HOUSE DOCKET, NO. 1292 FILED ON: 1/20/2011

HOUSE . . . . . No. 1379

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:

An Act to combat economic crime.

PETITION OF:

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

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HOUSE . . . . . No. 1379

By Mr. Vallee of Franklin, a petition (accompanied by bill, House, No. 1379) of James E. Vallee and others relative to economic crimes involving monetary instruments or other property known to be derived from criminal activity . The Judiciary.

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

The Commonwealth of Massachusetts

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:

SECTION 1. The General Laws, as appearing in the 2008 Official Edition, are hereby amended by adding after Chapter 267 the following new chapter: —

Chapter 267A Money Laundering.

Section 1. Definitions.

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

"Conducts", initiates, concludes or participates in initiating or concluding in a transaction.

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

"Transaction", a purchase, sale, loan, pledge, gift, transfer, delivery, or other disposition, and with respect to a financial institution includes a deposit, withdrawal, bailment, transfer between accounts, exchange of currency, loan, extension of credit, purchase or sale of any stock, bond, certificate of deposit, or other monetary instrument, use of a safe deposit box, or any other

payment, transfer, or delivery by, through, or to a financial institution, by whatever means effected.

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

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

Section 2. Money Laundering.

Whoever knowingly:

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

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

52 (c) directs, organizes, finances, plans, manages, supervises, or controls the transportation
53 of or transactions in monetary instruments or other property known to be derived from criminal
54 activity or which a reasonable person would believe to be derived from criminal activity;

55 is guilty of the crime of money laundering and shall be punished by imprisonment in the
56 state prison for not more than 6 years or by a fine of not more than $250,000 or twice the value
57 of the property transacted, whichever is greater, or by both such imprisonment and fine; and for
58 any subsequent offense shall be punished by imprisonment in the state prison for not less than 2
59 years, but not more than 10 years or by a fine of not more than $500,000 or three times the value
60 of the property transacted, whichever is greater, or by both such imprisonment and fine.

61 Section 3. Record Keeping.

62 (a) Reports filed by a financial institution pursuant to the Currency and Foreign
63 Transactions Act, set forth in 31 U.S.C., sections 5311 through 5315, 31 C.F.R. 103 shall be
64 given to the attorney general by said financial institution upon the request of the attorney general.
65 (b) A financial institution, or any officer, employee, or agent thereof that provides any reports,
66 records, or information pursuant to this section shall not be liable to its customer, to a state or
67 local agency, or to any person for any loss or damage caused in whole or in part by the making,
68 filing, or governmental use of the report, or any information contained therein. Nothing in this
69 chapter shall be construed to give rise to a private cause of action for relief or damages. This
70 paragraph does not preclude a financial institution, in its discretion, from instituting contact with,
71 and thereafter communicating with and disclosing customer financial records to appropriate
72 federal, state, or local law enforcement agencies when the financial institution has reason to
73 suspect that the records or information demonstrate that the customer has violated any provisions
74 of this chapter. (c) Any report, record, or information obtained by the attorney general pursuant
75 to this section is not a public record and is not subject to disclosure, except to other state and
76 federal law enforcement agencies. (d) Any violation of this section, which is not a violation of
77 section 2, shall be punished by a fine of $100 for each report requested by the attorney general
78 and subsequently not filed.

79 Section 4. Forfeiture.

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

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

84 Chapter 271A Enterprise Crime.

85 Section 1. Definitions.

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

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

92 "Pattern of criminal enterprise activity", engaging in at least two incidents of criminal
93 enterprise activity that have the same or similar pattern, intents, results, accomplices, victims or
94 methods of commission, or are otherwise interrelated by distinguishing characteristics and are
95 not isolated incidents, provided at least one of the acts occurred after the effective date of this
96 act, and the last of the incidents occurred within five years after a prior commission of criminal
97 enterprise activity.

