

HOUSE No. 01379

The Commonwealth of Massachusetts

PRESENTED BY:

James E. Vallee

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:

An Act to combat economic crime

.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
<i>James E. Vallee</i>	<i>10th Norfolk</i>
<i>John W. Scibak</i>	<i>2nd Hampshire</i>
<i>Jennifer E. Benson</i>	<i>37th Middlesex</i>
<i>Carolyn C. Dykema</i>	<i>8th Middlesex</i>
<i>Cory Atkins</i>	<i>14th Middlesex</i>
<i>Denise Andrews</i>	<i>2nd Franklin</i>
<i>Denise Provost</i>	<i>27th Middlesex</i>
<i>Linda Dorcena Forry</i>	<i>12th Suffolk</i>
<i>Steven A. Baddour</i>	<i>First Essex</i>
<i>Barry R. Finegold</i>	<i>Second Essex and Middlesex</i>
<i>David Paul Linsky</i>	<i>5th Middlesex</i>
<i>John D. Keenan</i>	<i>7th Essex</i>
<i>Attorney General Martha Coakley</i>	<i>One Ashburton Place</i> <input type="checkbox"/> <i>Boston, MA 02108</i>

HOUSE No. 01379

By Mr. James E. Vallee of Franklin, petition (accompanied by bill, House, No. 01379) of Linda Dorcena Forry and others relative to economic crimes involving monetary instruments or other property known to be derived from criminal activity . Joint Committee on the Judiciary.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE
□ HOUSE
□ , NO. 4293 OF 2009-2010.]

The Commonwealth of Massachusetts

In the Year Two Thousand Eleven

An Act to combat economic crime

□.

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. The General Laws, as appearing in the 2008 Official Edition, are hereby amended
- 2 by adding after Chapter 267 the following new chapter: —
- 3 Chapter 267A Money Laundering.
- 4 Section 1. Definitions.
- 5 As used in this chapter, the following words shall, unless the context clearly requires otherwise,
- 6 have the following meanings:—
- 7 “Conducts”, initiates, concludes or participates in initiating or concluding in a transaction.

8 “Criminal activity”, a criminal offense punishable under the laws of the commonwealth by
9 imprisonment in a state prison or a criminal offense committed in another jurisdiction punishable
10 under the laws of that jurisdiction as a felony.

11 “Transaction”, a purchase, sale, loan, pledge, gift, transfer, delivery, or other disposition, and
12 with respect to a financial institution includes a deposit, withdrawal, bailment, transfer between
13 accounts, exchange of currency, loan, extension of credit, purchase or sale of any stock, bond,
14 certificate of deposit, or other monetary instrument, use of a safe deposit box, or any other
15 payment, transfer, or delivery by, through, or to a financial institution, by whatever means
16 effected.

17 “Financial institution”, (a) any bank as defined in section one of chapter 167 ; (b) any national
18 banking association, bank, savings and loan, savings bank, cooperative bank, building and loan,
19 or credit union organized under the laws of the United States; (c) any banking association, bank,
20 savings and loan, savings bank, cooperative bank, building and loan or credit union organized
21 under the laws of any state; (d) any agency, agent, or branch of a foreign bank; (e) any currency
22 dealer or exchange; (f) any person or business engaged primarily in the cashing of checks; (g)
23 any person or business regularly engaged in the issuing, selling, or redeeming of traveler's
24 checks, money orders or similar instruments; (h) any broker or dealer in securities or
25 commodities; (i) any licensed transmitter of funds or other person or business regularly engaged
26 in the transmission of funds to a foreign nation for others; (j) any investment banker or
27 investment company; (k) any insurer; (l) any dealer in precious metals, stones or jewels; (m) any
28 pawnbroker or scrap metal dealer; (n) any telegraph or other communications company; (o) any
29 personal property or real estate broker; (p) any dealer in vehicles, including, but not limited to,
30 automobiles, aircraft and vessels; (q) any operator of a betting or gambling facility; (r) any travel

31 agent; (s) any thrift institution; (t) any operator of a credit card system; or (u) any loan or finance
32 company.

33 “Monetary instrument”, the currency and coin of the United States or any foreign country; any
34 bank check, money order, stock, investment security, or negotiable instrument in bearer form or
35 otherwise in such form that title passes upon delivery; gold, silver or platinum bullion or coins;
36 diamonds, emeralds, rubies, or sapphires; any negotiable instrument including: bank checks,
37 cashier's checks, traveler's checks, or monetary orders made payable to the order of a named
38 party that have not been endorsed or which bear restrictive endorsements; poker chips, vouchers
39 or other tokens exchangeable for cash by gaming entities; and credit cards, debit cards, gift cards,
40 gift certificates, calling cards, or scrips.

41 Section 2. Money Laundering.

42 Whoever knowingly:

43 (a) engages in a transaction involving a monetary instrument or other property known to be
44 derived from criminal activity with the intent to promote, carry on or facilitate criminal activity,
45 or knowing that the transaction is designed in whole or in part either to conceal or disguise the
46 nature, location, source, ownership or control of the property derived from criminal activity or to
47 avoid a transaction reporting requirement of this chapter, of the United States, or of any other
48 state;

49 (b) transports or possesses a monetary instrument or other property that was derived from
50 criminal activity; or

51 (c) directs, organizes, finances, plans, manages, supervises, or controls the transportation of or
52 transactions in monetary instruments or other property known to be derived from criminal
53 activity or which a reasonable person would believe to be derived from criminal activity;
54 is guilty of the crime of money laundering and shall be punished by imprisonment in the state
55 prison for not more than 6 years or by a fine of not more than \$250,000 or twice the value of the
56 property transacted, whichever is greater, or by both such imprisonment and fine; and for any
57 subsequent offense shall be punished by imprisonment in the state prison for not less than 2
58 years, but not more than 10 years or by a fine of not more than \$500,000 or three times the value
59 of the property transacted, whichever is greater, or by both such imprisonment and fine.

60 Section 3. Record Keeping.

61 (a) Reports filed by a financial institution pursuant to the Currency and Foreign Transactions
62 Act, set forth in 31 U.S.C., sections 5311 through 5315, 31 C.F.R. 103 shall be given to the
63 attorney general by said financial institution upon the request of the attorney general. (b) A
64 financial institution, or any officer, employee, or agent thereof that provides any reports, records,
65 or information pursuant to this section shall not be liable to its customer, to a state or local
66 agency, or to any person for any loss or damage caused in whole or in part by the making, filing,
67 or governmental use of the report, or any information contained therein. Nothing in this chapter
68 shall be construed to give rise to a private cause of action for relief or damages. This paragraph
69 does not preclude a financial institution, in its discretion, from instituting contact with, and
70 thereafter communicating with and disclosing customer financial records to appropriate federal,
71 state, or local law enforcement agencies when the financial institution has reason to suspect that
72 the records or information demonstrate that the customer has violated any provisions of this

73 chapter. (c) Any report, record, or information obtained by the attorney general pursuant to this
74 section is not a public record and is not subject to disclosure, except to other state and federal
75 law enforcement agencies. (d) Any violation of this section, which is not a violation of section 2,
76 shall be punished by a fine of \$100 for each report requested by the attorney general and
77 subsequently not filed.

78 Section 4. Forfeiture.

79 All monetary instruments or other property, real or personal, obtained directly as a result of a
80 violation of section 2 of this chapter, shall be subject to forfeiture to the commonwealth.

81 SECTION 2. The General Laws, as appearing in the 2008 Official Edition, are hereby amended
82 by adding after Chapter 271 the following new chapter: —

83 Chapter 271A Enterprise Crime.

84 Section 1. Definitions.

85 As used in this chapter, the following words shall, unless the context clearly requires otherwise,
86 have the following meanings:—

87 “Enterprise”, any individual, sole proprietorship, partnership, corporation, trust or other legal
88 entity, or any unchartered union, association or group of persons associated in fact although not a
89 legally recognized entity, and includes unlawful as well as lawful enterprises and governmental
90 as well as other entities.

