



General Assembly

January Session, 2007

**Raised Bill No. 7334**

LCO No. 5178

\*05178\_\_\_\_\_JUD\*

Referred to Committee on Judiciary

Introduced by:  
(JUD)

**AN ACT CONCERNING PEN REGISTERS AND TRAP OR TRACE DEVICES.**

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. (NEW) (*Effective October 1, 2007*) For the purposes of  
2 sections 1 to 7, inclusive, of this act:

3 (1) "Pen register" means a device or process that records or decodes  
4 dialing, routing, addressing or signaling information transmitted by an  
5 instrument or facility from which a wire or electronic communication  
6 is transmitted, provided that such information shall not include the  
7 contents of any communication. "Pen register" does not include (A)  
8 any device or process used by a provider or customer of a wire or  
9 electronic communication service for billing, or recording as an  
10 incident to billing, for communications services provided by such  
11 provider, or (B) any device or process used by a provider or customer  
12 of a wire communication service for cost accounting or other similar  
13 purposes in the ordinary course of its business;

14 (2) "Trap and trace device" means a device or process that captures  
15 the incoming electronic or other impulses that identify the originating

16 number or other dialing, routing, addressing and signaling  
17 information reasonably likely to identify the source of a wire or  
18 electronic communication, provided that such information shall not  
19 include the contents of any communication;

20 (3) "Electronic communication" means any transfer of signs, signals,  
21 writing, images, sounds, data or intelligence of any nature transmitted  
22 in whole or in part by a wire, radio, electromagnetic, photo-electronic  
23 or photo-optical system, but does not include (A) any wire or oral  
24 communication, (B) any communication made through a tone-only  
25 paging device, (C) any communication from a tracking device, or (D)  
26 electronic funds transfer information stored by a financial institution in  
27 a communications system used for the electronic storage and transfer  
28 of funds;

29 (4) "Electronic communication service" means any service that  
30 provides to users thereof the ability to send or receive wire or  
31 electronic communications;

32 (5) "Contents", when used with respect to any wire or electronic  
33 communication, means any information concerning the substance,  
34 purport or meaning of that communication; and

35 (6) "Wire communication" means "wire communication" as defined  
36 in section 54-41a of the general statutes.

37 Sec. 2. (NEW) (*Effective October 1, 2007*) (a) Except as provided in  
38 subsection (b) of this section, no person may install or use a pen  
39 register or a trap and trace device without first obtaining a court order  
40 under section 4 of this act.

41 (b) The provisions of subsection (a) of this section shall not apply  
42 with respect to the use of a pen register or a trap and trace device by a  
43 provider of wire or electronic communication service:

44 (1) Relating to the operation, maintenance and testing of a wire or  
45 electronic communication service, to the protection of the rights or

46 property of such provider or to the protection of users of that service  
47 from abuse of service or unlawful use of service;

48 (2) To record the fact that a wire or electronic communication was  
49 initiated or completed in order to protect such provider, another  
50 provider furnishing service toward the completion of the wire  
51 communication or a user of that service from fraudulent, unlawful or  
52 abusive use of service; or

53 (3) Where the consent of the user of that service has been obtained.

54 (c) A law enforcement agency authorized to install and use a pen  
55 register or a trap and trace device under sections 1 to 6, inclusive, of  
56 this act shall use technology reasonably available to it that restricts the  
57 recording or decoding of electronic or other impulses to the dialing,  
58 routing, addressing and signaling information utilized in the  
59 processing and transmitting of wire or electronic communications so  
60 as not to include the contents of any wire or electronic  
61 communications.

62 (d) Any person who violates the provisions of this section shall be  
63 guilty of a class D felony.

64 Sec. 3. (NEW) (*Effective October 1, 2007*) (a) The Chief State's  
65 Attorney, a deputy chief state's attorney, a state's attorney or an  
66 assistant state's attorney may make an application, under oath, to the  
67 Superior Court for an order or an extension of an order authorizing the  
68 installation and use of a pen register or a trap and trace device.

