants;* application how determined.

365 1. If the application conforms to paragraph F, the issuing
366 judge may examine under oath any person for the purpose of
367 determining whether probable cause exists for the issuance
368 of the warrant pursuant to paragraph E. A verbatim tran-
369 script of every such interrogation or examination must be

370 taken, and a transcription of the same sworn to by the steno-
371 grapher, shall be attached to the application and be deemed a
372 part thereof.

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

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

384 I. *Warrants*; form and content.

385 A warrant must contain the following:

386 1. The subscription and title of the issuing judge; and

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

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

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

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

406 6. A statement providing for service of the warrant pur-
407 suant to paragraph L except that if there has been a finding

408 of good cause shown requiring the postponement of such
409 service, a statement of such finding together with the basis
410 therefor must be included and an alternative direction for
411 deferred service pursuant to paragraph L, subparagraph 2.

412 J. *Warrants*; *renewals*.

413 1. Any time prior to the expiration of a warrant or a
414 renewal thereof, the applicant may apply to the issuing judge
415 for a renewal thereof with respect to the same person, place,
416 premises or telephone or telegraph line. An application for
417 renewal must incorporate the warrant sought to be renewed
418 together with the application therefor and any accompanying
419 papers upon which it was issued. The application for renewal
420 must set forth the results of the interceptions thus far con-
421 ducted. In addition, it must set forth present grounds for
422 extension in conformity with paragraph F, and the judge
423 may interrogate under oath and in such an event a transcript
424 must be provided and attached to the renewal application in
425 the same manner as is set forth in subparagraph 1 of para-
426 graph H.

427 2. Upon such application, the judge may issue an order
428 renewing the warrant and extending the authorization for a
429 period not exceeding fifteen (15) days from the entry thereof.
430 Such an order shall specify the grounds for the issuance
431 thereof. The application and an attested copy of the order
432 shall be retained by the issuing judge to be transported to the
433 chief justice in accordance with the provisions of subpara-
434 graph N of this section. In no event shall a renewal be granted
435 which shall terminate later than two years following the
436 effective date of the warrant.

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

438 1. A warrant may be executed pursuant to its terms any-
439 where in the commonwealth.

440 2. Such warrant may be executed by the authorized ap-
441 plicant personally or by any investigative or law enforce-
442 ment officer of the commonwealth designated by him for
443 the purpose.

444 3. The warrant may be executed according to its terms
445 during the hours specified therein, and for the period therein

446 authorized, or a part thereof. The authorization shall termi-
 447 nate upon the acquisition of the oral or wire communications,
 448 evidence or information described in the warrant. Upon ter-
 449 mination of the authorization in the warrant and any renewals
 450 thereof, the interception must cease at once, and any device
 451 installed for the purpose of the interception must be re-
 452 moved as soon thereafter as practicable. Entry upon private
 453 premises for the removal of such device is deemed to be
 454 authorized by the warrant.

455 L. *Warrants; service thereof.*

456 1. Prior to the execution of a warrant authorized by this
 457 section or any renewal thereof, an attested copy of the war-
 458 rant or the renewal must, except as otherwise provided in
 459 subparagraph 2 of this paragraph, be served upon a person
 460 whose oral or wire communications are to be obtained, and
 461 if an intercepting device is to be installed, upon the owner,
 462 lessee, or occupant of the place or premises, or upon the sub-
 463 scriber to the telephone or owner or lessee of the telegraph
 464 line described in the warrant.

465 2. If the application specifically alleges exigent circumstances
 466 requiring the postponement of service and the issuing judge
 467 finds that such circumstances exist, the warrant may provide
 468 that an attested copy thereof may be served within thirty
 469 days after the expiration of the warrant or, in case of any
 470 renewals thereof, within thirty days after the expiration of
 471 the last renewal; except that upon a showing of important
 472 special facts which set forth the need for continued secrecy
 473 to the satisfaction of the issuing judge, said judge may direct
 474 that the attested copy of the warrant be served on such
 475 parties as are required by this section at such time as may
 476 be appropriate in the circumstances but in no event may he
 477 order it to be served later than three (3) years from the time
 478 of expiration of the warrant or the last renewal thereof. In
 479 the event that the service required herein is postponed in ac-
 480 cordance with this paragraph, in addition to the require-
 481 ments of any other paragraph of this section; service of an
 482 attested copy of the warrant shall be made upon any aggrieved
 483 person who should reasonably be known to the person who

484 executed or obtained the warrant as a result of the informa-
 485 tion obtained from the interception authorized thereby.