91 “Pattern of criminal enterprise activity”, engaging in at least two incidents of criminal enterprise
92 activity that have the same or similar pattern, intents, results, accomplices, victims or methods of
93 commission, or are otherwise interrelated by distinguishing characteristics and are not isolated

94 incidents, provided at least one of the acts occurred after the effective date of this act, and the last
95 of the incidents occurred within five years after a prior commission of criminal enterprise
96 activity.

97 “Criminal enterprise activity”, to commit, to attempt to commit, to conspire to commit, or to
98 solicit, coerce, aid, abet, or intimidate another to commit any of the following criminal activity
99 under the laws of the commonwealth or equivalent crimes under the laws of any other
100 jurisdiction:

101 a felony offense under chapter 271: distributing, dispensing, manufacturing, or possessing with
102 intent to distribute, dispense or manufacture a controlled substance in violation of chapter 94C;
103 murder; rape; manslaughter; assault; assault and battery; assault and battery in order to collect a
104 loan; assault with intent to rob or murder; mayhem; robbery; extortion; stalking; criminal
105 harassment; kidnapping; arson; burglary; malicious destruction of property; commission of a
106 felony for hire; breaking and entering; child exploitation; assault and battery on a child; rape of a
107 child; rape and abuse of a child; enticement of a child under 16; poisoning; human trafficking;
108 violation of constitutional rights; usury; uttering; misuse or fraudulent use of credit cards;
109 identity fraud; misappropriation of funds; gross fraud; insurance fraud; unlawful prize fighting or
110 boxing matches; counterfeiting; perjury; subornation of perjury; obstruction of justice; money
111 laundering; witness intimidation; bribery; electronic eavesdropping; prostitution; receiving stolen
112 property; larceny over \$250; larceny by false pretenses or embezzlement; forgery; prohibited
113 financial interest; procurement fraud; false claims; tax evasion; filing false tax return; crimes
114 involving violations of: gambling and lottery laws, gift laws, liquor laws, tobacco laws, firearms
115 laws, securities laws, lobbying laws, ethics laws, conflict of interest laws, child or elder abuse

116 laws; or any conduct defined as racketeering activity under Title 18, U.S.C. s. 1961(1)(A)(B) and
117 (D).

118 “Unlawful debt”, a debt incurred or contracted in an illegal gambling activity or business or
119 which is unenforceable under state or federal law in whole or part as to principal or interest
120 because of the law relating to usury.

121 Section 2. Enterprise Crime.

122 Whoever knowingly:

123 (a) through a pattern of criminal enterprise activity or through the collection of an unlawful debt,
124 receives anything of value or acquires or maintains, directly or indirectly, any interest in or
125 control of any enterprise;

126 (b) has received any proceeds derived, directly or indirectly, from a pattern of criminal
127 enterprise activity or through the collection of an unlawful debt, to use or invest, directly or
128 indirectly, any part of the proceeds including proceeds derived from the investment, in the
129 acquisition of any interest in real property, or in the establishment or operation of, any enterprise;

130 (c) is employed by or associated with any enterprise to conduct or participate, directly or
131 indirectly, in the conduct of the enterprise's affairs by engaging in a pattern of criminal enterprise
132 activity or through the collection of an unlawful debt; or

133 (d) conspires or attempts to violate subsections (a), (b), or (c) of this section;

134 is guilty of enterprise crime and shall be punished by imprisonment in the state prison for not
135 less than 3 years and not more than 15 years or by a fine of not more than \$25,000, or by both
136 such imprisonment and fine.

137 A purchase of securities on the open market for purposes of investment, and without the
138 intention of controlling or participating in the control of the issuer, or of assisting another to do
139 so, shall not be unlawful under this subsection (1) if the securities of the issuer held by the
140 purchaser, the members of his immediate family, and his or their accomplices in any pattern of
141 criminal activity or the collection of an unlawful debt after such purchase do not amount in the
142 aggregate to one percent of the outstanding securities of any one class and do not confer, either
143 in law or in fact, the power to elect one or more directors of the issuer.

144 Section 3. Forfeiture.

145

146 All monetary proceeds or other property, real or personal, obtained directly as a result of a
147 violation of this chapter, shall be subject to forfeiture to the commonwealth.

148 SECTION 3. The General Laws, as appearing in the 2008 Official Edition, are hereby amended
149 by striking out section 99 of Chapter 272 and inserting, in place thereof, the following new
150 section: —

151 Section 99. Wiretap and Electronic Surveillance

152 Section 1. Preamble

153 The purpose of this section is to provide a procedure for law enforcement agencies to seek court-
154 approved wire and surveillance orders that will keep pace with modern technology and criminal
155 techniques, while at the same time protecting individual rights and privacy.

156 Section 2. Definitions.

157 As used in this section, the following words shall, unless the context clearly requires otherwise,
158 have the following meanings:—

159 “Aggrieved person” means a person who was a party to any intercepted wire, oral, or electronic
160 communication or a person against whom the interception was directed.

161 “Attorney for the state” means the attorney general, any assistant attorney general specially
162 designated by the attorney general, any district attorney, or any assistant district attorney
163 specially designated by the district attorney authorized to commence and prosecute an action
164 under this section.

165 “Aural transfer” means a transfer containing the human voice at any point between and including
166 the point of origin and the point of reception.

167 “Communication common carrier” means any person engaged as a common carrier in providing
168 or operating wire or electronic communication facilities.

169 “Contents” when used with respect to any wire, oral, or electronic communication, includes any
170 information concerning the substance, purport, or meaning of that communication.

171 “Corporate and institutional trading partners” means financial institutions and general business
172 entities and corporations which engage in the business of cash and asset management, asset
173 management directed to custody operations, securities trading, and wholesale capital markets
174 including foreign exchange, securities lending, and the purchase, sale or exchange of securities,
175 options, futures, swaps, derivatives, repurchase agreements and other similar financial
176 instruments with such financial institution.

177 “Court of competent jurisdiction” means a superior court of the commonwealth.

178 “Electronic communication” means any transfer of signs, signals, writing, images, sounds, data,
179 or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic,
180 photo-electronic or photo-optical system, excluding:

181 (1) any wire or oral communication;

182 (2) any communication made through a tone-only paging device;

183 (3) any communication from a tracking device, defined as an electronic or mechanical device
184 which permits the tracking of the movement of a person or object; or

185 (4) electronic funds transfer information stored by a financial institution in a communications
186 system used for the electronic storage and transfer of funds.

187 “Electronic communication service” means any service which provides to its users the ability to
188 send or receive wire or electronic communications.

189 “Electronic communications system” means any wire, radio, electromagnetic, photo-optical or
190 photo-electronic facilities for the transmission of wire or electronic communications, and any
191 computer facilities or related electronic equipment for the electronic storage of such
192 communications.

193 “Electronic, mechanical, or other device” means any device or apparatus which can be used to
194 intercept a wire, oral, or electronic communication other than:

195 (1) any telephone or telegraph instrument, equipment or facility, or any component thereof:

196 (A) furnished to the subscriber or user by a provider of wire or electronic communication service
197 or commercial entity in the ordinary course of its business, and being used by the subscriber or

198 user in the ordinary course of its business, or furnished by such subscriber or user for connection
199 to the facilities of such service and used in the ordinary course of its business; or

200 (B) being used by a provider of wire or electronic communication service in the ordinary course
201 of its business, or by an investigative or law enforcement officer in the ordinary course of the
202 officer's duties; or

203 (C) a hearing aid or similar device being used to correct subnormal hearing to not better than
204 normal.

205 "Electronic storage" means:

206 (1) any temporary, intermediate storage of a wire or electronic communication incidental to the
207 electronic transmission thereof; and

208

209 (2) any storage of such communication by an electronic communication service for purposes of
210 backup protection of such communication.

211 "Financial institution" means a bank, as defined in section 1 of chapter 167 , and an investment
212 bank, securities broker, securities dealer, investment adviser, mutual fund, investment company
213 or securities custodian as defined in section 1.165-12(c)(1) of the United States Treasury
214 Regulations.

