

99TH CONGRESS
1ST SESSION

S. 1667

To amend title 18, United States Code, with respect to the interception of certain communications, other forms of surveillance, and for other purposes.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 19 (legislative day, SEPTEMBER 16), 1985

Mr. LEAHY (for himself and Mr. MATHIAS) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To amend title 18, United States Code, with respect to the interception of certain communications, other forms of surveillance, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 SECTION 1. SHORT TITLE.

4 This Act may be cited as the “Electronic Communica-
5 tions Privacy Act of 1985”.

1 **TITLE I—TITLE 18 AND RELATED MATTERS**

2 **SEC. 101. FEDERAL PENALTIES FOR THE INTERCEPTION OF**
3 **ELECTRONIC COMMUNICATIONS.**

4 (a) **DEFINITIONS.**—(1) Section 2510 of title 18, United
5 States Code, is amended by striking out paragraph (1) and
6 inserting in lieu thereof the following:

7 “(1) ‘electronic communication’ means any trans-
8 mission of signs, signals, writing, images, sounds, data,
9 or intelligence of any nature in whole or in part by a
10 wire, radio, electromagnetic, or photoelectric system
11 that affects interstate or foreign commerce;”.

12 (2) Section 2510(4) of title 18, United States Code, is
13 amended by striking out “aural acquisition” and inserting
14 “interception” in lieu thereof.

15 (3) Section 2510(8) of title 18, United States Code, is
16 amended by striking out “existence,”.

17 (b) **EXCEPTIONS WITH RESPECT TO ELECTRONIC**
18 **COMMUNICATIONS.**—Section 2511(2) of title 18, United
19 States Code, is amended by adding at the end the following:

20 “(g) It shall not be unlawful under this chapter for any
21 person—

22 “(i) to intercept an electronic communication
23 made through an electronic communication system de-
24 signed so that such electronic communication is readily
25 accessible to the public.

1 “(ii) to intercept any electronic communication
2 which is transmitted—

3 “(I) by any station for the use of the general
4 public, which relates to ships, aircraft, vehicles, or
5 persons in distress;

6 “(II) by a walkie talkie, or a police or fire
7 communication system readily accessible to the
8 public; or

9 “(III) by an amateur radio station operator
10 or by a citizens band radio operator; or

11 “(iii) to engage in any conduct which—

12 “(I) is prohibited by section 633 of the Com-
13 munication Act of 1934; or

14 “(II) is excepted from the application of sec-
15 tion 705(a) of the Communication Act of 1934 by
16 section 705(b) of that Act.

17 “(h) It shall not be unlawful under this chapter—

18 “(i) to use a pen register (as that term is defined
19 for the purposes of chapter 206 (relating to pen regis-
20 ters) of this title); or

21 “(ii) for a provider of electronic communication
22 service to record the placement of a telephone call in
23 order to protect such provider, or a user of that serv-
24 ice, from abuse of service.”.

1 (c) **TECHNICAL AND CONFORMING AMENDMENTS.**—(1)

2 Chapter 119 of title 18, United States Code, is amended by
3 striking out “wire” each place it appears (including in any
4 section heading) and inserting “electronic” in lieu thereof.

5 (2) The heading of chapter 119 of title 18, United States
6 Code, is amended by inserting “**AND OTHER ELECTRONIC**
7 **COMMUNICATION**” after “**WIRE**”.

8 (3) The item relating to chapter 119 in the table of
9 chapters at the beginning of part I of title 18 of the United
10 States Code is amended by inserting “**and other elec-**
11 **tronic communication**” after “**Wire**”.

12 (4) Section 2511(2)(a)(i) of title 18, United States Code,
13 is amended—

14 (A) by striking out “communication common carri-
15 er” and inserting “a provider of electronic communica-
16 tion service” in lieu thereof;

17 (B) by striking out “of the carrier” and inserting
18 “of the provider of that service” in lieu thereof; and

19 (C) by striking out “: *Provided*, That said commu-
20 nication common carriers” and inserting “, except that
21 a provider of electronic communication service” in lieu
22 thereof.