486 3. The attested copy of the warrant shall be served on
 487 persons required by this section by an investigative or law en-
 488 forcement officer of the commonwealth by leaving the same
 489 at his usual place of abode, or in hand, or if this is not pos-
 490 sible by mailing the same by certified or registered mail to
 491 his last known place of abode. A return of service shall be
 492 made to the issuing judge, except, that if such service is post-
 493 poned as provided in subparagraph 2 of paragraph L, it shall
 494 be made to the chief justice. The return of service shall be
 495 deemed a part of the return of the warrant and attached
 496 thereto.

497 M. *Warrant; return.*

498 Within seven days after termination of the warrant or the
 499 last renewal thereof, a return must be made thereon to the
 500 judge issuing the warrant by the applicant therefor, contain-
 501 ing the following:

502 a. a statement of the nature and location of the communi-
 503 cations facilities, if any, and premises or places where the
 504 interceptions were made; and

505 b. the periods of time during which such interceptions
 506 were made; and

507 c. the names of the parties to the communications in-
 508 tercepted if known; and

509 d. the original recording of the oral or wire communica-
 510 tions intercepted, if any; and

511 e. a statement attested under the pains and penalties of
 512 perjury by each person who heard oral or wire communica-
 513 tions as a result of the interception authorized by the war-
 514 rant, which were not recorded, stating everything that was
 515 overheard to the best of his recollection at the time of the
 516 execution of the statement.

517 N. *Custody and secrecy of papers and recordings made*
 518 *pursuant to a warrant.*

519 1. The contents of any wire or oral communication in-
 520 tercepted pursuant to a warrant issued pursuant to this sec-
 521 tion shall, if possible be recorded on tape or wire or other

522 similar device. Duplicate recordings may be made for use
523 pursuant to subparagraphs 2 (a) and (b) of paragraph D
524 for investigations. Upon examination of the return and a
525 determination that it complies with this section, the issuing
526 judge shall forthwith order that the application, all renewal
527 applications, warrant, all renewal orders and the return there-
528 to be transmitted to the chief justice by such persons as he
529 shall designate. Their contents shall not be disclosed except
530 as provided in this section. The application, renewal appli-
531 cations, warrant, the renewal order and the return or any
532 one of them or any part of them may be transferred to any
533 trial court, grand jury proceeding of any jurisdiction by any
534 law enforcement or investigative officer or court officer desig-
535 nated by the chief justice and a trial justice may allow them
536 to be disclosed in accordance with paragraph D, subparagraph
537 2, or paragraph O or any other applicable provision of this
538 section.

539 The application, all renewal applications, warrant, all re-
540 newal orders and the return, shall be stored in a secure place
541 which shall be designated by the chief justice, to which ac-
542 cess shall be denied to all persons except the chief justice or
543 such court officers or administrative personnel of the court
544 as he shall designate.

545 2. Any violation of the terms and conditions of any order
546 of the chief justice pursuant to the authority granted in this
547 paragraph, shall be punished as a criminal contempt of court
548 in addition to any other punishment authorized by law.

549 3. The application, warrant, renewal and return shall be
550 kept for a period of five (5) years from the date of the issuance
551 of the warrant or the last renewal thereof at which time they
552 shall be destroyed by a person designated by the chief justice.
553 Notice prior to the destruction shall be given to the applicant
554 attorney general or his successor or the applicant district
555 attorney or his successor and upon a showing of good cause
556 to the chief justice, the application, warrant, renewal, and
557 return may be kept for such additional period as the chief
558 justice shall determine but in no event longer than the longest
559 period of limitation for any designated offense specified in

560 the warrant, after which time they must be destroyed by a
561 person designated by the chief justice.