215 "Intercept" means the secret acquisition of aural or other secret acquisition of the contents of any
216 wire, electronic or oral communication through the use of any electronic, mechanical, or other
217 device; provided that it shall not constitute an interception for an investigative or law
218 enforcement officer, as defined in this section, to record or transmit a wire, electronic or oral

219 communication if the officer is a party to such communication or has been given prior
220 authorization to record or transmit the communication by such a party and if recorded or
221 transmitted in the course of an investigation of any offense described in section 7, and a judicial
222 official authorized to issue warrants pursuant to chapter 276 determines that there is probable
223 cause that evidence of such a crime will be recorded or transmitted. Any such warrant shall be
224 valid for no greater than 15 days from the date of issue.

225 “Investigative or law enforcement officer” means any officer of the federal government, the state
226 or political subdivision thereof, who is empowered by law to conduct investigations of or to
227 make arrests for offenses enumerated in this section, and any attorney authorized by law to
228 prosecute or participate in the prosecution of such offenses.

229 “Judge of competent jurisdiction” means any judge of the superior court of the commonwealth.

230 “Oral communication” means any verbal communication uttered by a person exhibiting an
231 expectation that such communication is not subject to interception under circumstances
232 justifying such expectation. However, such term excludes any electronic communication.

233 “Pen register” means a device or process which records or decodes dialing, routing, addressing,
234 or signaling information transmitted by an instrument or facility from which a wire or electronic
235 communication is transmitted, provided, however, that such information shall not include the
236 contents of any communication. Such term excludes any device or process used by a provider or
237 customer of a wire or electronic communication service for billing, or recording as an incident to
238 billing, for communications services provided by such provider of any device used by a provider,
239 or any device or process used by a provider or customer of a wire or electronic communication
240 service for billing, cost accounting or other like purposes in the ordinary course of its business.

241 “Person” means any employee, or agent of the United States or any state or political subdivision
242 thereof, and any individual, partnership, association, joint stock company, trust, or corporation.

243 “Readily accessible to the general public” means, with respect to a radio communication, that
244 such communication is not:

245 (1) scrambled or encrypted;

246 (2) transmitted using modulation techniques whose essential parameters have been withheld
247 from the public with the intention of preserving the privacy of such communication;

248 (3) carried on a subcarrier or other signal subsidiary to a radio transmission;

249 (4) transmitted over a communication system provided by a common carrier, unless the
250 communication is a tone only paging system communication; or

251 (5) transmitted on frequencies allocated under part 25, subpart D, E, or F of part 74, or part 94 of
252 the Rules of the Federal Communications Commission, unless, in the case of a communication
253 transmitted on a frequency allocated under part 74 that is not exclusively allocated to broadcast
254 auxiliary services, the communication is a two-way voice communication by radio.

255 “Trap and trace device” means a device or process which captures the incoming electronic or
256 other impulses which identify the originating number or other dialing, routing, addressing, and
257 signaling information reasonably likely to identify the source of a wire or electronic
258 communication, provided, however, that such information shall not include the contents of any
259 communication. Provided, however, that any caller identification device lawfully installed shall
260 be excluded from this definition.

261 “User” means any person or entity who:

262 (1) uses an electronic or wire communication service; and

263 (2) is duly authorized by the provider of such service to engage in such use.

264 “Wire communication” means any aural transfer made in whole or in part through the use of

265 facilities for the transmission of communications by the aid of wire, cable, or other like

266 connection between the point of origin and the point of reception, including the use of such

267 connection in a switching station, furnished or operated by any person engaged in providing or

268 operating such facilities for the transmission of intrastate, interstate or foreign communications

269 or communications affecting intrastate, interstate or foreign commerce.

270 Section 3. Unlawful Interception and Disclosure of Wire, Oral, or Electronic Communications

271 (a) Except as provided in subsection (d), it is unlawful for a person to intentionally:

272 (1) intercept, endeavor to intercept, or procure any other person to intercept or endeavor to

273 intercept, any wire, oral, or electronic communication;

274 (2) use, endeavor to use, or procure any other person to use or endeavor to use any electronic,

275 mechanical, or other device to intercept any oral communication when:

276 (A) such device is affixed to, or otherwise transmits a signal through, a wire, cable, or other like

277 connection used in wire or electronic communications; or

278 (B) such device transmits communications by radio, or interferes with transmission of such

279 communication.

280 (3) disclose, or endeavor to disclose, to any other person the contents of any wire, oral, or

281 electronic communication, knowing or having reason to know that the information was obtained

282 through the interception of a wire, oral, or electronic communication in violation of this
283 subsection; or

284 (4) use, or endeavor to use, the contents of any wire, oral, or electronic communication, knowing
285 or having reason to know that the information was obtained through the interception of a wire,
286 oral, or electronic communication in violation of this subsection; or

287 (5) edit, alter or tamper with any tape, transcription or recording of wire, oral, or electronic
288 communications by any means, or attempt to edit, alter or tamper with any tape, transcription or
289 recording of wire, oral, or electronic communications by any means with the intent to present in
290 any judicial proceeding or proceeding under oath, or present such recording or permit such
291 recording to be presented in any judicial proceeding or proceeding under oath, without fully
292 indicating the nature of the changes made in the original state of the recording.

293 (b) Proof of the installation of any intercepting device by any person under circumstances
294 evincing an intent to commit an interception, which is not authorized or permitted by this
295 section, shall be prima facie evidence of a violation of this subsection.

296 (c) Any person who violates subsection (a) and any person who permits or on behalf of any other
297 person commits or attempts to commit, or any person who participates in a conspiracy to commit
298 or attempt to commit, or any accessory to a person who commits a violation of subsection (a)
299 shall be punished as provided in subsection (f) or shall be subject to suit as provided in Section
300 17.

301 (d) It shall be lawful under this section for :

302 (1) an operator of a switchboard, or an officer, employee, or agent of a provider of wire or
303 electronic communication service, whose facilities are used in the transmission of a wire or
304 electronic communication, to intercept, disclose, or use that communication in the normal course
305 of that person's employment while engaged in any activity which is a necessary incident to the
306 rendition of that person's service or to the protection of the rights or property of the provider of
307 that service, or which is necessary to prevent the use of such facilities in violation of section
308 fourteen A of chapter two hundred and sixty-nine of the general laws; except that a provider of
309 wire or electronic communication service to the public shall not utilize service observing or
310 random monitoring except for mechanical or service quality control checks;

311 (2) (A) providers of wire or electronic communication service, their officers, employees, and
312 agents, landlords, custodians, or other persons, to provide information, facilities, or technical
313 assistance to persons authorized by law to intercept wire, oral, or electronic communications or
314 to conduct electronic surveillance, if such provider, its officers, employees, or agents, landlord,
315 custodian, or other specified person, has been provided with:

316 (i) a court order directing such assistance signed by the authorizing judge; or

317 (ii) a certification in writing by the attorney for the state that no warrant or court order is required
318 by law, that all statutory requirements have been met, and that the specified assistance is
319 required. The certification shall set forth the period of time during which the provision of
320 information, facilities, or technical assistance is authorized and specifying the information,
321 facilities, or assistance required;

322 (B) No provider of wire or electronic communication service, officer, employee, or agent
323 thereof, or landlord, custodian, or other specified person shall disclose the existence of any

324 interception or surveillance or the device used to accomplish the interception or surveillance with
325 respect to which the person has been furnished a court order or certification under this section,
326 except as may otherwise be required by legal process and then only after prior notification to the
327 attorney for the state as may be appropriate. Any such disclosure, shall render such person liable
328 for the civil damages provided for in section 17.

329 (C) No cause of action shall lie in any court against any provider of wire or electronic
330 communication service, its officers, employees, or agents, landlord, custodian, or other specified
331 person for providing information, facilities, or assistance in accordance with the terms of a court
332 order or certification under this section.

