H.R. 3378

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 HOUSE OF REPRESENTATIVES

September 19, 1985

Mr. KASTENMEIER (for himself, Mr. MOORHEAD, Mr. MORRISON of Connecticut, Mr. FEIGHAN, and Mrs. SCHROEDER) introduced the following bill; which was 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 Representatives of the United States of America in Congress assembled,

2 SECTION 1. SHORT TITLE.

4 This Act may be cited as the "Electronic Communications Privacy Act of 1985".
TITLE I—TITLE 18 AND RELATED MATTERS

SEC. 101. FEDERAL PENALTIES FOR THE INTERCEPTION OF ELECTRONIC COMMUNICATIONS.

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

"'(1) 'electronic communication' means any transmission of signs, signals, writing, images, sounds, data, or intelligence of any nature in whole or in part by a wire, radio, electromagnetic, or photoelectric system that affects interstate or foreign commerce;'."

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

(3) Section 2510(8) of title 18, United States Code, is amended by striking out "existence,"

(b) Exceptions With Respect to Electronic Communications.—Section 2511(2) of title 18, United States Code, is amended by adding at the end the following:

"'(g) It shall not be unlawful under this chapter for any person—

'(i) to intercept an electronic communication made through an electronic communication system designed so that such electronic communication is readily accessible to the public."
"(ii) to intercept any electronic communication which is transmitted—

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

"(II) by a walkie talkie, or a police or fire communication system readily accessible to the public; or

"(III) by an amateur radio station operator or by a citizens band radio operator; or

"(iii) to engage in any conduct which—

"(I) is prohibited by section 633 of the Communication Act of 1934; or

"(II) is excepted from the application of section 705(a) of the Communication Act of 1934 by section 705(b) of that Act.

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

"(i) to use a pen register (as that term is defined for the purposes of chapter 206 (relating to pen registers) of this title); or

"(ii) for a provider of electronic communication service to record the placement of a telephone call in order to protect such provider, or a user of that service, from abuse of service.".
(c) TECHNICAL AND CONFORMING AMENDMENTS.—(1)
Chapter 119 of title 18, United States Code, is amended by striking out "wire" each place it appears (including in any section heading) and inserting "electronic" in lieu thereof.

(2) The heading of chapter 119 of title 18, United States Code, is amended by inserting "AND OTHER ELECTRONIC COMMUNICATION" after "WIRE".

(3) The item relating to chapter 119 in the table of chapters at the beginning of part I of title 18 of the United States Code is amended by inserting "and other electronic communication" after "wire".

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

(A) by striking out "communication common carrier" and inserting "a provider of electronic communication service" in lieu thereof;

(B) by striking out "of the carrier" and inserting "of the provider of that service" in lieu thereof; and

(C) by striking out ": Provided, That said communication common carriers" and inserting ", except that a provider of electronic communication service" in lieu thereof.

(5) Section 2511(2)(a)(ii) of title 18, United States Code, is amended—
(A) by striking out "communication common carriers" and inserting "providers of electronic communication services" in lieu thereof; and

(B) by striking out "communication common carrier" each place it appears and inserting "provider of electronic communication services" in lieu thereof.

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

(A) by striking out "communications common carrier" the first place it appears and inserting "a provider of an electronic communication service" in lieu thereof; and

(B) by striking out "a communications common carrier" the second place it appears and inserting "such a provider" in lieu thereof; and

(C) by striking out "communications common carrier's business" and inserting "business of providing that electronic communication service" in lieu thereof.

SEC. 102. ADDITIONAL PROHIBITIONS RELATING TO ELECTRONIC COMMUNICATIONS AND REQUIREMENTS FOR CERTAIN DISCLOSURES.