23 (5) Section 2511(2)(a)(ii) of title 18, United States Code,
24 is amended—

1 (A) by striking out “communication common carri-
 2 ers” and inserting “providers of electronic communica-
 3 tion services” in lieu thereof; and

4 (B) by striking out “communication common carri-
 5 er” each place it appears and inserting “provider of
 6 electronic communication services” in lieu thereof.

7 (6) Section 2512(2)(a) of title 18, United States Code, is
 8 amended—

9 (A) by striking out “communications common car-
 10 rier” the first place it appears and inserting “a provid-
 11 er of an electronic communication service” in lieu
 12 thereof;

13 (B) by striking out “a communications common
 14 carrier” the second place it appears and inserting
 15 “such a provider” in lieu thereof; and

16 (C) by striking out “communications common car-
 17 rier’s business” and inserting “business of providing
 18 that electronic communication service” in lieu thereof.

19 **SEC. 102. ADDITIONAL PROHIBITIONS RELATING TO ELEC-**
 20 **TRONIC COMMUNICATIONS AND REQUIRE-**
 21 **MENTS FOR CERTAIN DISCLOSURES.**

22 (a) **ADDITIONAL PROHIBITIONS.**—Section 2511 of title
 23 18, United States Code, is amended by adding at the end the
 24 following:

1 “(3) Unless authorized by the person or entity providing
2 an electronic communication service or by a user of that serv-
3 ice, and except as otherwise authorized in section 2516 of
4 this title, whoever willfully accesses an electronic communi-
5 cation system through which such service is provided or will-
6 fully exceeds an authorization to access that electronic com-
7 munication service and obtains or alters that electronic com-
8 munication while it is stored in such system shall—

9 “(A) if the offense is committed for purposes of
10 commercial advantage, malicious destruction or
11 damage, or private commercial gain—

12 “(i) be fined not more than \$250,000 or im-
13 prisoned not more than one year, or both, in the
14 case of a first offense under this subparagraph;

15 “(ii) be fined not more than \$250,000 or im-
16 prisoned not more than two years, or both, for
17 any subsequent offense under this subparagraph;
18 and

19 “(B) be fined not more than \$5,000 or imprisoned
20 not more than six months, or both, in any other case.

21 “(4) A person or entity providing an electronic commu-
22 nication service shall not knowingly divulge the contents of
23 any communication (other than one to such person or entity)
24 carried on that service to any person or entity other than the

1 addressee of such communication or that addressee's agent,
2 except—

3 “(A) as otherwise authorized in section 2516 of
4 this title;

5 “(B) with the consent of the user originating such
6 communication;

7 “(C) to a person employed to forward such com-
8 munication to its destination; or

9 “(D) for a business activity related to a service
10 provided by the provider of the electronic communica-
11 tion service to a user of the electronic communication
12 service.”.

13 **(b) REQUIREMENTS FOR CERTAIN DISCLOSURES.—(1)**
14 Section 2516 of title 18, United States Code, is amended by
15 adding at the end the following:

16 “(3) A person authorized to make application under this
17 section for an interception may also make an application for a
18 disclosure which would otherwise be in violation of section
19 2511 (3) or (4). Such application shall meet the requirements
20 for an application for an interception under this section. The
21 court shall not grant such disclosure unless the applicant
22 demonstrates that the particular communications to be dis-
23 closed concern a particular offense enumerated in section
24 2516 of this title. If an order of disclosure is granted, disclo-
25 sure of information under that order shall not be subject to

1 the prohibitions contained in such section 2511 (3) or (4).
2 Such disclosure shall be treated for the purposes of this chap-
3 ter as interceptions under this chapter, and shall be subject to
4 the same requirements and procedures as apply under this
5 chapter to interceptions under this chapter.