333 (3) a person to intercept or access an electronic communication made through an electronic
334 communication system that is configured so that such electronic communication is readily
335 accessible to the general public;

336 (4) a person to intercept any radio communication which is transmitted:

337 (A) by any station for the use of the general public, or that relates to ships, aircraft, vehicles, or
338 persons in distress;

339 (B) by any governmental, law enforcement, civil defense, private land mobile, or public safety
340 communications system, including police and fire, readily accessible to the general public;

341 (C) by a station operating on an authorized frequency within the bands allocated to the amateur,
342 citizens band, or general mobile radio service; or

343 (D) by any marine or aeronautical communications system;

344 (5) a person to engage in any conduct which:

345 (A) is prohibited by Section 633 of the Communications Act of 1934; or

346 (B) is excepted from the applications of Section 705(a) of the Communications Act of 1934 by

347 Section 705(b) of that Act;

348 (6) a person to intercept any wire or electronic communication the transmission of which is

349 causing harmful interference to any lawfully operating station or consumer electronic equipment,

350 to the extent necessary to identify the source of such interference;

351 (7) other users of the same frequency to intercept any radio communication made through a

352 system that utilized frequencies monitored by individuals engaged in the provision or the use of

353 such system, if such communication is not scrambled or encrypted;

354 (8) a person to use a pen register or a trap and trace device in accordance with the provisions

355 defined in this section;

356 (9) a provider of electronic communication service to record the fact that a wire or electronic

357 communication was initiated or completed in order to protect such provider, another provider

358 furnishing service toward the completion of the wire or electronic communication, or a user of

359 that service, from fraudulent, unlawful or abusive use of such service;

360 (10) investigative and law enforcement officers of the United States of America to violate the

361 provisions of this section if acting pursuant to authority of the laws of the United States and

362 within the scope of their authority;

363 (11) any person duly authorized to make specified interceptions by a warrant issued pursuant to

364 this section;

365 (12) investigative or law enforcement officers to violate the provisions of this section for the
366 purposes of ensuring the safety of any law enforcement officer or agent thereof who is acting in
367 an undercover capacity, or as a witness for the commonwealth; provided, however, that any such
368 interception which is not otherwise permitted by this section shall be deemed unlawful for
369 purposes of section 9(o);

370 (13) a financial institution to record telephone communications with its corporate or institutional
371 trading partners in the ordinary course of its business; provided, however, that such financial
372 institution shall establish and maintain a procedure to provide semi-annual written notice to its
373 corporate and institutional trading partners that telephone communications over designated lines
374 will be recorded;

375 (14) a person acting under color of law to intercept the wire or electronic communications of a
376 computer trespasser transmitted to, through or from a computer, if:

377 (A) the owner or operator of the computer authorizes the interception of the computer
378 trespasser's communication on the computer;

379 (B) the person acting under color of law is lawfully engaged in an investigation;

380 (C) the person acting under color of law has reasonable grounds to believe that the contents of
381 the computer trespasser's communications will be relevant to the investigation; and

382 (D) such interception does not acquire communications other than those transmitted to or from
383 the computer trespasser;

384 (15) any investigative or law enforcement officer, specially designated by the Attorney General
385 or a District Attorney, who reasonably determines that an emergency situation exists that

386 involves immediate danger of death or serious physical injury to any person, and there are
387 grounds upon which an order could be entered under this section to authorize such interception,
388 may intercept such wire, oral, or electronic communication if an application for an order
389 approving the interception is made in accordance with this section within forty-eight hours after
390 the interception has occurred, or begins to occur. In the absence of an order, such interception
391 shall immediately terminate when the communication sought is obtained or when the application
392 for the order is denied, whichever is earlier. In the event such application for approval is denied,
393 the contents of any wire, oral, or electronic communication intercepted shall be subject to the
394 prohibitions set forth in section 6 and the civil remedies of section 17. No such violation shall be
395 subject to criminal penalties.

396 (16) for an employee of:

397 (A) an ambulance service licensed pursuant to the General Laws, a fire station employing
398 firefighters, as defined by the General Laws, a law enforcement agency as defined by this
399 section, or any other entity with published emergency telephone numbers; or

400 (B) an agency operating an emergency telephone number "911" system established pursuant to
401 the General Laws, to intercept and record incoming wire and electronic communications;
402 however, such employee may intercept and record incoming wire and electronic communications
403 to designated "911" telephone numbers and published non-emergency telephone numbers staffed
404 by trained dispatchers at public safety answering points only. It is also lawful for such employee
405 to intercept and record outgoing wire or electronic communications to the numbers from which
406 such incoming wire or electronic communications were placed when necessary to obtain
407 information required to provide the emergency services being requested.

408 (e) (1) Except as provided in paragraph (2) of this subsection, a person or entity providing an
409 electronic communication service to the public shall not intentionally divulge the contents of any
410 communication, other than one to such person or entity, or an agent thereof, while in
411 transmission on that service to any person or entity other than an addressee or intended recipient
412 of such communication or an agent of such addressee or intended recipient.

413 (2) A person or entity providing electronic communication service to the public may divulge the
414 contents of any such communication:

415 (A) as otherwise authorized in subsection 3(d) or 8 of this section;

416 (B) with the lawful consent of the originator or any addressee or intended recipient of such
417 communication;

418 (C) to a person employed or authorized, or whose facilities are used, to forward such
419 communication to its destination; or

420 (D) which were inadvertently obtained by the service provider and which appear to pertain to the
421 commission of a crime, if such divulgence is made to a law enforcement agency.

422 (f) Except as otherwise specifically provided in this section, any person who willfully commits
423 an interception, attempts to commit an interception, or procures any other person to commit an
424 interception or to attempt to commit an interception of any wire, oral or electronic
425 communication shall be fined not more than ten thousand dollars, or imprisoned in the state
426 prison for not more than five years, or imprisoned in a jail or house of correction for not more
427 than two and one half years, or both so fined and given one such imprisonment.

428 Section 4. Unlawful Manufacture, Distribution, Possession, and Advertising of Wire, Oral, or
429 Electronic Communication Intercepting Devices.

430 (a) Except as provided in subsection (e), it is unlawful for any person to intentionally:

431 (1) transport or transmit any electronic, mechanical, or other device, knowing or having reason to
432 know that the design of such device renders it primarily useful for the purpose of the
433 surreptitious interception of wire, oral, or electronic communications, or knowing or having
434 reason to know that the device is intended for surreptitious interception of wire, oral, or
435 electronic communications; or

436 (2) manufacture, assemble, possess, or sell any electronic, mechanical, or other device, knowing
437 or having reason to know that the design of such device renders it primarily useful for the
438 purpose of the surreptitious interception of wire, oral, or electronic communications, or knowing
439 or having reason to know that the device is intended for surreptitious interception of wire, oral,
440 or electronic communications; or

441 (3) place in any newspaper, magazine, handbill, or other publication any advertisement of:

442 (A) any electronic, mechanical, or other device, knowing or having reason to know that the
443 design of such device renders it primarily useful for the purpose of surreptitious interception of
444 wire, oral, or electronic communications, or knowing or having reason to know that the device is
445 intended for surreptitious interception of wire, oral, or electronic communications; or

446 (B) any other electronic, mechanical, or other device, where such advertisement promotes the use
447 of such device for the purpose of the surreptitious interception of wire, oral, or electronic
448 communications.

449 (b) A person who violates subsection (a) shall be fined not more than \$10,000, or imprisoned not
450 more than five years in state prison or not more than two and one half year in a jail or house of
451 correction, or both such fine and imprisonment.

452 (c) The installation of any such intercepting device by such person or with his permission or at
453 his direction shall be prima facie evidence of possession as required by subsection (a).

454 (d) Any person who permits or on behalf of any other person commits or attempts to commit, or
455 any person who participates in a conspiracy to commit or attempt to commit, or any accessory to
456 a person who commits a violation of subsection (a) shall be punished in the same manner as is
457 provided for the respective offenses as described in subsection (b).

458 (e) Notwithstanding subsection (a), it shall be lawful for a person to transport, or manufacture,
459 assemble, possess, or sell any electronic, mechanical, or other device, knowing or having reason
460 to know that the design of such device renders it primarily useful for the purpose of the
461 surreptitious interception of wire, oral, or electronic communications, or knowing or having
462 reason to know that the device is intended for surreptitious interception of wire, oral, or
463 electronic communications, if the person is:

464 (1) a provider of wire or electronic communication service or an officer, agent, or employee of,
465 or a person under contract with, such a provider, in the normal course of the business of
466 providing that wire or electronic communication service; or

467 (2) an officer, agent, or employee of, or a person under contract with, bidding upon contracts
468 with, or in the course of doing business with, the United States, a state, or a political subdivision
469 thereof, in the normal course of the activities of the United States, a state, or a political
470 subdivision thereof.