(a) ADDITIONAL PROHIBITIONS.—Section 2511 of title 18, United States Code, is amended by adding at the end the following:
"(3) Unless authorized by the person or entity providing an electronic communication service or by a user of that service, and except as otherwise authorized in section 2516 of this title, whoever willfully accesses an electronic communication system through which such service is provided or willfully exceeds an authorization to access that electronic communication service and obtains or alters that electronic communication while it is stored in such system shall—

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

"(i) be fined not more than $250,000 or imprisoned not more than one year, or both, in the case of a first offense under this subparagraph; and

"(ii) be fined not more than $250,000 or imprisoned not more than two years, or both, for any subsequent offense under this subparagraph; and

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

"(4) A person or entity providing an electronic communication service shall not knowingly divulge the contents of any communication (other than one to such person or entity) carried on that service to any person or entity other than the
addressee of such communication or that addressee's agent, except—

"(A) as otherwise authorized in section 2516 of this title;

"(B) with the consent of the user originating such communication;

"(C) to a person employed to forward such communication to its destination; or

"(D) for a business activity related to a service provided by the provider of the electronic communication service to a user of the electronic communication service."

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

"(3) A person authorized to make application under this section for an interception may also make an application for a disclosure which would otherwise be in violation of section 2511 (3) or (4). Such application shall meet the requirements for an application for an interception under this section. The court shall not grant such disclosure unless the applicant demonstrates that the particular communications to be disclosed concern a particular offense enumerated in section 2516 of this title. If an order of disclosure is granted, disclosure of information under that order shall not be subject to
the prohibitions contained in such section 2511 (3) or (4).

Such disclosure shall be treated for the purposes of this chapter as interceptions under this chapter, and shall be subject to the same requirements and procedures as apply under this chapter to interceptions under this chapter.

"(4) A provider of electronic communication service may not, upon the request of a governmental authority, disclose to that authority a record kept by that provider in the course of providing that communication service and relating to a particular communication made through that service, unless the governmental authority obtains a court order for such disclosure based on a finding that—

"(A) the governmental entity reasonably suspects the person or entity by whom or to whom such communication was made to have engaged or to be about to engage in criminal conduct; and

"(B) the record may contain information relevant to that conduct.

SEC. 103. RECOVERY OF CIVIL DAMAGES.

Section 2520 of title 18, United States Code, is amended to read as follows:

"§ 2520. Recovery of civil damages authorized

"'(a) Any person whose electronic communication or oral communication is intercepted, accessed, disclosed, or used in violation of this chapter may in a civil action recover from
the person or entity which engaged in that violation such
relief as may be appropriate.

"(b) In an action under this section, appropriate relief
includes—

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

"(2) damages under subsection (c); and

"(3) a reasonable attorney's fee and other litiga-
tion costs reasonably incurred.

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

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

"(2) statutory damages in an amount not less than
$500 or more than $10,000.

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

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

"(1) the date of the occurrence of the violation; or

"(2) the date upon which the claimant first has
had a reasonable opportunity to discover the viola-
tion.".
SEC. 104. CERTAIN APPROVALS BY ACTING ASSISTANT ATTORNEY GENERAL.

Section 2516(1) of title 18 of the United States Code is amended by inserting "(or acting Assistant Attorney General)" after "Assistant Attorney General".

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

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

(1) by inserting "section 751 (relating to escape)," after "wagering information";

(2) by striking out "2314" and inserting "2312, 2313, 2314," in lieu thereof;

(3) by inserting "the second section 2320 (relating to trafficking in certain motor vehicles or motor vehicle parts), section 1203 (relating to hostage taking), section 1029 (relating to fraud and related activity in connection with access devices), section 32 (relating to destruction of aircraft or aircraft facilities)," after "stolen property),"; and

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

•HR 3378 IH
SEC. 106. ADDITIONAL REQUIREMENTS FOR APPLICATIONS.

ORDERS, AND IMPLEMENTATION OF ORDERS.

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

(b) ALTERNATE INVESTIGATIVE TECHNIQUES.—Section 2518(1)(c) of title 18 of the United States Code is amended by inserting "(including the use of consensual monitoring, pen registers, tracking devices, contempt proceedings, perjury prosecutions, use of accomplice testimony, grand jury subpoena of documents, search warrants, interviewing witnesses, and obtaining documents through other legal means)" after "procedures".

(c) PLACE OF AUTHORIZED INTERCEPTION.—Section 2518(3) of title 18 of the United States Code is amended by inserting "(and outside that jurisdiction but within the United States in the case of a mobile interception device installed within such jurisdiction)" after "within the territorial jurisdiction of the court in which the judge is sitting".