6 “(4) A provider of electronic communication service
7 may not, upon the request of a governmental authority, dis-
8 close to that authority a record kept by that provider in the
9 course of providing that communication service and relating
10 to a particular communication made through that service,
11 unless the governmental authority obtains a court order for
12 such disclosure based on a finding that—

13 “(A) the governmental entity reasonably suspects
14 the person or entity by whom or to whom such com-
15 munication was made to have engaged or to be about
16 to engage in criminal conduct; and

17 “(B) the record may contain information relevant
18 to that conduct.”.

19 **SEC. 103. RECOVERY OF CIVIL DAMAGES.**

20 Section 2520 of title 18, United States Code, is amend-
21 ed to read as follows:

22 **“§ 2520. Recovery of civil damages authorized**

23 “(a) Any person whose electronic communication or oral
24 communication is intercepted, accessed, disclosed, or used in
25 violation of this chapter may in a civil action recover from

1 the person or entity which engaged in that violation such
2 relief as may be appropriate.

3 “(b) In an action under this section, appropriate relief
4 includes—

5 “(1) such preliminary and other equitable or de-
6 claratory relief as may be appropriate;

7 “(2) damages under subsection (c); and

8 “(3) a reasonable attorney’s fee and other litiga-
9 tion costs reasonably incurred.

10 “(c) The court may assess as damages in an action
11 under this section either—

12 “(1) the sum of the actual damages suffered by
13 the plaintiff and any profits made by the violator as a
14 result of the violation; or

15 “(2) statutory damages in an amount not less than
16 \$500 or more than \$10,000.

17 “(d) A good faith reliance on a court warrant or order is
18 a complete defense against a civil action under this section.

19 “(e) A civil action under this section may not be com-
20 menced later than two years after whichever is later of—

21 “(1) the date of the occurrence of the violation; or

22 “(2) the date upon which the claimant first has
23 had a reasonable opportunity to discover the viola-
24 tion.”.

1 **SEC. 104. CERTAIN APPROVALS BY ACTING ASSISTANT ATTOR-**
2 **NEY GENERAL.**

3 Section 2516(1) of title 18 of the United States Code is
4 amended by inserting “(or acting Assistant Attorney Gener-
5 al)” after “Assistant Attorney General”.

6 **SEC. 105. ADDITION OF OFFENSES TO CRIMES FOR WHICH**
7 **INTERCEPTION IS AUTHORIZED.**

8 Section 2516(1)(c) of title 18 of the United States Code
9 is amended—

10 (1) by inserting “section 751 (relating to escape),”
11 after “wagering information”;

12 (2) by striking out “2314” and inserting “2312,
13 2313, 2314,” in lieu thereof;

14 (3) by inserting “the second section 2320 (relating
15 to trafficking in certain motor vehicles or motor vehicle
16 parts), section 1203 (relating to hostage taking), sec-
17 tion 1029 (relating to fraud and related activity in con-
18 nection with access devices), section 32 (relating to de-
19 struction of aircraft or aircraft facilities),” after “stolen
20 property,”; and

21 (4) by inserting “section 1952A (relating to use of
22 interstate commerce facilities in the commission of
23 murder for hire), section 1952B (relating to violent
24 crimes in aid of racketeering activity),” after “1952
25 (interstate and foreign travel or transportation in aid of
26 racketeering enterprises),”.

1 **SEC. 106. ADDITIONAL REQUIREMENTS FOR APPLICATIONS,**
2 **ORDERS, AND IMPLEMENTATION OF ORDERS.**

3 (a) **INVESTIGATION OBJECTIVES.**—Section 2518(1)(b)
4 of title 18 of the United States Code is amended by inserting
5 immediately before the semicolon at the end the following: “,
6 and (v) the specific investigative objectives and the specific
7 targets, if known, of the interception to which the application
8 pertains”.

9 (b) **ALTERNATE INVESTIGATIVE TECHNIQUES.**—Sec-
10 tion 2518(1)(c) of title 18 of the United States Code is
11 amended by inserting “(including the use of consensual moni-
12 toring, pen registers, tracking devices, contempt proceedings,
13 perjury prosecutions, use of accomplice testimony, grand jury
14 subpoena of documents, search warrants, interviewing wit-
15 nesses, and obtaining documents through other legal means)”
16 after “procedures”.

