

No. 327

AN ACT

HB 1588

Amending Title 18 (Crimes and Offenses) of the Pennsylvania Consolidated Statutes, adding and grading the crime of eavesdropping.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. The chapter analysis of Chapter 57 of Title 18, act of November 25, 1970 (P.L.707, No.230), known as the Pennsylvania Consolidated Statutes, added December 6, 1972 (P.L.1482, No.334), is amended by adding an item to read:

CHAPTER 57
INVASION OF PRIVACY

Sec.

* * *

5705. *Breach of privacy by eavesdropping with electronic, mechanical or other devices.*

Section 2. Section 5701 of Title 18 of the act is amended by adding a definition to read:

§ 5701. Definitions.

Subject to additional definitions contained in subsequent provisions of this chapter, the following words and phrases, when used in this chapter shall have, unless the context clearly indicates otherwise, the meanings given to them in this section:

* * *

“Eavesdropping.” Surreptitiously listening to, monitoring, transmitting, amplifying or recording the voice of another person without the knowledge and approval of such other person by use of any electronic, mechanical or other device, but the term “electronic, mechanical, or other device” does not include a hearing aid or similar device used by a person with impaired hearing, for the purpose of overcoming the impairment and permitting the hearing of sounds ordinarily audible to the human ear.

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Section 3. Sections 5703 and 5704 of Title 18 of the act are reenacted to read:

§ 5703. Admissibility in evidence.

Except as proof in a suit or prosecution for a violation of this chapter, no evidence obtained as a result of a violation of privacy or breach of privacy of messages shall be admissible as evidence in any legal proceeding.

§ 5704. Civil damages.

Any person who violates or aids, abets, or procures a violation of this chapter shall be liable to any person whose communication is unlawfully intercepted or divulged for treble the amount of any damage resulting from such unlawful interception, divulgence or use, but in no event less than \$100 and a reasonable attorney's fee.

Section 4. Title 18 of the act is amended by adding a section to read:

§ 5705. Breach of privacy by eavesdropping with electronic, mechanical or other devices.

(a) Offense defined.—A person commits a misdemeanor of the second degree if he:

(1) makes, sells, buys, makes use of, possesses, installs or employs any electronic, mechanical or other device for the purpose of eavesdropping; or

(2) divulges or uses any information, knowing or having reason to know that such information was obtained by eavesdropping unless such divulgence or use is with the permission of the person or persons whose voice, voices or actions were the subject of the eavesdropping.

(b) Confiscation of eavesdropping devices.—Any electronic, mechanical or other device made, sold, bought, made use of, possessed, installed or employed in violation of subsection (a) of this section shall be seized by and forfeited to the Commonwealth of Pennsylvania.

(c) Exceptions.—Subsections (a) and (b) of this section shall not apply to devices used or acts done by any of the following:

(1) Personnel of any telephone or telegraph common carrier or their corporate affiliates in the performance of their duties in connection with the construction, maintenance or operation of a telephone or telegraph system.

(2) The President of the United States or those acting at his direction in the exercise of his constitutional power to take such measures as he deems necessary to protect the Nation against actual or potential attack or other hostile acts of a foreign power or to protect National security information against foreign intelligence activities. No information obtained in the exercise of such power by eavesdropping, otherwise prohibited by this section, shall be received in evidence in any judicial or administrative proceeding. Neither shall such information be otherwise used or divulged except as necessary to implement such power.

(3) Duly appointed public Pennsylvania State and local law enforcement officers in the performance of their law enforcement duties when acting pursuant to an order of court issued in accordance with the provisions of subsection (d) of this section. This exception shall be limited to those situations in which the personal safety of such law enforcement officers is in jeopardy and shall not include any right of recordation. The electronic recording of any conversation

overheard by electronic or mechanical means or other device in the exercise of this exception shall not be admissible in any judicial or administrative proceeding.

(d) Procedure for granting exception to law enforcement officers.—The exception provided for in paragraph (3) of subsection (c) of this section relative to law enforcement officers shall be exercised only in compliance with the following procedure:

(1) The Attorney General or any district attorney or any deputy of the Attorney General or any district attorney so designated may authorize an application to be made to any judge of a court of record having jurisdiction for an order granting such exception.

(2) Each application shall be made in writing upon oath or affirmation and shall state the applicant's authority to make such application and shall include the following information:

(i) The identity of the law enforcement agency making the application and the official authorizing the application.

(ii) A full and complete statement of facts and circumstances relied upon by the applicant to justify his belief that an order should be issued, including details as to the particular offense that has been, is being, or is about to be committed; a description of the equipment to be used; the identity of person or persons, if known, committing the offenses; and the reasons why the personal safety of law enforcement officers may be in jeopardy in the matter at hand.

(iii) The period of time for which the exercise of the exception is required.

(iv) A full and complete statement of the facts concerning all previous applications relating to the same matter known to the individual authorizing or making the application, made to any other judge and the action taken by such judge.

(v) When the application is for the extension of an order, a statement setting forth the results thus far obtained and justification for such continuance.

(vi) Any additional information which the judge may require.

(3) Any judge authorized to receive such application for an exception may issue an order as requested or a modified order if such judge determines on the basis of the facts submitted by the applicant that there is probable cause that a crime has been, is being or is about to be committed and that the personal safety of law enforcement officers assigned thereto may be in jeopardy.

(4) Any such order shall specify the identity of the alleged criminals, if known, and the nature of the offense; the law enforcement agency or officers authorized to exercise the exception; and the period of time during which the exercise of the exception is

authorized. No such order may be for a period in excess of 30 days, although extensions may be granted upon the filing of a new application.

APPROVED—The 27th day of December, A. D. 1974.

MILTON J. SHAPP

The foregoing is a true and correct copy of Act of the General Assembly No. 327.

A handwritten signature in black ink, reading "C. McLaughlin Tucker". The signature is written in a cursive, flowing style.

Secretary of the Commonwealth.