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HOUSE OF REPRESENTATIVES  
COMMITTEE TO INVESTIGATE THE ADMINISTRATION OF JUSTICE  
Commonwealth of Pennsylvania  
Harrisburg, Pennsylvania

October 17, 1973

TO: Committee Members

FROM: Downey Rice  
Counsel

Pennsylvania Wiretapping Law

It is our understanding that the anti-wiretapping law went into effect in 1957 as 18 P.S. 3742. In 1973, in the revision of the Criminal Code, the same anti-wiretapping statute was continued as 18 P.S. 5702. This is attached.

Additionally, Senate Bill 729, adopted by the Legislature and sent to Governor Shapp on June 20, 1973 for signature, contained the following language:

(E) EXCEPTION. -- PARAGRAPH (A) OF THIS SECTION SHALL NOT EXTEND TO ACTS DONE BY PERSONNEL OF ANY TELEPHONE OR TELEGRAPH COMMON CARRIER IN THE PERFORMANCE OF THEIR DUTIES IN CONNECTION WITH THE CONSTRUCTION, MAINTENANCE OR OPERATION OF A TELEPHONE OR TELEGRAPH SYSTEM.

DR:rf  
attachment

**§ 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.

## CHAPTER 57

## INVASION OF PRIVACY

Sec.

5701. Definitions.

5702. Breach of privacy of telephone or telegraph communications.

5703. Admissibility in evidence.

5704. Civil damages.

**§ 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:

“Divulge.” Includes divulgence to a fellow employe of official in government or private enterprise or in a judicial, administrative, legislative, or other proceeding.

“Person.” Includes persons acting or purporting to act for, or in behalf of, any government or subdivision thereof, whether Federal, State, or local.

“Private place.” A place where one may reasonably expect to be safe from casual or hostile intrusion or surveillance, but the term does not include a place to which the public or a substantial group thereof has access.

**§ 5702. Breach of privacy of telephone or telegraph communications**

A person commits a misdemeanor of the second degree if he:

- (1) intercepts without permission of the parties to the communication a message or other communication by telephone or telegraph;
- (2) installs or employs any device for overhearing or recording communications passing through a telephone or telegraph line with intent to intercept a communication in violation of this chapter; or
- (3) divulges or uses without the consent of the sender or receiver the existence or contents of any such message or other communication if the actor knows that the message was illegally intercepted, or if he learned of the message in the course of employment with an agency engaged in transmitting it.

Pennsylvania

See update

18 § 2952 CRIMES AND OFFENSES

§ 2952. Repealed. 1966, Jan. 18, P.L. (1965) 1305, § 50

§ 3511. Repealed. 1966, Jan. 18, P.L. (1965) 1305, § 50

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INTERCEPTION AND INTERFERENCE OF COMMUNICATIONS

§ 3742. Telephone or telegraph communications; civil and criminal liability

No person shall intercept a communication by telephone or telegraph without permission of the parties to such communication. No person shall install or employ any device for overhearing or recording communications passing through a telephone or telegraph line with intent to intercept a communication in violation of this act. No person shall divulge or use the contents or purport of a communication intercepted in violation of this act. Whoever wilfully violates or aids, abets or procures a violation of this act is guilty of a misdemeanor, and shall be punishable by imprisonment of not more than one year, or by fine of not more than five thousand dollars (\$5000), or both, and 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 one hundred dollars (\$100) and a reasonable attorney's fee. The term "person" includes natural persons, business associations, partnerships, corporations, or other legal entities, and persons acting or purporting to act for, or in behalf of, any government or subdivision thereof, whether Federal, State or local. The term "divulge" includes divulgence to a fellow employe or official in government or private enterprise or in a judicial, administrative, legislative or other proceeding. Except as proof in a suit or prosecution for a violation of this act, no evidence obtained as a result of an unlawful interception shall be admissible in any such proceeding. Nothing in this act shall be interpreted to apply to acts done by personnel of any telephone or telegraph carrier in the performance of their duties in connection with the construction, maintenance or operation of a telephone or telegraph system. 1957, July 16, P.L. 956, No. 411, § 1.

Renumbered from section 2443 of Title 15.