17 (c) **PLACE OF AUTHORIZED INTERCEPTION.**—Section
18 2518(3) of title 18 of the United States Code is amended by
19 inserting “(and outside that jurisdiction but within the United
20 States in the case of a mobile interception device installed
21 within such jurisdiction)” after “within the territorial jurisdic-
22 tion of the court in which the judge is sitting”.

23 (d) **REIMBURSEMENT FOR ASSISTANCE; PHYSICAL**
24 **ENTRY.**—Section 2518(4) of title 18 of the United States
25 Code is amended—

1 (1) by striking out “at the prevailing rates” and
2 inserting in lieu thereof “for reasonable expenses in-
3 curred in providing such facilities or assistance”; and

4 (2) by adding at the end “An order authorizing
5 the interception of an electronic communication under
6 this chapter may, upon a showing by the applicant that
7 there are no other less intrusive means reasonably
8 available of effecting the interception, authorize physi-
9 cal entry by law enforcement officers to install an elec-
10 tronic, mechanical, or other device. No such order may
11 require the participation of any individuals operating or
12 employed by an electronic communications system in
13 such physical entry.”.

14 (e) PERIODIC REPORTS.—Subsection (6) of section
15 2518 of title 18 of the United States Code is amended to
16 read as follows:

17 “(6) An order authorizing interception pursuant to this
18 chapter shall require that reports be made not less often than
19 every ten days to the judge who issued such order, showing
20 what progress has been made toward achievement of the au-
21 thorized objective, the need, if any for continued interception,
22 and whether any evidence has been discovered through such
23 interception of offenses other than those with respect to
24 which such order was issued. The judge may suspend or ter-
25 minate interception if any such report is deficient or evinces

1 serious procedural irregularities. The judge shall terminate
 2 interception if the legal basis of continued interception no
 3 longer exists.”.

4 (f) **TIME LIMIT FOR THE MAKING AVAILABLE TO**
 5 **JUDGE OF RECORDINGS.**—Section 2518(8)(a) of title 18 of
 6 the United States Code is amended by striking out “Immedi-
 7 ately upon” and inserting “Not later than forty-eight hours
 8 after” in lieu thereof.

9 **SEC. 107. EFFECTIVE DATE.**

10 This title and the amendments made by this title shall
 11 take effect ninety days after the date of the enactment of this
 12 Act and shall, in the case of conduct pursuant to a court
 13 order or extension, apply only with respect to court orders or
 14 extensions made after this title takes effect.

15 **TITLE II—PEN REGISTERS AND TRACKING**
 16 **DEVICES**

17 **SEC. 201. TITLE 18 AMENDMENT.**

18 (a) **IN GENERAL.**—Title 18 of the United States Code
 19 is amended by inserting after chapter 205 the following new
 20 chapter:

21 **“CHAPTER 206—PEN REGISTERS AND TRACKING**
 22 **DEVICES**

“Sec.

“3121. General prohibition on pen register and tracking device use; exception.

“3122. Application for an order for a pen register or tracking device.

“3123. Issuance of an order for a pen register or tracking device.

“3124. Emergency use of pen register or tracking device without prior authoriza-
 tion.

“3125. Assistance in installation and use of a pen register or tracking device.

“3126. Notice to affected persons.

“3127. Reports concerning pen registers and tracking devices.

“3128. Recovery of civil damages authorized.

“3129. Definitions for chapter.

1 **“§ 3121. General prohibition on pen register and tracking**
 2 **device use; exception**

3 “(a) **IN GENERAL.**—Except as provided in this section
 4 or section 3124 of this title, no person may install or use a
 5 pen register or a tracking device without first obtaining a
 6 court order under section 3123 of this title or under the For-
 7 eign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801
 8 et seq.).

9 “(b) **EXCEPTION.**—The prohibition of subsection (a)
 10 does not apply with respect to the use of a pen register by a
 11 provider of electronic communication services relating to the
 12 operation, maintenance, and testing of an electronic commu-
 13 nication service.