471 Section 5. Confiscation of Wire, Oral, or Electronic Communication Interception Devices.

472 Upon conviction of a violation of this section, any electronic, mechanical, or other device used,
473 sent, carried, manufactured, assembled, possessed or sold in violation of this section may be
474 confiscated by the commonwealth and forwarded, by the authority of the written order of the
475 court to the colonel of the state police, who shall destroy said article.

476 Section 6. Prohibition of Use as Evidence of Intercepted Wire, Oral or Electronic
477 Communications.

478 No part of the contents of any wire, oral or electronic communication intercepted in violation of
479 this section, and no evidence derived therefrom, may be received in evidence in any trial,
480 hearing, or other proceeding in or before any court, grand jury, department, officer, agency,
481 regulatory body, legislative committee, or other authority of this state, or political subdivision
482 thereof, if the disclosure of that information would be in violation of this section unless a judge
483 determines, pursuant to section 9(o) of this act or because it is in the interest of justice, that
484 exclusion from evidence is not required. The prohibition of use as evidence provided in this
485 section does not apply in cases of prosecution for criminal interception in violation of the
486 provisions of this section.

487 Section 7. Authorization for Interception of Wire, Oral, or Electronic Communications.

488 (a) The attorney for the state may authorize an application to a judge of competent jurisdiction
489 for, and such judge may grant in conformity with section 9 of this act an order authorizing the
490 interception of wire, oral or electronic communications by an investigative or law enforcement
491 officer, or an agency having responsibility for the investigation of the offense as to which the
492 application is made, when such interception may provide or has provided evidence of:

493 (1) any offense which involves murder, kidnapping, robbery, or extortion;

494 (2) any of the following offenses: arson, assault and battery with a dangerous weapon, a violation
495 of section 13 A(b) of section two hundred and sixty-five, bribery, a violation of section 2 of
496 chapter two hundred sixty-eight A, burglary, misuse of credit cards or fraudulent use of credit
497 cards to obtain money, goods or services, malicious destruction of property, embezzlement,
498 enterprise crime, escape, throwing or placing explosives at or near persons or property, illegal
499 possession or storage of explosives, possession of infernal machines, forgery, gaming violations,
500 identity fraud in violation of section 37E of chapter two hundred sixty-six of the general laws,
501 indecent assault and battery, insurance fraud, intimidation of witnesses or jurors or persons
502 furnishing information in connection with criminal proceedings, larceny, lending of money or
503 things of value in violation of the general laws, mayhem, money laundering, perjury, subornation
504 of perjury, prostitution, rape, receiving stolen property, communicating terroristic threats,
505 possessing or using chemical, biological or nuclear weapons, possession or use of hoax
506 substances crimes involving violations of: gambling and lottery laws, gift laws, liquor laws,
507 tobacco laws, firearms laws, securities laws, lobbying laws, ethics laws, or conflict of interest
508 laws.

509 (3) any offense involving the possession or distribution of a narcotic drug, marijuana, or other
510 dangerous drug;

511 (4) coercion of child under eighteen into criminal conspiracy, inducing person under eighteen to
512 have sexual intercourse, possession or dissemination of matter harmful to minors, posing or
513 exhibiting child in state of nudity or sexual conduct, dissemination of visual material of child in

514 state of nudity or sexual conduct, purchase or possession of visual material of child depicted in
515 sexual conduct;

516 (5) any offense punishable by imprisonment for more than one year involving the possession or
517 distribution of firearms;

518 (6) any accessory to any offense described in this act or any conspiracy or attempt or solicitation
519 to commit any offense described in this act;

520 (7) the location of any fugitive from justice from an offense described in this subsection

521 Section 8. Authorization for Disclosure and Use of Intercepted Wire, Oral, and Electronic
522 Communications.

523 (a) Any investigative or law enforcement officer who, by any means authorized by this section,
524 has obtained knowledge of the contents of any wire, oral, or electronic communication, or
525 evidence derived therefrom, may:

526 (1) disclose such contents to another investigative or law enforcement officer to the extent that
527 such disclosure is appropriate to the proper performance of the official duties of the officer
528 making or receiving the disclosure; or

529 (2) use such contents to the extent such use is appropriate to the proper performance of the
530 officer's official duties.

531 (b) Any person who has received, by any means authorized by this section, any information
532 concerning a wire, oral, or electronic communication, or evidence derived therefrom, intercepted
533 in accordance with the provisions of this section may disclose the contents of that
534 communication or such derivative evidence while giving testimony under oath or affirmation in

535 any proceeding in any court of the United States or of any state or in any federal or state grand
536 jury proceeding.

537 (c) No otherwise privileged wire, oral, or electronic communication intercepted in accordance
538 with, or in violation of, the provisions of this section shall lose its privileged character.

539 (d) Except as otherwise specifically provided in this section, any person who willfully discloses
540 to any person, any information concerning or contained in, the application for, the granting or
541 denial of orders for interception, renewals, notice or return on an ex parte order granted pursuant
542 to this section, or the contents of any document, tape, or recording kept in accordance with
543 Section 9

544 (m), shall be guilty of a misdemeanor punishable by imprisonment in a jail or house of correction
545 for not more than two years or by a fine of not more than five thousand dollars or both.

546 Section 9. Procedure for Interception of Wire, Oral, or Electronic Communications

547 (a) An application for a warrant authorized by this section must be made by an attorney for the
548 state to a judge of competent jurisdiction in the county where the interception is to occur, or the
549 county where the office of the applicant is located, or in the event that there is no judge of
550 competent jurisdiction sitting in said county at such time, to a judge of competent jurisdiction
551 sitting in Suffolk County; except that for these purposes, the office of the attorney general shall
552 be deemed to be located in Suffolk County.

553 (b) Each application for an order authorizing or approving the interception of a wire, oral, or
554 electronic communication under this section shall be made in writing upon oath or affirmation
555 and shall state:

556 (1) the identity of the investigative or law enforcement officer making the application, and the
557 officer authorizing the application;

558 (2) the applicant's authority to make such application;

559 (3) fully and completely the facts and circumstances relied upon by the applicant, to justify the
560 applicant's belief that an order should be issued, including:

561 (A) details as to the particular offense that has been, is being, or is about to be committed;

562 (B) except as provided in subsection (p) of this section, a description of the nature and location
563 of the facilities from which or the place where the communication is to be intercepted;

564 (C) a particular description of the type of communications sought to be intercepted and that such
565 communications are not legally privileged; and

566 (D) the identity of the person, if known, committing the offense and whose communications are
567 to be intercepted.

568 (4) whether or not other investigative procedures have been tried and failed or why they
569 reasonably appear unlikely to succeed if tried or otherwise might be too dangerous;

570 (5) the period of time for which the interception is required to be maintained. If the nature of the
571 investigation is such that the authorization for the interception should not automatically terminate
572 when the described oral, wire, or electronic communications have been first obtained, the
573 application must specifically state facts establishing probable cause to believe that additional
574 oral, wire, or electronic communications of the same nature will occur thereafter;

575 (6) the facts concerning all previous applications known to the individual authorizing and
576 making the application, made to any judge for authorization to intercept, or for approval of
577 interceptions of, wire, oral, or electronic communications involving any of the same persons,
578 facilities or places specified in the application, and the action taken by the judge on each such
579 application;

580 (7) where the application is for the extension of an order, the results thus far obtained from the
581 interception, or a reasonable explanation of the failure to obtain such results; and

582 (8) if it is reasonably necessary to make a secret entry upon a private place and premises in order
583 to install an intercepting device to effectuate the interception, a statement to such effect.

584 (c) The judge may require the applicant to furnish additional testimony or documentary evidence
585 in support of the application. A verbatim transcript of every such interrogation or examination
586 must be taken, and a transcription of the same, sworn to by the stenographer, shall be attached to
587 the application and be deemed a part thereof.