Title of Act:

An Act to define and prohibit unauthorized interception, divulgence or use of telephone and telegraph communications; providing criminal penalties and civil damages, including attorneys' fees, for the violation thereof; and limiting the admissibility of evidence. 1957, July 16, P.L. 956, No. 411.

Library references

P.L.E. Telecommunications § 1.

519, 385 U.S. 981, 17 L.Ed.2d 443, rehearing denied 89 S.Ct. 231, 393 U.S. 919, 21 L.Ed.2d 207.

A determination that right of any caller to privacy of his conversation is of greater societal value than interest served by permitting eavesdropping or wiretapping is solely within discretion of legislature when within constitutional limits. Com. v. McCoy, 275 A.2d 28, 442 Pa. 234, 1971.

This section, prohibiting interception of telephone communications without permission of parties to communication and prohibiting installation of listening or recording device, does not include attachment of listening device by subscriber to his own telephone for rightly paramount purpose. Com. v. Goldberg, 224 A.2d 91, 208 Pa.Super. 513, 1966.

In telephone conversation, both parties are alternately "senders" and "receivers", but defendant was sender of that part of conversation between him and corporate employee which indicated an offer of bribery and if there had been an "interception" defendant's consent would have been required; but employee's permission alone sufficed where witness merely listened on extension, there was no violation of statute, and testimony as to conversation was admissible in evidence. Com. v. Murray, 213 A.2d 162, 206 Pa.Super. 298, 1956.

Where corporate employee consented to witness' listening to telephone conversation in which attempt was made to bribe corporate employee, recording of conversation did not constitute "inter-

Index to Notes

Consent 2  
Evidence 3

1. Construction and application

When one party to telephone conversation, himself, records a communication received from other party, no "interception" forbidden by Federal Communications Act or Pennsylvania statutes occurs. Parkhurst v. Kling, 266 F.Supp. 780, motion denied 249 F.Supp. 315.

Constitutional rights of defendant in prosecution in state court in Pennsylvania were not violated because evidence obtained by wire tap was used, where this section prohibiting use of evidence so obtained was not enacted until after conviction though before sentence. U. S. ex rel. Griffin v. Hendrick, 217 F.Supp. 865, D.C.1963, affirmed 360 F.2d 614, certiorari denied 87 S.Ct.

See  
Sup  
bit  
Revised



1 intoxicating liquor shall apply to seizures and forfeitures  
2 under the provisions of this section.

3 § 5514. Pool selling and bookmaking.

4 A person is guilty of a misdemeanor of the first degree if  
5 he:

- 6 (1) engages in pool selling or bookmaking;
- 7 (2) occupies any place for the purpose of receiving,  
8 recording or registering bets or wagers, or of selling pools;
- 9 (3) receives, records, registers, forwards, or purports  
10 or pretends to forward, to another, any bet or wager upon the  
11 result of any political nomination, appointment or election,  
12 or upon any contest of any nature;
- 13 (4) becomes the custodian or depository, for gain or  
14 ward, of any property staked, wagered or pledged, or to be  
15 staked, wagered, or pledged upon any such result; or
- 16 (5) being the owner, lessee, or occupant of any  
17 premises, knowingly permits or suffers the same, to be used  
18 or occupied for any of such purposes.

19 CHAPTER 57

20 INVASION OF PRIVACY

21. Sec.

- 22 5701. Definitions.
- 23 5702. Breach of privacy of telephone or telegraph  
24 communications.
- 25 5703. Admissibility in evidence.
- 26 5704. Civil damages.
- 27 § 5701. Definitions.

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29 provisions of this chapter, the following words and phrases,  
30 when used in this chapter shall have, unless the context clearly



1 indicates otherwise, the meanings given to them in this section:

2 "Divulge." Includes divulgence to a fellow employe of  
3 official in government or private enterprise or in a judicial,  
4 administrative, legislative, or other proceeding.

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6 or in behalf of, any government or subdivision thereof, whether  
7 Federal, State, or local.

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11 substantial group thereof has access.