(d) REIMBURSEMENT FOR ASSISTANCE; PHYSICAL ENTRY.—Section 2518(4) of title 18 of the United States Code is amended—
(1) by striking out "at the prevailing rates" and inserting in lieu thereof "for reasonable expenses incurred in providing such facilities or assistance"; and

(2) by adding at the end "An order authorizing the interception of an electronic communication under this chapter may, upon a showing by the applicant that there are no other less intrusive means reasonably available of effecting the interception, authorize physical entry by law enforcement officers to install an electronic, mechanical, or other device. No such order may require the participation of any individuals operating or employed by an electronic communications system in such physical entry."

(c) Periodic Reports.—Subsection (6) of section 2518 of title 18 of the United States Code is amended to read as follows:

"(6) An order authorizing interception pursuant to this chapter shall require that reports be made not less often than every ten days to the judge who issued such order, showing what progress has been made toward achievement of the authorized objective, the need, if any, for continued interception, and whether any evidence has been discovered through such interception of offenses other than those with respect to which such order was issued. The judge may suspend or terminate interception if any such report is deficient or evinces..."
serious procedural irregularities. The judge shall terminate interception if the legal basis of continued interception no longer exists."

(f) TIME LIMIT FOR THE MAKING AVAILABLE TO JUDGE OF RECORDINGS.—Section 2518(8)(a) of title 18 of the United States Code is amended by striking out "Immediately upon" and inserting "Not later than 48 hours after" in lieu thereof.

SEC. 107. EFFECTIVE DATE.

This title and the amendments made by this title shall take effect 90 days after the date of the enactment of this Act and shall, in the case of conduct pursuant to a court order or extension, apply only with respect to court orders or extensions made after this title takes effect.

TITLE II—PEN REGISTERS AND TRACKING DEVICES

SEC. 201. TITLE 18 AMENDMENT.

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

"CHAPTER 206—PEN REGISTERS AND TRACKING DEVICES

"Sec.
"§1211. General prohibition on pen register and tracking device use; exception.
"§1222. Application for an order for a pen register or tracking device.
"§1233. Issuance of an order for a pen register or tracking device.
"§1244. Emergency use of pen register or tracking device without prior authorization.
"§1255. Assistance in installation and use of a pen register or tracking device."
14

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

"(a) IN GENERAL.—Except as provided in this section or section 3124 of this title, no person may install or use a pen register or a tracking device without first obtaining a court order under section 3123 of this title or under the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.).

"(b) EXCEPTION.—The prohibition of subsection (a) does not apply with respect to the use of a pen register by a provider of electronic communication services relating to the operation, maintenance, and testing of an electronic communication service.

"(c) PENALTY.—Whoever knowingly violates subsection (a) shall be fined not more than $100,000 or imprisoned not more than one year, or both.

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

"(a) LAW ENFORCEMENT OFFICERS MAY MAKE APPLI-

ICATION.—(1) A Federal law enforcement officer having responsibility for an ongoing criminal investigation may make application for an order or an extension of an order under section 3123 of this title authorizing or approving the instal-
lation and use of a pen register or a tracking device under this chapter, in writing under oath or equivalent affirmation, to a court of competent jurisdiction.

"(2) A State law enforcement officer having responsibility for an ongoing criminal investigation may make application for an order or an extension of an order under section 3123 of this title authorizing or approving the installation and use of a pen register or a tracking device under this chapter, in writing under oath or equivalent affirmation, to a court of competent jurisdiction of such State.

"(b) CONTENTS OF APPLICATION.—An application under subsection (a) of this section shall include—

"(1) the identity of the law enforcement officer making the application and of any other officer or employee authorizing or directing such application, and the identity of the agency in which each such law enforcement officer and other officer or employee is employed; and

"(2) a statement of the facts and circumstances relied upon by the applicant to justify the applicant's belief that an order should be issued.