588 (d) Upon such application the judge may enter an ex parte order, as requested or as modified,
589 authorizing or approving interception of wire, oral, or electronic communications within the
590 state, if the judge determines on the basis of the facts submitted by the applicant that:

591 (1) there is probable cause for belief that an individual is committing, has committed, or is about
592 to commit a particular offense enumerated in section 7 of this act;

593 (2) there is probable cause for belief that particular communications concerning that offense will
594 be obtained through such interception;

595 (3) normal investigative procedures have been tried and failed or reasonably appear unlikely to
596 succeed if tried or may otherwise be too dangerous; and

597 (4) except as provided in subsection (p), there is probable cause for belief that the facilities from
598 which, or the place where, the wire, oral, or electronic communications are to be intercepted are
599 being used, or are about to be used, in connection with the commission of such offense, or are
600 leased to, listed in the name of, or commonly used by such person.

601 (e) Each order authorizing or approving the interception of any wire, oral, or electronic
602 communication under this section shall specify:

603 (1) the subscription and title of the issuing judge;

604 (2) the identity of the person, if known, whose communications are to be intercepted;

605 (3) the nature and location of the communications facilities as to which, or the place where,
606 authority to intercept is granted;

607 (4) a particular description of the type of communication sought to be intercepted, and a
608 statement of the particular offense to which it relates;

609 (5) the identity of the agency authorized to intercept the communications, and of the person
610 authorizing the application;

611 (6) the period of time during which such interception is authorized; and

612 (7) an express authorization to make secret entry upon a private place or premises to install a
613 specified intercepting device, if such entry is necessary to execute the warrant.

614 (f) An order authorizing the interception of a wire, oral, or electronic communication under this
615 section shall, upon request of the applicant, direct that a provider of wire or electronic
616 communication service, landlord, custodian, or other person shall furnish the applicant forthwith
617 all information, facilities, and technical assistance necessary to accomplish the interception
618 unobtrusively and with a minimum of interference with the services that such service provider,
619 landlord, custodian, or person is according the person whose communications are to be
620 intercepted. Any provider of wire or electronic communication service, landlord, custodian or
621 other person furnishing such facilities or technical assistance shall be compensated therefor by
622 the applicant for reasonable expenses incurred in providing such facilities or assistance.

623 (g) An order entered under this section may authorize or approve the interception of any wire,
624 oral, or electronic communication for the shorter of 30 days or the period necessary to achieve
625 the objective of the authorization. Such 30 day period begins on the earlier of the day on which
626 the investigative or law enforcement officer first begins to conduct an interception under the
627 order or ten days after the order is entered, whichever occurs earliest. Extensions of an order
628 may be granted only upon application for an extension made in accordance with subsection (b)
629 of this section and the court making the findings required by subsection (d) of this section. The
630 period of extension shall be the shorter of 30 days or the time the authorizing judge deems
631 necessary to achieve the purposes for which it was granted. Every order and extension thereof
632 shall contain a provision that the authorization to intercept shall be executed as soon as
633 practicable, shall be conducted in such a way as to minimize the interception of communications
634 not otherwise subject to interception under this section, and must terminate upon the earlier of 30
635 days or the attainment of the authorized objective. In the event the intercepted communication is
636 in a code or a foreign language, and an expert in that foreign language or code is not reasonably

637 available during the interception period, minimization may be accomplished as soon as
638 practicable after such interception of the communication in full.

639 (h) An interception under this section may be conducted in whole or in part by federal, state,
640 county or municipal personnel, or by an individual operating under a contract with the state,
641 county or municipality acting under the supervision of an investigative or law enforcement
642 officer authorized to conduct the interception.

643

644 (i) Whenever an order authorizing interception is entered pursuant to this section, the order may
645 require reports to be made to the judge who issued the order showing what progress has been
646 made toward achievement of the authorized objective and the need for continued interception.
647 Such reports shall be made at intervals as the judge may require.

648 (j) Notwithstanding any other provision of this section, any investigative or law enforcement
649 officer, specially designated by the attorney for the state, may intercept a wire, oral, or electronic
650 communication prior to issuance of an order approving the interception if the officer reasonably
651 determines that:

652 (A) an emergency situation exists that involves immediate danger of death or serious physical
653 injury to any person or the danger of escape of a prisoner; and there are grounds upon which an
654 order could be entered under this section to authorize such interception; and

655 (B) an application for an order approving the interception is made in accordance with this section
656 within 48 hours after the interception has occurred, or begins to occur.

657 (k) In the absence of an order approving an interception described in subsection (j), such
658 interception shall immediately terminate upon the earlier of obtainment of the communication
659 sought or denial of the application.

660 (l) In the event an application for approval of an interception described in subsection (j) is
661 denied, or in any other case where the interception is terminated without an order having been
662 issued, the contents of any wire, oral, or electronic communication intercepted shall be subject to
663 the prohibitions set forth in section 6 and the civil remedies of section 17. No such violation
664 shall be subject to criminal penalties.

665 (m) (1) The contents of any wire, oral, or electronic communication intercepted by any means
666 authorized by this section shall, if possible, be recorded on tape or wire or other comparable
667 device. Upon examination of the return and a determination that it complies with this section,
668 the issuing judge shall forthwith order that the application, all renewal applications, warrant, all
669 renewal orders and the return thereto be transmitted to the chief justice by such persons as he
670 shall designate. The application, all renewal applications, warrant, all renewal orders and the
671 return shall be stored in a secure place which shall be designated by the chief justice, to which
672 access shall be denied to all persons except the chief justice or such court officers or
673 administrative personnel of the court as he shall designate.

674 The recordings shall not be destroyed except upon an order of the issuing or denying judge and
675 in any event shall be kept for ten years. Notice prior to the destruction shall be given to the
676 applicant attorney general or his successor or the applicant district attorney or his successor and
677 upon a showing of good cause to the chief justice, the application, warrant, renewal and return
678 may be kept for such additional period as the chief justice shall determine but in no event longer

679 than the longest period of limitation for any designated offense specified in the warrant, after
680 which time they must be destroyed by a person designated by the chief justice. Duplicate
681 recordings may be made for use or disclosure pursuant to the provisions of section 8(a) or (b) of
682 this section

683 (2) Applications made and orders granted under this section shall be sealed by the judge. Such
684 applications and orders shall be disclosed only upon a showing of good cause before a judge of
685 competent jurisdiction and shall not be destroyed except on order of the issuing or denying
686 judge, and in any event shall be kept for ten years.

687 (3) Except as otherwise provided in subparagraph (a), within a reasonable time, not to exceed 90
688 days, after the filing of an application for an order of approval under subsection (l) which is
689 denied, or the termination of the period of an order or extensions thereof, an investigative or law
690 enforcement officer of the commonwealth shall serve an attested copy of the warrant or the
691 renewal on the persons named in the warrant, and such other aggrieved persons who shall
692 reasonably be known to the person who obtained the warrant as a result of information obtained
693 from an authorized interception. The attested copy of the warrant shall be served by leaving the
694 same at his usual place of abode, or in hand, or if this is not possible by mailing the same by
695 certified or registered mail to his last known place of abode. A return of service shall be made to
696 the issuing judge, except, that if such service is postponed as provided in this subparagraph, it
697 shall be made to the chief justice. The return of service shall be deemed a part of the return of
698 the warrant and attached thereto.

699 (a) Upon an ex parte showing of important special facts which set forth the need for continued
700 secrecy to the satisfaction of the issuing judge, said judge may direct that the attested copy of the

701 warrant be served on such parties as are required by this subsection at such time as may be
702 appropriate in the circumstances but in no event may he it to be served later than three years
703 from the time of expiration of the warrant or the last renewal thereof.

704 (b) The judge, upon the filing of a motion, may make available to such person or such person's
705 counsel for inspection such portions of the intercepted communications, applications and orders
706 as the judge determines to be in the interest of justice.

707 (n) The contents of any wire, oral or electronic communication intercepted pursuant to this
708 section, or evidence derived therefrom, shall not be received in evidence or otherwise disclosed
709 in any trial, hearing, or other proceeding in a court of the commonwealth unless each party, not
710 less than ten days before the trial, hearing, or proceeding, has been furnished with a copy of the
711 court order and accompanying application under which the interception was authorized or
712 approved and a complete copy of each recording or a statement under oath of the evidence
713 overheard as a result of the transmission which the commonwealth intends to offer in evidence.
714 This ten day period may be waived by the judge if the judge finds that it was not possible to
715 furnish the party with the above information ten days before the trial, hearing or proceeding and
716 that the party will not be prejudiced by the delay in receiving such information.