14 “(c) **PENALTY.**—Whoever knowingly violates subsec-
 15 tion (a) shall be fined not more than \$100,000 or imprisoned
 16 not more than one year, or both.

17 **“§ 3122. Application for an order for a pen register or**
 18 **tracking device**

19 “(a) **LAW ENFORCEMENT OFFICERS MAY MAKE AP-**
 20 **PLICATION.**—(1) A Federal law enforcement officer having
 21 responsibility for an ongoing criminal investigation may make
 22 application for an order or an extension of an order under
 23 section 3123 of this title authorizing or approving the instal-

1 lation and use of a pen register or a tracking device under
 2 this chapter, in writing under oath or equivalent affirmation,
 3 to a court of competent jurisdiction.

4 “(2) A State law enforcement officer having responsibil-
 5 ity for an ongoing criminal investigation may make applica-
 6 tion for an order or an extension of an order under section
 7 3123 of this title authorizing or approving the installation
 8 and use of a pen register or a tracking device under this
 9 chapter, in writing under oath or equivalent affirmation, to a
 10 court of competent jurisdiction of such State.

11 “(b) **CONTENT OF APPLICATION.**—An application
 12 under subsection (a) of this section shall include—

13 “(1) the identity of the law enforcement officer
 14 making the application and of any other officer or em-
 15 ployee authorizing or directing such application, and
 16 the identity of the agency in which each such law en-
 17 forcement officer and other officer or employee is em-
 18 ployed; and

19 “(2) a statement of the facts and circumstances
 20 relied upon by the applicant to justify the applicant’s
 21 belief that an order should be issued.

22 **“§ 3123. Issuance of an order for a pen register or track-**
 23 **ing device**

24 “(a) **IN GENERAL.**—Upon an application made under
 25 section 3122 of this title, the court may enter an *ex parte*

1 order, as requested or as found warranted by the court, au-
2 thorizing or approving the installation and use of a pen regis-
3 ter or a tracking device within the jurisdiction of the court
4 (and outside that jurisdiction but within the United States in
5 the case of a mobile tracking device installed within such
6 jurisdiction) if the court finds on the basis of the information
7 submitted by the applicant that—

8 “(1) in the case of a pen register, there is reason-
9 able cause to believe; and

10 “(2) in the case of a tracking device, there is
11 probable cause to believe;

12 that the information likely to be obtained by such installation
13 and use is relevant to a legitimate criminal investigation.

14 “(b) CONTENTS OF ORDER.—An order issued under
15 this section—

16 “(1) shall specify—

17 “(A) the identity, if known, of the person to
18 whom is leased, in whose name is listed, or who
19 commonly uses the telephone line to which the
20 pen register is to be attached or of the person to
21 be traced by means of the tracking device;

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

24 “(C) the number of the telephone line to
25 which the pen register is to be attached, or the

1 identity of the object to which the tracking device
2 is to be attached;

3 “(D) a statement of the nature of the crimi-
4 nal investigation to which the information likely
5 to be obtained by the pen register or tracking
6 device relates;

7 “(E) the identity of the law enforcement offi-
8 cer authorized to install and use the pen register
9 or tracking device; and

10 “(F) the period of time during which the use
11 of the pen register or tracking device is author-
12 ized; and

13 “(2) shall direct, upon the request of the appli-
14 cant, the furnishing of information, facilities, and tech-
15 nical assistance necessary to accomplish the installation
16 and use of the pen register or tracking device under
17 section 3125 of this title.

18 “(c) TIME PERIOD AND EXTENSIONS.—(1) An order
19 issued under this section may authorize or approve the instal-
20 lation and use of a pen register or tracking device for the
21 period necessary to achieve the objective of the authorization,
22 or for thirty days, whichever is less.