562 O. *Introduction of evidence.*

563 1. Notwithstanding any other provisions of this section
564 or any order issued pursuant thereto, in any criminal trial
565 where the commonwealth intends to offer in evidence any
566 portions of the contents of any interception or any evidence
567 derived therefrom the defendant shall be served with a com-
568 plete copy of each document and item which make up each
569 application, renewal application, warrant, renewal order, and
570 return pursuant to which the information was obtained, ex-
571 cept that he shall be furnished a copy of any recording instead
572 of the original. The service must be made at the arraignment
573 of the defendant or, if a period in excess of thirty (30) days
574 shall elapse prior to the commencement of the trial of the
575 defendant, the service may be made at least thirty (30) days
576 before the commencement of the criminal trial. Service shall
577 be made in hand upon the defendant or his attorney by any
578 investigative or law enforcement officer of the commonwealth.
579 Return of the service required by this subparagraph in-
580 cluding the date of service shall be entered into the record of
581 trial of the defendant by the commonwealth and such return
582 shall be deemed prima facie evidence of the service described
583 therein. Failure by the commonwealth to make such service
584 at the arraignment, or if delayed, at least thirty days before
585 the commencement of the criminal trial, shall render such
586 evidence illegally obtained for purposes of the trial against the
587 defendant; and such evidence shall not be offered nor re-
588 ceived at the trial notwithstanding the provisions of any other
589 law or rules of court.

590 2. In any criminal trial where the commonwealth intends
591 to offer in evidence any portions of a recording or transmis-
592 sion or any evidence derived therefrom, made pursuant to
593 the exceptions set forth in paragraph B, subparagraph 4, of
594 this section, the defendant shall be served with a complete
595 copy of each recording or a statement under oath of the
596 evidence overheard as a result of the transmission. The serv-

597 ice must be made at the arraignment of the defendant or if
 598 a period in excess of thirty days shall elapse prior to the com-
 599 mencement of the trial of the defendant, the service may be
 600 made at least thirty days before the commencement of the
 601 criminal trial. Service shall be made in hand upon the de-
 602 fendant or his attorney by any investigative or law enforce-
 603 ment officer of the commonwealth. Return of the service re-
 604 quired by this subparagraph including the date of service shall
 605 be entered into the record of trial of the defendant by the
 606 commonwealth and such return shall be deemed prima facie
 607 evidence of the service described therein. Failure by the
 608 commonwealth to make such service at the arraignment, or if
 609 delay at least thirty days before the commencement of the
 610 criminal trial, shall render such evidence illegally obtained for
 611 purposes of the trial against the defendant and such evidence
 612 shall not be offered nor received at the trial notwithstanding
 613 the provisions of any other law or rules of court.

614 P. *Suppression of evidence.*

615 Any person who is a defendant in a criminal trial in a
 616 court of the commonwealth may move to suppress the con-
 617 tents of any intercepted wire or oral communication or evi-
 618 dence derived therefrom, for the following reasons:

- 619 1. That the communication was unlawfully intercepted.
- 620 2. That the communication was not intercepted in ac-
 621 cordance with the terms of this section.
- 622 3. That the application or renewal application fails to set
 623 forth facts sufficient to establish probable cause for the is-
 624 suance of a warrant.
- 625 4. That the interception was not made in conformity with
 626 the warrant.
- 627 5. That the evidence sought to be introduced was illegally
 628 obtained.
- 629 6. That the warrant does not conform to the provisions
 630 of this section.