717 (o) Any aggrieved person who is a party in any trial, hearing, or proceeding in or before any
718 court, department, officer, agency, regulatory body, or other authority of this state, or a political
719 subdivision thereof, may move to suppress the contents of any wire, oral or electronic
720 communication intercepted pursuant to this section, or evidence derived therefrom, on the
721 grounds that:

722 (1) the communication was unlawfully intercepted;

723 (2) the application or renewal failed to set forth facts sufficient to establish probable cause for the
724 issuance of the warrant;

725 (3) the order of authorization or approval under which it was intercepted is insufficient on its
726 face or does not conform with the provisions of this chapter; or

727 (4) the interception was not made in conformity with the order of authorization or approval.

728 Such motion shall be made before the trial, hearing, or proceeding unless there was no
729 opportunity to make such motion or the person was not aware of the grounds of the motion. If
730 the motion is granted, the contents of the intercepted wire or oral communication, or evidence
731 derived therefrom, shall be suppressed.

732 (p) The requirements of subsection (d)(4) of this section relating to the specification of the
733 facilities from which, or the place where, the communication is to be intercepted are inapplicable
734 if:

735 (1) in the case of an application with respect to the interception of an oral communication:

736 (A) the application is by an investigative or law enforcement officer and is approved by the
737 attorney for the state;

738 (B) the application contains a full complete statement as to why such specification is not
739 practical and identifies the person committing the offenses and whose communications are to be
740 intercepted; and

741 (C) the judge finds that such specification is not practical; and

742 (2) in the case of an application with respect to a wire or electronic communication:

743 (A) the application is by an investigative or law enforcement officer and is approved by the
744 attorney for the state;

745 (B) the application identifies the person believed to be committing the offense and whose
746 communications are to be intercepted and the applicant makes a showing of a purpose, on the
747 part of that person, to thwart interception by changing facilities; and

748 (C) the judge finds that such purpose has been adequately shown.

749 (q) An interception of a communication under an order to which the requirements of subsection
750 (d)(4) of this section do not apply by reason of subsection (p) shall not begin until the facilities
751 from which, or the place where, the communication is to be intercepted is ascertained by the
752 person implementing the interception order. A provider of wire or electronic communication
753 service that has received an order as provided for in subsection (p)(2) may move the court to
754 modify or quash the order on the ground that its assistance with respect to the interception cannot
755 be performed in a timely or reasonable fashion. The court, upon notice to the state, shall decide
756 such a motion expeditiously.

757 Section 10. Warrant Return

758 Within seven days after termination of the warrant or the last renewal thereof, a return must be
759 made thereon to the judge issuing the warrant by the applicant therefor, containing the following:

760 (a) A statement of the nature and location of the communications facilities, if any, and premise or
761 places where the interceptions were made; and

762 (b) The periods of time during which such interceptions were made; and

763 (c) The names of the parties to the communications intercepted if known; and

764 (d) The original recording of the oral, wire or electronic communications intercepted, if any; and

765 (e) A statement attested under the pains and penalties of perjury by each person who heard oral
766 or wire communications as a result of the interception authorized by the warrant, which were not
767 recorded, stating everything that was overheard to the best of his recollection at the time of the
768 execution of the statement.

769 Section 11. General Prohibition on Pen Register and Trap and Trace Device Use; Exceptions.

770 (a) Except as provided in section 15(b) of this act, no person may install or use a pen register or a
771 trap and trace device without first obtaining a court order under section 12 of this act.

772 (b) The prohibition of subsection (a) is inapplicable with respect to the use of a pen register or a
773 trap and trace device by a provider of electronic or wire communication service:

774 (1) relating to the operation, maintenance, and testing of a wire or electronic communication
775 service or to the protection of the rights or property of such provider, or to the protection of users
776 of that service from abuse of service or unlawful use of service; or

777 (2) to record the fact that a wire or electronic communication was initiated or completed in order
778 to protect such provider, another provider furnishing service toward the completion of the wire
779 or electronic communication, or a user of that service, from fraudulent, unlawful or abusive use
780 of service; or

781 (3) where the consent of the user of that service has been obtained.

782 (c) A government agency authorized to install and use a pen register or trap and trace device
783 under sections 11 through 15 shall use technology reasonably available to it that restricts the
784 recording or decoding of electronic or other impulses to the dialing, routing, addressing, and

785 signaling information utilized in the processing and transmitting of wire or electronic
786 communications so as not to include the contents of any wire or electronic communications.

787 (d) A person who knowingly violates subsection (a) shall be fined not more than \$5,000.00 for
788 each violation, or imprisoned in a jail or house of correction for not more than one year, or both
789 such fine and imprisonment.

790 Section 12. Application for an Order for a Pen Register or Trap and Trace Device.

791 (a) A state investigative or law enforcement officer authorized by the attorney for the state may
792 make application in writing under oath or equivalent affirmation to a court of competent
793 jurisdiction for an order or an extension of an order under section 13 of this section authorizing
794 or approving the installation and use of a pen register or a trap and trace device under this
795 section.

796 (b) An application under subsection (a) shall include:

797 (1) the identity of the attorney for the state or the law enforcement or investigative officer
798 making the application and the identity of the law enforcement agency conducting the
799 investigation; and

800 (2) a certification under oath by the applicant that the information likely to be obtained is
801 relevant to an ongoing criminal investigation being conducted by that agency.

802 Section 13. Issuance of an Order for a Pen Register or a Trap and Trace Device.

803 (a) In general:

804 (1) Upon an application made under section 12, the court shall enter an ex parte order
805 authorizing the installation and use of a pen register or trap and trace device within the
806 jurisdiction of the court, if the court finds that the State law enforcement or investigative officer
807 has certified to the court that the information likely to be obtained by such installation and use is
808 relevant to an ongoing criminal investigation.

809 (2) (A) Where the law enforcement agency implementing an ex parte order under this subsection
810 seeks to do so by installing and using its own pen register or trap and trace device on a packet-
811 switched data network of a provider of electronic communication service to the public, the
812 agency shall ensure that a record will be maintained which will identify:

813 (i) any officer or officers who installed the device and any officer or officers who accessed the
814 device to obtain information from the network;

815 (ii) the date and time the device was installed, the date and time the device was uninstalled, and
816 the date, time, and duration of each time the device is accessed to obtain information;

817 (iii) the configuration of the device at the time of its installation and any subsequent
818 modification thereof; and

819 (iv) any information which has been collected by the device.

820 To the extent that the pen register or trap and trace device can be set automatically to record this
821 information electronically, the record shall be maintained electronically throughout the
822 installation and use of such device.

823 (B) The record maintained under subparagraph (A) shall be provided ex parte and under seal to
824 the court which entered the ex parte order authorizing the installation and use of the device

825 within 30 days after termination of the order (including any extensions thereof). Upon
826 examination of the return and a determination that it complies with this section, the issuing judge
827 shall forthwith order that the application, all renewal applications, warrant, all renewal orders
828 and the return thereto be transmitted to the chief justice by such persons as he shall designate.
829 Their contents shall not be disclosed except as provided in this section. The application, renewal
830 application(s), warrant(s), the renewal order(s) and the return or any one of them or any part of
831 them may be transferred to any trial court, grand jury proceeding of any jurisdiction by any law
832 enforcement or investigative officer or court officer designated by the chief justice and a trial
833 justice may allow them to be disclosed in accordance with section 8.

834 The application, all renewal applications, warrant, all renewal orders and the return shall be
835 stored in a secure place which shall be designated by the chief justice, to which access shall be
836 denied to all persons except the chief justice or such court officers or administrative personnel of
837 the court as he shall designate.

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

841 (b) An order issued under this section:

842 (1) shall specify:

843 (A) the identity, if known, of the person to whom is leased or in whose name is listed the
844 telephone line or other facility to which the pen register or trap and trace device is to be attached
845 or applied;

846 (B) the identity, if known, of the person who is the subject of the criminal investigation;

847 (C) the attributes of the communications to which the order applies, including the number or

848 other identifier and, if known, the location of the telephone line or other facility to which the pen

849 register or trap and trace device is to be attached or applied, and, in the case of an order

850 authorizing installation and use of a trap and trace device under subsection (a)(2), the geographic

851 limits of the order; and

852 (D) a statement of the offense to which the information likely to be obtained by the pen register

853 or trap and trace device relates; and

854

855 (2) shall direct, upon the request of the applicant, the furnishing of information, facilities, and

856 technical assistance necessary to accomplish the installation of the pen register or trap and trace

857 device under section 14.