23 “(2) Extensions of such an order may be granted, but
24 only upon an application for an order under section 3122 of
25 this title and upon the judicial finding required by subsection

1 (a) of this section. The extension shall include a full and com-
2 plete statement of any changes in the information required by
3 subsection (b) of this section to be set forth in the original
4 order. The period of extension may be for the period neces-
5 sary to achieve the objective for which it was granted, or for
6 thirty days, whichever is less.

7 “(d) NONDISCLOSURE OF EXISTENCE OF PEN REGIS-
8 TER OR TRACKING DEVICE.—An order authorizing or ap-
9 proving the installation and use of a pen register or tracking
10 device shall direct that the person owning or leasing the line
11 to which the pen register is attached, or who has been or-
12 dered by the court to provide assistance to the applicant,
13 shall not disclose the existence of the pen register or tracking
14 device until at least sixty days after its removal. Upon the
15 request of the applicant, the court may order such person to
16 postpone any disclosure of the existence of the pen register or
17 tracking device for additional periods of not more than sixty
18 days each, if the court finds, upon the showing of the appli-
19 cant, that there is reason for the belief that disclosing the
20 existence of the pen register or tracking device may—

21 “(1) endanger the life or physical safety of any
22 person;

23 “(2) result in flight from prosecution;

24 “(3) result in destruction of, or tampering with,
25 evidence;

1 “(4) result in intimidation of potential witnesses;

2 or

3 “(5) otherwise seriously jeopardize an investiga-
4 tion or governmental proceeding.

5 **“§ 3124. Emergency use of pen register or tracking device**
6 **without prior authorization**

7 “(a) **IN GENERAL.**—A law enforcement officer specially
8 designated by the Attorney General may install and use a
9 pen register or a tracking device without a court order, if a
10 judge of competent jurisdiction is notified at the time the de-
11 cision to make such installation and use is made, and if—

12 “(1) such law enforcement officer reasonably de-
13 termines that—

14 “(A) an emergency situation exists that
15 involves—

16 “(i) immediate danger of death or seri-
17 ous bodily injury to any person;

18 “(ii) conspiratorial activities threatening
19 the national security interest; or

20 “(iii) conspiratorial activities character-
21 istic of organized crime;

22 that requires the installation and use of a pen reg-
23 ister or a tracking device before an order author-
24 izing the installation and use of the pen register

1 or tracking device can, with due diligence, be ob-
2 tained; and

3 “(B) there are grounds upon which an order
4 could be entered under section 3123 of this title
5 to authorize the installation and use of such pen
6 register or tracking device; and

7 “(2) an application for an order approving the in-
8 stallation and use of the pen register or tracking device
9 is made under section 3122 of this title as soon as
10 practicable but not more than forty-eight hours after
11 the pen register or tracking device is installed.

12 “(b) TERMINATION.—In the absence of an order ap-
13 proving the pen register or tracking device, the use of the
14 pen register or tracking device shall terminate immediately
15 when the information sought is obtained, or when the appli-
16 cation for the order is denied, whichever is earlier.

17 **“§ 3125. Assistance in installation and use of a pen regis-**
18 **ter or tracking device**

19 “(a) IN GENERAL.—Except as provided in subsection
20 (b), upon the request of a law enforcement officer authorized
21 by this chapter to install and use a pen register or tracking
22 device, a communications common carrier, landlord, custodi-
23 an, or other person shall furnish such law enforcement officer
24 forthwith all information, facilities, and technical assistance
25 necessary to accomplish the installation and use of the pen

1 register or tracking device unobtrusively and with a minimum
2 of interference with the services that the person so ordered
3 by the court accords the party with respect to whom the
4 installation and use is to take place, if—

5 “(1) such assistance is directed by a court order
6 as provided in section 3123(b)(2) of this title; or

7 “(2) the emergency installation and use of the pen
8 register or tracking device is authorized under section
9 3124 of this title.

10 “(b) EXCEPTION.—A law enforcement officer may not
11 request the participation under this section of any individuals
12 operating or employed by an electronic communications
13 system in such physical entry.