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

102 a felony offense under chapter 271: distributing, dispensing, manufacturing, or
103 possessing with intent to distribute, dispense or manufacture a controlled substance in violation
104 of chapter 94C; murder; rape; manslaughter; assault; assault and battery; assault and battery in
105 order to collect a loan; assault with intent to rob or murder; mayhem; robbery; extortion;
106 stalking; criminal harassment; kidnapping; arson; burglary; malicious destruction of property;
107 commission of a felony for hire; breaking and entering; child exploitation; assault and battery on
108 a child; rape of a child; rape and abuse of a child; enticement of a child under 16; poisoning;
109 human trafficking; violation of constitutional rights; usury; uttering; misuse or fraudulent use of
110 credit cards; identity fraud; misappropriation of funds; gross fraud; insurance fraud; unlawful
111 prize fighting or boxing matches; counterfeiting; perjury; subornation of perjury; obstruction of
112 justice; money laundering; witness intimidation; bribery; electronic eavesdropping; prostitution;
113 receiving stolen property; larceny over $250; larceny by false pretenses or embezzlement;
114 forgery; prohibited financial interest; procurement fraud; false claims; tax evasion; filing false
115 tax return; crimes involving violations of: gambling and lottery laws, gift laws, liquor laws,
116 tobacco laws, firearms laws, securities laws, lobbying laws, ethics laws, conflict of interest laws,
117 child or elder abuse laws; or any conduct defined as racketeering activity under Title 18, U.S.C.
118 s. 1961(1)(A)(B) and (D).

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

122 Section 2. Enterprise Crime.

Whoever knowingly:

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

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

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

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

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

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

Section 3. Forfeiture.

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

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

Section 99. Wiretap and Electronic Surveillance

Section 1. Preamble

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

157 Section 2. Definitions.

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

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

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

166 "Aural transfer" means a transfer containing the human voice at any point between and
167 including the point of origin and the point of reception.

168 "Communication common carrier" means any person engaged as a common carrier in
169 providing or operating wire or electronic communication facilities.

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

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

178 "Court of competent jurisdiction" means a superior court of the commonwealth.

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

182 (1) any wire or oral communication;

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

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

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

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

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

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

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

198 (A) furnished to the subscriber or user by a provider of wire or electronic communication
199 service or commercial entity in the ordinary course of its business, and being used by the
200 subscriber or user in the ordinary course of its business, or furnished by such subscriber or user
201 for connection to the facilities of such service and used in the ordinary course of its business; or

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

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

207 “Electronic storage” means:

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

210

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

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

217 “Intercept” means the secret acquisition of aural or other secret acquisition of the
218 contents of any wire, electronic or oral communication through the use of any electronic,
219 mechanical, or other device; provided that it shall not constitute an interception for an
220 investigative or law enforcement officer, as defined in this section, to record or transmit a wire,
221 electronic or oral communication if the officer is a party to such communication or has been
222 given prior authorization to record or transmit the communication by such a party and if recorded
223 or transmitted in the course of an investigation of any offense described in section 7, and a
224 judicial official authorized to issue warrants pursuant to chapter 276 determines that there is
225 probable cause that evidence of such a crime will be recorded or transmitted. Any such warrant
226 shall be valid for no greater than 15 days from the date of issue.

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

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

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

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

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

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

250 (1) scrambled or encrypted;

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

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

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

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

261 "Trap and trace device" means a device or process which captures the incoming
262 electronic or other impulses which identify the originating number or other dialing, routing,
263 addressing, and signaling information reasonably likely to identify the source of a wire or
264 electronic communication, provided, however, that such information shall not include the
265 contents of any communication. Provided, however, that any caller identification device
266 lawfully installed shall be excluded from this definition.

267 "User" means any person or entity who:

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

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

270 "Wire communication" means any aural transfer made in whole or in part through the use
271 of facilities for the transmission of communications by the aid of wire, cable, or other like
272 connection between the point of origin and the point of reception, including the use of such
273 connection in a switching station, furnished or operated by any person engaged in providing or
274 operating such facilities for the transmission of intrastate, interstate or foreign communications
275 or communications affecting intrastate, interstate or foreign commerce.

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

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

279 (1) intercept, endeavor to intercept, or procure any other person to intercept or endeavor
280 to intercept, any wire, oral, or electronic communication;

281 (2) use, endeavor to use, or procure any other person to use or endeavor to use any
282 electronic, mechanical, or other device to intercept any oral communication when:

283 (A) such device is affixed to, or otherwise transmits a signal through, a wire, cable, or
284 other like connection used in wire or electronic communications; or

285 (B) such device transmits communications by radio, or interferes with transmission of
286 such communication.

287 (3) disclose, or endeavor to disclose, to any other person the contents of any wire, oral, or
288 electronic communication, knowing or having reason to know that the information was obtained
289 through the interception of a wire, oral, or electronic communication in violation of this
290 subsection; or

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

294 (5) edit, alter or tamper with any tape, transcription or recording of wire, oral, or
295 electronic communications by any means, or attempt to edit, alter or tamper with any tape,
296 transcription or recording of wire, oral, or electronic communications by any means with the
297 intent to present in any judicial proceeding or proceeding under oath, or present such recording
298 or permit such recording to be presented in any judicial proceeding or proceeding under oath,
299 without fully indicating the nature of the changes made in the original state of the recording.