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

"(a) IN GENERAL.—Upon an application made under section 3122 of this title, the court may enter an ex parte
order, as requested or as found warranted by the court, au-

thorizing or approving the installation and use of a pen regis-
ter or a tracking device within the jurisdiction of the court
(and outside that jurisdiction but within the United States in
the case of a mobile tracking device installed within such
jurisdiction) if the court finds on the basis of the information
submitted by the applicant that—

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

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

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

"(b) CONTENTS OF ORDER.—An order issued under
this section—

"(1) shall specify—

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

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

"(C) the number of the telephone line to
which the pen register is to be attached, or the
identity of the object to which the tracking device is to be attached;

"(D) a statement of the nature of the criminal investigation to which the information likely to be obtained by the pen register or tracking device relates;

"(E) the identity of the law enforcement officer authorized to install and use the pen register or tracking device; and

"(F) the period of time during which the use of the pen register or tracking device is authorized; and

"(2) shall direct, upon the request of the applicant, the furnishing of information, facilities, and technical assistance necessary to accomplish the installation and use of the pen register or tracking device under section 3125 of this title.

"(c) TIME PERIOD AND EXTENSIONS.—(1) An order issued under this section may authorize or approve the installation and use of a pen register or tracking device for the period necessary to achieve the objective of the authorization, or for 30 days, whichever is less.

"(2) Extensions of such an order may be granted, but only upon an application for an order under section 3122 of this title and upon the judicial finding required by subsection
(a) of this section. The extension shall include a full and complete statement of any changes in the information required by subsection (b) of this section to be set forth in the original order. The period of extension may be for the period necessary to achieve the objective for which it was granted, or for 30 days, whichever is less.

"(d) Nondisclosure of Existence of Pen Register or Tracking Device.—An order authorizing or approving the installation and use of a pen register or tracking device shall direct that the person owning or leasing the line to which the pen register is attached, or who has been ordered by the court to provide assistance to the applicant, shall not disclose the existence of the pen register or tracking device until at least 60 days after its removal. Upon the request of the applicant, the court may order such person to postpone any disclosure of the existence of the pen register or tracking device for additional periods of not more than 60 days each, if the court finds, upon the showing of the applicant, that there is reason for the belief that disclosing the existence of the pen register or tracking device may—

"(1) endanger the life or physical safety of any person;

"(2) result in flight from prosecution;

"(3) result in destruction of, or tampering with, evidence;
"(4) result in intimidation of potential witnesses;

or

"(5) otherwise seriously jeopardize an investigation or governmental proceeding.

§ 3124. Emergency use of pen register or tracking device without prior authorization

"(a) IN GENERAL.—A law enforcement officer specially designated by the Attorney General may install and use a pen register or a tracking device without a court order, if a judge of competent jurisdiction is notified at the time the decision to make such installation and use is made, and if—

"(1) such law enforcement officer reasonably determines that—

"(A) an emergency situation exists that involves—

"(i) immediate danger of death or serious bodily injury to any person;

"(ii) conspiratorial activities threatening the national security interest; or

"(iii) conspiratorial activities characteristic of organized crime;

that requires the installation and use of a pen register or a tracking device before an order authorizing the installation and use of the pen register
or tracking device can, with due diligence, be obtained; and

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

"(2) an application for an order approving the installation and use of the pen register or tracking device is made under section 3122 of this title as soon as practicable but not more than 48 hours after the pen register or tracking device is installed.

"(b) TERMINATION.—In the absence of an order approving the pen register or tracking device, the use of the pen register or tracking device shall terminate immediately when the information sought is obtained, or when the application for the order is denied, whichever is earlier.

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

"(a) IN GENERAL.—Except as provided in subsection (b), upon the request of a law enforcement officer authorized by this chapter to install and use a pen register or tracking device, a communications common carrier, landlord, custodian, or other person shall furnish such law enforcement officer forthwith all information, facilities, and technical assistance necessary to accomplish the installation and use of the pen
register or tracking device unobtrusively and with a minimum
of interference with the services that the person so ordered
by the court accords the party with respect to whom the
installation and use is to take place, if—

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

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

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

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

§ 3126. Notice to affected persons

"(a) Service of Inventory.—Except as provided in
subsection (b), within a reasonable time but not later than
ninety days after the filing of an application for an order of
approval required under section 3124 of this title, if such
application is denied, or the termination of an order, as ex-
tended, under section 3123 of this title, the issuing or deny-
ing judge shall cause to be served on the persons named in
the order or application, and such other parties to activity
monitored by means of a pen register or tracking device as
the judge may determine in the judge's discretion that it is in
the interest of justice, an inventory which shall include notice
of—

"(1) the fact of the entry of the order or the appli-
cation;

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

"(3) the fact that during the period activity took
place under such order.