14 “(c) COMPENSATION.—A communications common car-
15 rier, landlord, custodian, or other person who furnishes facili-
16 ties or technical assistance pursuant to this section shall be
17 compensated for such assistance for reasonable expenses in-
18 curred in providing such facilities or assistance.

19 **“§ 3126. Notice to affected persons**

20 “(a) SERVICE OF INVENTORY.—Except as provided in
21 subsection (b), within a reasonable time but not later than
22 ninety days after the filing of an application for an order of
23 approval required under section 3124 of this title, if such
24 application is denied, or the termination of an order, as ex-
25 tended, under section 3123 of this title, the issuing or deny-

1 ing judge shall cause to be served on the persons named in
2 the order or application, and such other parties to activity
3 monitored by means of a pen register or tracking device as
4 the judge may determine in the judge's discretion that it is in
5 the interest of justice, an inventory which shall include notice
6 of—

7 “(1) the fact of the entry of the order or the appli-
8 cation;

9 “(2) the date of such entry and the period of au-
10 thorized, approved, or disapproved activity under such
11 order, or the denial of the application; and

12 “(3) the fact that during the period activity took
13 place under such order.

14 “(b) EXCEPTION.—On an ex parte showing of good
15 cause to a judge of competent jurisdiction—

16 “(1) the serving of the inventory required by this
17 subsection may be postponed; and

18 “(2) the serving of such inventory may be dis-
19 pensed with if notice under this section would compro-
20 mise an ongoing criminal investigation or result in the
21 disclosure of classified information harmful to the na-
22 tional security.

23 “(c) MOTION FOR INSPECTION.—The judge, upon the
24 filing of a motion, may in the judge's discretion make avail-
25 able to such person or such person's counsel for inspection

1 such portions of the results of activity under such order or
2 referred to in such application, and such orders and applica-
3 tions as the judge determines to be in the interest of justice.

4 **“§ 3127. Reports concerning pen registers and tracking**
5 **devices**

6 **“(a) REPORT BY ISSUING OR DENYING JUDGE.—**

7 Within thirty days after the expiration of an order (or each
8 extension thereof) entered under section 3123 of this title, or
9 the denial of an order approving the use of a pen register or a
10 tracking device, the issuing or denying judge shall report to
11 the Administrative Office of the United States Courts—

12 **“(1) the fact that an order or extension was ap-**
13 **plied for;**

14 **“(2) the kind of order or extension applied for;**

15 **“(3) the fact that the order or extension was**
16 **granted as applied for, was modified, or was denied;**

17 **“(4) the period of operation of the pen register or**
18 **tracking device authorized by the order, and the**
19 **number and duration of any extensions of the order;**

20 **“(5) the offense specified in the order or applica-**
21 **tion, or extension of an order;**

22 **“(6) the identity of the applying law enforcement**
23 **officer and agency making the application and the**
24 **person authorizing the application; and**

1 “(7) the nature of the facilities from which or the
2 place where activity under the order was to be carried
3 out.

4 “(b) **REPORT BY ATTORNEY GENERAL.**—In Jan-
5 uary of each year the Attorney General, an Assistant Attor-
6 ney General specially designated by the Attorney General,
7 or the principal prosecuting attorney of a State, or the prin-
8 cipal prosecuting attorney for any political subdivision of a
9 State, shall report to the Administrative Office of the United
10 States Courts—

11 “(1) the information required by paragraphs (1)
12 through (7) of subsection (a) of this section with respect
13 to each application for an order or extension made
14 during the preceding calendar year;

15 “(2) a general description of the pen registers and
16 tracking devices conducted under such order or exten-
17 sion, including—

18 “(A) the approximate nature and frequency
19 of incriminating evidence obtained;

20 “(B) the approximate number of persons
21 whose activities were monitored; and

22 “(C) the approximate nature, amount, and
23 cost of the manpower and other resources used in
24 carrying out orders under this chapter;

1 “(3) the number of arrests resulting from activity
2 conducted under such order or extension, and the of-
3 fenses for which arrests were made;

4 “(4) the number of trials resulting from such
5 activity;

6 “(5) the number of motions to suppress made with
7 respect to such activity, and the number granted or
8 denied;

9 “(6) the number of convictions resulting from such
10 activity and the offenses for which the convictions were
11 obtained and a general assessment of the importance of
12 such activity; and

13 “(7) the information required by paragraphs (2)
14 through (6) of this subsection with respect to orders or
15 extensions obtained in a preceding calendar year.