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

303 (c) Any person who violates subsection (a) and any person who permits or on behalf of
304 any other person commits or attempts to commit, or any person who participates in a conspiracy
305 to commit or attempt to commit, or any accessory to a person who commits a violation of
306 subsection (a) shall be punished as provided in subsection (f) or shall be subject to suit as
307 provided in Section 17.

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

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

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

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

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

329 (B) No provider of wire or electronic communication service, officer, employee, or agent
330 thereof, or landlord, custodian, or other specified person shall disclose the existence of any
331 interception or surveillance or the device used to accomplish the interception or surveillance with
332 respect to which the person has been furnished a court order or certification under this section,
333 except as may otherwise be required by legal process and then only after prior notification to the
334 attorney for the state as may be appropriate. Any such disclosure, shall render such person liable
335 for the civil damages provided for in section 17.

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

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

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

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

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

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

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

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

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

353 (B) is excepted from the applications of Section 705(a) of the Communications Act of
354 1934 by Section 705(b) of that Act;

355 (6) a person to intercept any wire or electronic communication the transmission of which
356 is causing harmful interference to any lawfully operating station or consumer electronic
357 equipment, to the extent necessary to identify the source of such interference;

358 (7) other users of the same frequency to intercept any radio communication made through
359 a system that utilized frequencies monitored by individuals engaged in the provision or the use of
360 such system, if such communication is not scrambled or encrypted;

361 (8) a person to use a pen register or a trap and trace device in accordance with the
362 provisions defined in this section;

363 (9) a provider of electronic communication service to record the fact that a wire or
364 electronic communication was initiated or completed in order to protect such provider, another
365 provider furnishing service toward the completion of the wire or electronic communication, or a
366 user of that service, from fraudulent, unlawful or abusive use of such service;

367 (10) investigative and law enforcement officers of the United States of America to violate
368 the provisions of this section if acting pursuant to authority of the laws of the United States and
369 within the scope of their authority;

370 (11) any person duly authorized to make specified interceptions by a warrant issued
371 pursuant to this section;

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

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

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

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

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

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

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

391 (15) any investigative or law enforcement officer, specially designated by the Attorney
392 General or a District Attorney, who reasonably determines that an emergency situation exists that
393 involves immediate danger of death or serious physical injury to any person, and there are
394 grounds upon which an order could be entered under this section to authorize such interception,
395 may intercept such wire, oral, or electronic communication if an application for an order
396 approving the interception is made in accordance with this section within forty-eight hours after
397 the interception has occurred, or begins to occur. In the absence of an order, such interception
398 shall immediately terminate when the communication sought is obtained or when the application
399 for the order is denied, whichever is earlier. In the event such application for approval is denied,
400 the contents of any wire, oral, or electronic communication intercepted shall be subject to the
401 prohibitions set forth in section 6 and the civil remedies of section 17. No such violation shall be
402 subject to criminal penalties.

403 (16) for an employee of:

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

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

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

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

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

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

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

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

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

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

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

439 (1) transport or transmit any electronic, mechanical, or other device, knowing or having
440 reason to know that the design of such device renders it primarily useful for the purpose of the
441 surreptitious interception of wire, oral, or electronic communications, or knowing or having
442 reason to know that the device is intended for surreptitious interception of wire, oral, or
443 electronic communications; or

444 (2) manufacture, assemble, possess, or sell any electronic, mechanical, or other device,
445 knowing or having reason to know that the design of such device renders it primarily useful for
446 the purpose of the surreptitious interception of wire, oral, or electronic communications, or
447 knowing or having reason to know that the device is intended for surreptitious interception of
448 wire, oral, or electronic communications; or

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

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

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

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

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

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

467 (e) Notwithstanding subsection (a), it shall be lawful for a person to transport, or
468 manufacture, assemble, possess, or sell any electronic, mechanical, or other device, knowing or
469 having reason to know that the design of such device renders it primarily useful for the purpose
470 of the surreptitious interception of wire, oral, or electronic communications, or knowing or
471 having reason to know that the device is intended for surreptitious interception of wire, oral, or
472 electronic communications, if the person is:

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

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

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

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

486 Section 6. Prohibition of Use as Evidence of Intercepted Wire, Oral or Electronic
487 Communications.

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

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

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

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

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

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

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

524 child in state of nudity or sexual conduct, purchase or possession of visual material of child
525 depicted in sexual conduct;

