

99TH CONGRESS  
1ST SESSION

# 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.

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## 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

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## A BILL

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

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

3 **SECTION 1. SHORT TITLE.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19 **SEC. 102. RECOVERY OF CIVIL DAMAGES.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

*"Sec.*

*"8121. General prohibition on pen register and tracking device use; exception.*

*"8122. Application for an order for a pen register or tracking device.*

*"8123. Issuance of an order for a pen register or tracking device.*

*"8124. Emergency use of pen register or tracking device without prior authoriza-  
 tion.*

*"8125. Assistance in installation and use of a pen register or tracking device.*

*"3126. Notice to affected persons.*

*"3127. Reports concerning pen registers and tracking devices.*

*"3128. Recovery of civil damages authorized.*

*"3129. Definitions for chapter.*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

16           “(1) shall specify—

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

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

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

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

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

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

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

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

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

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

1 (a) of this section. The extension shall include a full and com-  
2 plete statement of any changes in the information required by  
3 subsection (b) of this section to be set forth in the original  
4 order. The period of extension may be for the period neces-  
5 sary to achieve the objective for which it was granted, or for  
6 30 days, whichever is less.

7       “(d) NONDISCLOSURE OF EXISTENCE OF PEN REGIS-  
8 TER OR TRACKING DEVICE.—An order authorizing or ap-  
9 proving the installation and use of a pen register or tracking  
10 device shall direct that the person owning or leasing the line  
11 to which the pen register is attached, or who has been or-  
12 dered by the court to provide assistance to the applicant,  
13 shall not disclose the existence of the pen register or tracking  
14 device until at least 60 days after its removal. Upon the re-  
15 quest of the applicant, the court may order such person to  
16 postpone any disclosure of the existence of the pen register or  
17 tracking device for additional periods of not more than 60  
18 days each, if the court finds, upon the showing of the appli-  
19 cant, that there is reason for the belief that disclosing the  
20 existence of the pen register or tracking device may—

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

23               “(2) result in flight from prosecution;

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

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

2           or

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

14               “(2) damages; and

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

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

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

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

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

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

2 “As used in this chapter—

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

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

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

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

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

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

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

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

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

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

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

206. Pen Registers and Tracking Devices ..... 3121

16 **SEC. 202. EFFECTIVE DATE.**

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