16 “(c) REPORT BY DIRECTOR OF ADMINISTRATIVE
17 OFFICE OF THE UNITED STATES COURTS.—In April of
18 each year the Director of the Administrative Office of the
19 United States Courts shall transmit to the Congress a full
20 and complete report concerning the number of applications
21 for orders under this chapter and the number of orders and
22 extensions granted or denied under this chapter during the
23 preceding calendar year. Such report shall include a summa-
24 ry and analysis of the data required to be filed with the Ad-
25 ministrative Office by subsections (a) and (b) of this section.

1 The Director of the Administrative Office of the United
2 States Courts is authorized to issue binding regulations deal-
3 ing with the content and form of the reports required to be
4 filed by subsections (a) and (b) of this section.

5 **“§ 3128. Recovery of civil damages authorized**

6 “(a) Any person who is harmed by a violation of this
7 chapter may in a civil action recover from the person or entity
8 which engaged in that violation such relief as may be
9 appropriate.

10 “(b) In an action under this section, appropriate relief
11 includes—

12 “(1) such preliminary and other equitable or de-
13 claratory relief as may be appropriate;

14 “(2) damages; and

15 “(3) a reasonable attorney’s fee and other litiga-
16 tion costs reasonably incurred.

17 “(c) A good faith reliance on a court warrant or order is
18 a complete defense against a civil action under this section.

19 “(d) A civil action under this section may not be com-
20 menced later than two years after whichever is later of—

21 “(1) the date of the occurrence of the violation; or

22 “(2) the date upon which the claimant first has
23 had a reasonable opportunity to discover the
24 violation.”.

1 **“§ 3129. Definitions for chapter**

2 “As used in this chapter—

3 “(1) the term ‘communications common carrier’
4 has the meaning set forth for the term ‘common carrier’
5 in section 3(h) of the Communications Act of 1934
6 (47 U.S.C. 153(h));

7 “(2) the term ‘electronic communication’ has the
8 meaning set forth for such term in section 2510 of this
9 title;

10 “(3) the term ‘court of competent jurisdiction’
11 means—

12 “(A) a district court of the United States or
13 a United States Court of Appeals; or

14 “(B) a court of general criminal jurisdiction
15 of a State authorized by a statute of that State to
16 enter orders authorizing the use of pen registers
17 and tracking devices in accordance with this
18 chapter;

19 “(4) the term ‘legitimate criminal investigation’
20 means a lawful investigation or official proceeding in-
21 quiring into a violation of any Federal criminal law;

22 “(5) the term ‘pen register’ means a device which
23 records and or decodes electronic or other impulses
24 which identify the numbers dialed or otherwise trans-
25 mitted on the telephone line to which such device is
26 attached, but such term does not include any device

1 used by a provider of electronic communication serv-
 2 ices for billing, or recording as an incident to billing,
 3 for communications services provided by such provider;

4 “(5) the term ‘tracking device’ means an electron-
 5 ic or mechanical device which permits the tracking of
 6 the movement of a person or object in circumstances in
 7 which there exists a reasonable expectation of privacy
 8 with respect to such tracking; and

9 “(6) the term ‘State’ means a State, the District
 10 of Columbia, Puerto Rico, and any other possession or
 11 territory of the United States.”.

12 (b) CLERICAL AMENDMENT.—The table of chapters for
 13 part II of title 18 of the United States Code is amended by
 14 inserting after the item relating to chapter 205 the following
 15 new item:

“206. Pen Registers and Tracking Devices 3121”.

16 SEC. 202. EFFECTIVE DATE.

17 This title and the amendments made by this title shall
 18 take effect on the date of the enactment of this Act.

○