631 Q. *Civil Remedy.*

632 Any aggrieved person whose oral or wire communications
 633 were intercepted, disclosed or used except as permitted or
 634 authorized by this section or whose personal or property in-

635 terests or privacy were violated by means of an interception
 636 except as permitted or authorized by this section shall have a
 637 civil cause of action against any person who so intercepts,
 638 discloses or uses such communications or who so violates his
 639 personal, property or privacy interest, and shall be entitled
 640 to recover from any such person —

- 641 1. actual damages but not less than liquidated damages
 642 computed at the rate of \$100 per day for each day of viola-
 643 tion or \$1000, whichever is higher;
- 644 2. punitive damages; and
- 645 3. a reasonable attorney's fee and other litigation disburse-
 646 ments reasonably incurred. Good faith reliance on a warrant
 647 issued under this section shall constitute a complete defense
 648 to an action brought under this paragraph.

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

650 On the second Friday of January, each year, the attorney
 651 general and each district attorney shall submit a report to
 652 the general court stating (1) the number of applications made
 653 for warrants during the previous year, (2) the name of the
 654 applicant, (3) the number of warrants issued, (4) the effec-
 655 tive period for the warrants, (5) the number and designation
 656 of the offenses for which those applications were sought, and
 657 for each of the designated offenses the following: (a) the
 658 number of renewals, (b) the number of interceptions made
 659 during the previous year, (c) the number of indictments be-
 660 lieved to be obtained as a result of those interceptions, (d)
 661 the number of criminal convictions obtained in trials where
 662 interception evidence or evidence derived therefrom was in-
 663 troduced. This report shall be a public document and be made
 664 available to the public at the offices of the attorney general
 665 and district attorneys. In the event of failure to comply with
 666 the provisions of this paragraph any person may compel com-
 667 pliance by means of an action of mandamus.

- 1 SECTION 2. Chapter 166 of the General Laws is hereby
- 2 amended by adding the following after Section 43:
- 3 *Section 44. Service Observing, Interception.* — Service ob-
 4 serving of telephone lines conducted by telephone companies

5 for the purpose of determining the quality of transmission or
6 for any other purpose shall cease as soon as a connection is
7 established between the users of the telephone line. Notwith-
8 standing any other law, in line of any subscriber of a telephone
9 company shall not be monitored by a telephone company for
10 the purpose of service observing or random monitoring, if
11 he shall so request in writing to the telephone company. Any
12 subscriber may seek an injunction in the superior court to
13 prevent such service observing or random monitoring.

14 The Department of Public Utilities shall require that each
15 telephone company file annually with it a complete report of
16 all service observing activity carried on by any telephone
17 company including the number of calls monitored during the
18 previous calendar year, all rules and regulations of the tele-
19 phone companies for such service observing, a complete de-
20 scription of the location of each service observing facility for
21 each past calendar year, the number of employees engaged
22 in service observing and a statement of the expenses incurred
23 for such service observing to include salaries, cost of capital
24 equipment and maintenance and replacement costs of such
25 equipment, and administrative expenses incurred. The De-
26 partment shall also conduct periodic inspections at least semi-
27 annually of such service observing to determine whether or
28 not it complies with this section and the accuracy of the re-
29 ports filed. In the event of the failure of any telephone com-
30 pany to comply with this section the Department of Public
31 Utilities must order that the activity cease until compliance
32 is obtained and may seek an enforcement order in the Superior
33 Court of Suffolk County.

1 SECTION 3. Section 25 of Chapter 147, of the general laws
2 is amended by adding the following sentences after the last
3 sentence of the first paragraph: —

4 No person convicted of a violation of Section 99 or 99A of
5 Chapter 272 of the general laws shall be granted a license and
6 any license previously granted to such person shall be revoked.

1 SECTION 4. Section one hundred of chapter two hundred and

2 seventy-two of the general laws is hereby repealed.

1 SECTION 5. Section one hundred and one of chapter two
2 hundred and seventy-two of the general laws is hereby re-
3 pealed.

1 SECTION 6. Section one hundred and two of chapter two
2 hundred and seventy-two of the general laws is hereby re-
3 pealed.

1 SECTION 7. If any provision of this act or application thereof
2 to any person or circumstances is held invalid, such invalidity
3 shall not effect other provisions or applications of the act
4 which can be given effect without the invalid provision or ap-
5 plication, and to this end the provisions of this act are de-
6 clared to be severable.