858 (c) An order issued under this section:

859 (1) shall authorize the installation and use of a pen register or a trap and trace device for a period

860 not to exceed 60 days; and

861 (2) may be granted only upon an application for an order under section 12 of this section after a

862 judicial finding required by subsection (a). Any period(s) of extension shall not exceed 60 days.

863 (d) An order authorizing or approving the installation and use of a pen register or a trap and trace

864 device shall direct that:

865 (1) the order be sealed until otherwise ordered by the court;

866 (2) the person owning or leasing the line or other facility to which the pen register or a trap and
867 trace device is attached or applied, or who is obligated by the order to provide assistance to the
868 applicant, not disclose the existence of the pen register or trap and trace device or the existence
869 of the investigation to the listed subscriber, or to any other person, unless or until otherwise
870 ordered by the court; and

871 (3) a violation of this subsection may be punished as a contempt of the issuing or denying court.

872 Section 14. Assistance in Installation and Use of a Pen Register or a Trap and Trace Device.

873 (a) Upon the request of the attorney for the state or an investigative or law enforcement officer
874 authorized to install and use a pen register under this section, a provider of wire or electronic
875 communication service, landlord, custodian, or other person shall furnish such investigative or
876 law enforcement officer forthwith all information, facilities, and technical assistance necessary to
877 accomplish the installation of the pen register unobtrusively and with a minimum of interference
878 with the service that the person so ordered by the court accords the party with respect to whom
879 the installation and use is to take place, if such assistance is directed by a court order as provided
880 in section 13(b)(2) of this section.

881 (b) Upon the request of the attorney for the state or an investigative or law enforcement officer
882 authorized to receive the results of a trap and trace device under this section, a provider of a wire
883 or electronic communication service, landlord, custodian, or other person shall install such
884 device forthwith on the appropriate line or facility and shall furnish such investigative or law
885 enforcement officer all additional information, facilities and technical assistance including
886 installation and operation of the device unobtrusively and with a minimum of interference with
887 the services that the person so ordered by the court accords the party with respect to whom the

888 installation and use is to take place, if such installation and assistance is directed by a court order
889 as provided in section 13(b)(2) of this section. Unless otherwise ordered by the court, the results
890 of the trap and trace device shall be furnished, pursuant to section 13

891 (b) or section 12 of the act, to the attorney for the state or the investigative or law enforcement
892 officer, designated in the court order, at reasonable intervals during regular business hours for the
893 duration of the order.

894 (c) A provider of a wire or electronic communication service, landlord, custodian, or other
895 person who furnishes facilities or technical assistance pursuant to this section shall be reasonably
896 compensated for such reasonable expenses incurred in providing such facilities and assistance.

897 (d) No cause of action shall lie in any court against any provider of a wire or electronic
898 communication service, its officers, employees, agents, or other specified persons for providing
899 information, facilities or assistance in accordance with a court order under this section or request
900 pursuant to section 12 or section 13(b) of this act.

901 (e) A good faith reliance on a court order under this section, a request pursuant to section 12 of
902 this section, a legislative authorization, or a statutory authorization is a complete defense against
903 any civil or criminal action brought under this section.

904 (f) Any unexcused failure of the provider of an electronic or wire communications service to
905 comply with a court order under this section or a request pursuant to section 12 may be punished
906 as a contempt of the issuing court.

907 Section 15. Emergency Pen Register and Trap and Trace Device Installation and Use.

908 (a) Notwithstanding any other provision of this section, any investigative or law enforcement
909 officer, specially designated by the attorney for the state, may have installed and use a pen
910 register or trap and trace device if:

911 (1) the officer reasonably determines that an emergency situation exists that involves immediate
912 danger of death or serious bodily injury to any person or the danger of escape of a prisoner; and

913 (2) within 48 hours after the installation has occurred, or begins to occur, an order approving the
914 installation or use is issued in accordance with section 13 of this act.

915 (b) In the absence of an authorizing order, such use shall immediately terminate upon the earlier
916 of obtainment of the information sought, denial of the application, or the lapse of 48 hours since
917 the installation of the pen register or trap and trace device.

918 (c) The knowing installation or use by any investigative or law enforcement officer of a pen
919 register or trap and trace device pursuant to subsection (a) without application for the authorizing
920 order within 48 hours of the installation shall constitute a violation of this section and shall make
921 such person liable to the penalties outlined in section 11(d) of this act, unless a court of
922 competent jurisdiction in its discretion determines that the failure to obtain a timely order
923 pursuant to this section was the result of mitigating or other circumstances.

924 (d) A provider for a wire or electronic service, landlord, custodian, or other person who furnished
925 facilities or technical assistance pursuant to this section shall be reasonably compensated for
926 such reasonable expenses incurred in providing such facilities and assistance.

927 (e) No cause of action shall lie in any court against any provider of wire or electronic
928 communication service, its officers, employees, or agents, landlord, custodian, or other specified

929 person for providing information, facilities, or assistance in accordance with the terms of this
930 section.

931 Section 16. Reports Concerning Intercepted Wire, Oral, or Electronic Communications and Pen
932 Register and Trap and Trace Devices.

933 (a) On the second Friday of January, each year, the attorney general and each district attorney
934 shall report to the general court:

935 (1) a general description of the interceptions made under such order or extension, including:

936 (A) the number of applications made for wiretap warrants during the previous year;

937 (B) the name of the applicant;

938 (C) the number of wiretap warrants issued;

939 (D) the effective period of the wiretap warrants;

940 (E) the number and designation of the offenses for which those wiretap applications were sought,

941 and for each of the designated offenses the following:

942 (i) the number of renewals,

943 (ii) the number of interceptions made during the previous year,

944 (iii) the number of indictments believed to be obtained as a result of those interceptions,

945 (iv) the number of criminal convictions obtained in trials where interception evidence or

946 evidence derived therefrom was introduced

947 (2) the number of pen register orders and orders for trap and trace devices applied for by
948 investigative or law enforcement officers of the state.

949 (b) This report shall be a public document and be made available to the public at the offices of
950 the attorney general and district attorneys. In the event of failure to comply with the provisions
951 of this paragraph any person may compel compliance by means of an action of mandamus.

952 Section 17. Authorized Recovery of Civil Damages.

953 (a) Except as provided in section 3(d), any person whose wire, oral, or electronic communication
954 is intercepted, disclosed, or intentionally used in violation of this section may in a civil action
955 recover from the person or entity, other than the United States, the commonwealth of
956 Massachusetts or any political subdivision thereof, which engaged in that violation such relief as
957 may be appropriate:

958 (b) In an action under this section, appropriate relief includes:

959 (1) damages under subsection (c) and punitive damages in appropriate cases; and

960 (2) a reasonable attorney's fee and other litigation costs reasonably incurred.

961 (c) The court may assess as damages whichever is the greater of:

962 (1) the sum of the actual damages suffered by the plaintiff and any profits made by the violator
963 as a result of the violation; or

964 (2) \$100 a day for each day of violation; or

965 (3) \$1,000.

966 (d) A complete defense against any civil action brought under this section is a good faith reliance
967 on:

968 (1) a court warrant or order, a grand jury subpoena, a legislative authorization, or a statutory
969 authorization;

970 (2) a request of an investigative or law enforcement officer under section 9(j) of this section; or

971 (3) a good faith determination that section 3(d) of this section permitted the conduct complained
972 of.

973 (e) A civil action under this section may not be commenced later than two years after the date
974 upon which the claimant first has a reasonable opportunity to discover the violation

975 Section 18. Severability.

976 If any provisions of this section or application thereof to any person or circumstance is held
977 invalid, the invalidity does not affect other provisions or applications of the section which can be
978 given effect without the invalid provisions or application, and to this end the provisions of this
979 section are severable.