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15 (1) intercepts without permission of the parties to the  
16 communication a message or other communication by telephone  
17 or telegraph;

18 (2) installs or employs any device for overhearing or  
19 recording communications passing through a telephone or  
20 telegraph line with intent to intercept a communication in  
21 violation of this chapter; or

22 (3) divulges or uses without the consent of the sender  
23 or receiver the existence or contents of any such message or  
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9 and a reasonable attorney's fee.

10 CHAPTER 59

11 PUBLIC INDECENCY

12 Sec.

13 5901. Open lewdness.

14 5902. Prostitution and related offenses.

15 5903. Obscenity.

16 5904. Public exhibition of insane or deformed person.

17 § 5901. Open lewdness.

18 A person commits a misdemeanor of the third degree if he does  
19 any lewd act which he knows is likely to be observed by others  
20 who would be affronted or alarmed.

21 § 5902. Prostitution and related offenses.

22 (a) Prostitution.--A person is guilty of prostitution; a  
23 misdemeanor of the third degree, if he or she:

24 (1) is an inmate of a house of prostitution or otherwise  
25 engages in sexual activity as a business; or

26 (2) loiters in or within view of any public place for  
27 the purpose of being hired to engage in sexual activity.

28 (b) Promoting prostitution.--A person who knowingly promotes  
29 prostitution of another commits a misdemeanor or felony as  
30 provided in subsection (c) of this section. The following acts

Part 1

CHAPTER 119—WIRE INTERCEPTION AND INTERCEPTION OF ORAL COMMUNICATIONS

Sec.

- 2510. Definitions.
- 2511. Interception and disclosure of wire or oral communications prohibited.
- 2512. Manufacture, distribution, possession, and advertising of wire or oral communication intercepting devices prohibited.
- 2513. Confiscation of wire or oral communication intercepting devices.
- 2514. Immunity of witnesses.
- 2515. Prohibition of use as evidence of intercepted wire or oral communications.
- 2516. Authorization for interception of wire or oral communications.
- 2517. Authorization for disclosure and use of intercepted wire or oral communications.
- 2518. Procedure for interception of wire or oral communications.
- 2519. Reports concerning intercepted wire or oral communications.
- 2520. Recovery of civil damages authorized.

Historical Note

1968 Amendment. Pub.L. 90-351, Title III, § 802, June 19, 1968, 82 Stat. 212, added chapter 119 and items 2510-2520.

§ 2510. Definitions

As used in this chapter—

(1) "wire communication" means any communication made in whole or in part through the use of facilities for the transmission of communications by the aid of wire, cable, or other like connection between the point of origin and the point of reception furnished or operated by any person engaged as a common carrier in providing or operating such facilities for the transmission of interstate or foreign communications;

(2) "oral communication" means any oral communication uttered by a person exhibiting an expectation that such communication is not subject to interception under circumstances justifying such expectation;

(3) "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States;

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Where corporate employee consented to witness' listening to telephone conversation in which attempt was made to bribe corporate employee, recording of conversation did not constitute "inter-

ception", within statute could be used by witness in memory. 11

In prosecution for of heroin where conversations between defendant obtained were relevant and received in evidence defendant was tried for the date of the section and its application outlawing wire tapping was not until after conviction was not Griffin, 149 A.2d 434, 1959, certiorari denied U.S. 838, 5 L.Ed.2d 217.

Where telephone call by police officers during caller asked for "name of defendant, and in place, and there was present in the room was conducted by defendant was not a prohibited communication by defendant prosecution for book selling, testimony of the calls was admitted. Smith, 140 A.2d 347, 1958.

2. Consent
This section clearly intent of all parties be

§ 3743. Police and fire

(a) Police or fire casts on frequencies megacycles and four cycles only.

(b) No unauthorized police or fire radio cast for the purpose of unlawful act or maintenance of apparatus of any nature any unlawful act.

(c) This act shall department, public

(d) Any person of a misdemeanor, a fine of not more imprisonment for no 1968, Dec. 12, P.L. —

Section 2 of the Act that the act should take

Title of Act:
An Act prohibiting and interference of ce fire radio broadcasts; manufacture, conversion

PROTECTION

§ 8766. Inquiry as grounds

Examination and challenges, see Rules of Criminal Procedure 1106 and 1107, set to Title 19.