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

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

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

531 Section 8. Authorization for Disclosure and Use of Intercepted Wire, Oral, and Electronic
532 Communications.

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

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

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

541 (b) Any person who has received, by any means authorized by this section, any
542 information concerning a wire, oral, or electronic communication, or evidence derived
543 therefrom, intercepted in accordance with the provisions of this section may disclose the contents
544 of that communication or such derivative evidence while giving testimony under oath or
545 affirmation in any proceeding in any court of the United States or of any state or in any federal or
546 state grand jury proceeding.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

587 (6) the facts concerning all previous applications known to the individual authorizing and
588 making the application, made to any judge for authorization to intercept, or for approval of
589 interceptions of, wire, oral, or electronic communications involving any of the same persons,

590 facilities or places specified in the application, and the action taken by the judge on each such
591 application;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

626 (f) An order authorizing the interception of a wire, oral, or electronic communication
627 under this section shall, upon request of the applicant, direct that a provider of wire or electronic
628 communication service, landlord, custodian, or other person shall furnish the applicant forthwith
629 all information, facilities, and technical assistance necessary to accomplish the interception
630 unobtrusively and with a minimum of interference with the services that such service provider,
631 landlord, custodian, or person is according the person whose communications are to be
632 intercepted. Any provider of wire or electronic communication service, landlord, custodian or
633 other person furnishing such facilities or technical assistance shall be compensated therefor by
634 the applicant for reasonable expenses incurred in providing such facilities or assistance.

635 (g) An order entered under this section may authorize or approve the interception of any
636 wire, oral, or electronic communication for the shorter of 30 days or the period necessary to
637 achieve the objective of the authorization. Such 30 day period begins on the earlier of the day on
638 which the investigative or law enforcement officer first begins to conduct an interception under
639 the order or ten days after the order is entered, whichever occurs earliest. Extensions of an order
640 may be granted only upon application for an extension made in accordance with subsection (b)
641 of this section and the court making the findings required by subsection (d) of this section. The
642 period of extension shall be the shorter of 30 days or the time the authorizing judge deems
643 necessary to achieve the purposes for which it was granted. Every order and extension thereof
644 shall contain a provision that the authorization to intercept shall be executed as soon as
645 practicable, shall be conducted in such a way as to minimize the interception of communications
646 not otherwise subject to interception under this section, and must terminate upon the earlier of 30
647 days or the attainment of the authorized objective. In the event the intercepted communication is
648 in a code or a foreign language, and an expert in that foreign language or code is not reasonably
649 available during the interception period, minimization may be accomplished as soon as
650 practicable after such interception of the communication in full.

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

655

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

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

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

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

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

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

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

686 The recordings shall not be destroyed except upon an order of the issuing or denying
687 judge and in any event shall be kept for ten years. Notice prior to the destruction shall be given
688 to the applicant attorney general or his successor or the applicant district attorney or his
689 successor and upon a showing of good cause to the chief justice, the application, warrant,
690 renewal and return may be kept for such additional period as the chief justice shall determine but
691 in no event longer than the longest period of limitation for any designated offense specified in

692 the warrant, after which time they must be destroyed by a person designated by the chief justice.
693 Duplicate recordings may be made for use or disclosure pursuant to the provisions of section 8(a)
694 or (b) of this section

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

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

711 (a) Upon an ex parte showing of important special facts which set forth the need for
712 continued secrecy to the satisfaction of the issuing judge, said judge may direct that the attested
713 copy of the warrant be served on such parties as are required by this subsection at such time as
714 may be appropriate in the circumstances but in no event may he it to be served later than three
715 years from the time of expiration of the warrant or the last renewal thereof.

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

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

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

734 (1) the communication was unlawfully intercepted;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

771 Section 10. Warrant Return

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

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

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

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

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

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

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

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

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

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

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

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

800 (c) A government agency authorized to install and use a pen register or trap and trace
801 device under sections 11 through 15 shall use technology reasonably available to it that restricts
802 the recording or decoding of electronic or other impulses to the dialing, routing, addressing, and
803 signaling information utilized in the processing and transmitting of wire or electronic
804 communications so as not to include the contents of any wire or electronic communications.

805 (d) A person who knowingly violates subsection (a) shall be fined not more than
806 $5,000.00 for each violation, or imprisoned in a jail or house of correction for not more than one
807 year, or both such fine and imprisonment.