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

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

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

"(c) MOTION FOR INSPECTION.—The judge, upon the
filing of a motion, may in the judge's discretion make avail-
able to such person or such person's counsel for inspection
such portions of the results of activity under such order or
referred to in such application, and such orders and applica-
tions as the judge determines to be in the interest of justice.

"§ 3127. Reports concerning pen registers and tracking
devices

(a) Report by Issuing or Denying Judge.—
Within thirty days after the expiration of an order (or each
extension thereof) entered under section 3123 of this title, or
the denial of an order approving the use of a pen register or a
tracking device, the issuing or denying judge shall report to
the Administrative Office of the United States Courts—

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

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

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

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

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

(6) the identity of the applying law enforcement
officer and agency making the application and the
person authorizing the application; and
“(7) the nature of the facilities from which or the place where activity under the order was to be carried out.

“(b) REPORT BY ATTORNEY GENERAL.—In January of each year the Attorney General, an Assistant Attorney General specially designated by the Attorney General, or the principal prosecuting attorney of a State, or the principal prosecuting attorney for any political subdivision of a State, shall report to the Administrative Office of the United States Courts—

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

“(2) a general description of the pen registers and tracking devices conducted under such order or extension, including—

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

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

“(C) the approximate nature, amount, and cost of the manpower and other resources used in carrying out orders under this chapter;
"(3) the number of arrests resulting from activity conducted under such order or extension, and the offenses for which arrests were made;

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

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

"(6) the number of convictions resulting from such activity and the offenses for which the convictions were obtained and a general assessment of the importance of such activity; and

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

"(c) Report by Director of Administrative Office of the United States Courts.—In April of each year the Director of the Administrative Office of the United States Courts shall transmit to the Congress a full and complete report concerning the number of applications for orders under this chapter and the number of orders and extensions granted or denied under this chapter during the preceding calendar year. Such report shall include a summary and analysis of the data required to be filed with the Administrative Office by subsections (a) and (b) of this section.
The Director of the Administrative Office of the United States Courts is authorized to issue binding regulations dealing with the content and form of the reports required to be filed by subsections (a) and (b) of this section.

"§ 3128. Recovery of civil damages authorized

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

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

(1) such preliminary and other equitable or declaratory relief as may be appropriate;

(2) damages; and

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

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

(d) A civil action under this section may not be commenced later than two years after whichever is later of—

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

(2) the date upon which the claimant first has had a reasonable opportunity to discover the violation."
§ 3129. Definitions for chapter

"As used in this chapter—

"(1) the term 'communications common carrier' has the meaning set forth for the term 'common carrier' in section 3(h) of the Communications Act of 1934 (47 U.S.C. 153(h));

"(2) the term 'electronic communication' has the meaning set forth for such term in section 2510 of this title;

"(3) the term 'court of competent jurisdiction' means—

"(A) a district court of the United States or a United States Court of Appeals; or

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

"(4) the term 'legitimate criminal investigation' means a lawful investigation or official proceeding inquiring into a violation of any Federal criminal law;

"(5) the term 'pen register' means a device which records and or decodes electronic or other impulses which identify the numbers dialed or otherwise transmitted on the telephone line to which such device is attached, but such term does not include any device
used by a provider of electronic communication services for billing, or recording as an incident to billing, for communications services provided by such provider;

"(5) the term 'tracking device' means an electronic or mechanical device which permits the tracking of the movement of a person or object in circumstances in which there exists a reasonable expectation of privacy with respect to such tracking; and

"(6) the term 'State' means a State, the District of Columbia, Puerto Rico, and any other possession or territory of the United States.".

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

206. Pen Registers and Tracking Devices .................................

SEC. 202. EFFECTIVE DATE.

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