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

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

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

815 (1) the identity of the attorney for the state or the law enforcement or investigative officer
816 making the application and the identity of the law enforcement agency conducting the
817 investigation; and

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

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

821 (a) In general:

822 (1) Upon an application made under section 12, the court shall enter an ex parte order
823 authorizing the installation and use of a pen register or trap and trace device within the
824 jurisdiction of the court, if the court finds that the State law enforcement or investigative officer

825 has certified to the court that the information likely to be obtained by such installation and use is
826 relevant to an ongoing criminal investigation.

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

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

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

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

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

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

842 (B) The record maintained under subparagraph (A) shall be provided ex parte and under
843 seal to the court which entered the ex parte order authorizing the installation and use of the
844 device within 30 days after termination of the order (including any extensions thereof). Upon
845 examination of the return and a determination that it complies with this section, the issuing judge
846 shall forthwith order that the application, all renewal applications, warrant, all renewal orders
847 and the return thereto be transmitted to the chief justice by such persons as he shall designate.
848 Their contents shall not be disclosed except as provided in this section. The application, renewal
849 application(s), warrant(s), the renewal order(s) and the return or any one of them or any part of
850 them may be transferred to any trial court, grand jury proceeding of any jurisdiction by any law
851 enforcement or investigative officer or court officer designated by the chief justice and a trial
852 justice may allow them to be disclosed in accordance with section 8.

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

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

860 (b) An order issued under this section:

861 (1) shall specify:

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

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

866 (C) the attributes of the communications to which the order applies, including the number
867 or other identifier and, if known, the location of the telephone line or other facility to which the
868 pen register or trap and trace device is to be attached or applied, and, in the case of an order
869 authorizing installation and use of a trap and trace device under subsection (a)(2), the geographic
870 limits of the order; and

871 (D) a statement of the offense to which the information likely to be obtained by the pen
872 register or trap and trace device relates; and

873

874 (2) shall direct, upon the request of the applicant, the furnishing of information, facilities,
875 and technical assistance necessary to accomplish the installation of the pen register or trap and
876 trace device under section 14.

877 (c) An order issued under this section:

878 (1) shall authorize the installation and use of a pen register or a trap and trace device for a
879 period not to exceed 60 days; and

880 (2) may be granted only upon an application for an order under section 12 of this section
881 after a judicial finding required by subsection (a). Any period(s) of extension shall not exceed
882 60 days.

883 (d) An order authorizing or approving the installation and use of a pen register or a trap
884 and trace device shall direct that:

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

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

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

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

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

903 (b) Upon the request of the attorney for the state or an investigative or law enforcement
904 officer authorized to receive the results of a trap and trace device under this section, a provider of
905 a wire or electronic communication service, landlord, custodian, or other person shall install such
906 device forthwith on the appropriate line or facility and shall furnish such investigative or law
907 enforcement officer all additional information, facilities and technical assistance including
908 installation and operation of the device unobtrusively and with a minimum of interference with
909 the services that the person so ordered by the court accords the party with respect to whom the
910 installation and use is to take place, if such installation and assistance is directed by a court order
911 as provided in section 13(b)(2) of this section. Unless otherwise ordered by the court, the results
912 of the trap and trace device shall be furnished, pursuant to section 13

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

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

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

924 (e) A good faith reliance on a court order under this section, a request pursuant to section
925 12 of this section, a legislative authorization, or a statutory authorization is a complete defense
926 against any civil or criminal action brought under this section.

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

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

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

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

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

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

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

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

951 (e) No cause of action shall lie in any court against any provider of wire or electronic
952 communication service, its officers, employees, or agents, landlord, custodian, or other specified
953 person for providing information, facilities, or assistance in accordance with the terms of this
954 section.

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

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

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

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

962 (B) the name of the applicant;

963 (C) the number of wiretap warrants issued;

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

965 (E) the number and designation of the offenses for which those wiretap applications were
966 sought, and for each of the designated offenses the following:

967 (i) the number of renewals,

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

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

970 (iv) the number of criminal convictions obtained in trials where interception evidence or
971 evidence derived therefrom was introduced

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

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

978 Section 17. Authorized Recovery of Civil Damages.

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

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

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

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

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

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

990 (2) $100 a day for each day of violation; or

991 (3) $1,000.

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

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

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

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

1000 (e) A civil action under this section may not be commenced later than two years after the
1001 date upon which the claimant first has a reasonable opportunity to discover the violation

1002 Section 18. Severability.

1003 If any provisions of this section or application thereof to any person or circumstance is
1004 held invalid, the invalidity does not affect other provisions or applications of the section which
1005 can be given effect without the invalid provisions or application, and to this end the provisions of
1006 this section are severable.