69 (b) An application under subsection (a) of this section shall include:  
70 (1) The identity of the Chief State's Attorney, deputy chief state's  
71 attorney, state's attorney or assistant state's attorney making the  
72 application and the identity of the law enforcement agency conducting  
73 the investigation, and (2) a certification by the applicant that the  
74 information likely to be obtained is relevant to an ongoing criminal  
75 investigation being conducted by such agency.

76       Sec. 4. (NEW) (*Effective October 1, 2007*) (a) Upon an application  
77 being made under section 3 of this act, the court shall enter an ex parte  
78 order authorizing the installation and use of a pen register or a trap  
79 and trace device if the court finds that the applicant has certified to the  
80 court that the information likely to be obtained by such installation  
81 and use of a pen register or a trap and trace device is relevant to an  
82 ongoing criminal investigation.

83       (b) Where the law enforcement agency implementing an ex parte  
84 order under this section seeks to do so by installing and using its own  
85 pen register or trap and trace device on a packet-switched data  
86 network of a provider of electronic communication service to the  
87 public, the agency shall ensure that a record will be maintained that  
88 will identify (1) any officer or officers who installed the device and any  
89 officer or officers who accessed the device to obtain information from  
90 the network; (2) the date and time the device was installed, the date  
91 and time the device was uninstalled, and the date, time and duration  
92 of each time the device is accessed to obtain information; (3) the  
93 configuration of the device at the time of its installation and any  
94 subsequent modification thereof; and (4) any information which has  
95 been collected by the device. To the extent that the pen register or trap  
96 and trace device can be set automatically to record this information  
97 electronically, the record shall be maintained electronically throughout  
98 the installation and use of such device. The record maintained under  
99 this subsection shall be provided ex parte and under seal to the court  
100 which entered the ex parte order authorizing the installation and use  
101 of the device within thirty days after termination of the order  
102 including any extensions thereof.

103       (c) An order issued under this section shall: (1) Specify (A) the  
104 identity, if known, of the person to whom is leased or in whose name  
105 is listed the telephone line or other facility to which the pen register or  
106 trap and trace device is to be attached, (B) the identity, if known, of the  
107 person who is the subject of the criminal investigation, (C) the  
108 attributes of the communications to which the order applies, including

109 the number or other identifier and, if known, the physical location of  
110 the telephone line or other facility to which the pen register or trap and  
111 trace device is to be attached and, in the case of an order authorizing  
112 installation and use of a trap and trace device, the geographic limits of  
113 the order, and (D) a statement of the offense to which the information  
114 likely to be obtained by the pen register or trap and trace device  
115 relates, and (2) direct, upon the request of the applicant, the furnishing  
116 of information, facilities and technical assistance necessary to  
117 accomplish the installation of the pen register or trap and trace device.

118 (d) An order issued under this section shall authorize the  
119 installation and use of a pen register or a trap and trace device for a  
120 period not to exceed sixty days. The court may grant an extension of  
121 such order for a period not to exceed sixty days upon an application  
122 being made under subsection (a) of section 3 of this act and a judicial  
123 finding being made under subsection (a) of this section.

124 (e) An order issued under this section shall direct that (1) the order  
125 be sealed until otherwise ordered by the court, and (2) the person  
126 owning or leasing the line or other facility to which the pen register or  
127 trap and trace device is attached or applied or who has been ordered  
128 by the court to provide assistance to the applicant, not disclose the  
129 existence of the pen register or trap and trace device or the existence of  
130 the investigation to the listed subscriber or to any other person unless  
131 or until otherwise ordered by the court.

132 Sec. 5. (NEW) (*Effective October 1, 2007*) A good faith reliance on a  
133 court order issued under section 4 of this act, a legislative  
134 authorization or a statutory authorization is a complete defense against  
135 any civil or criminal action brought under sections 1 to 6, inclusive, of  
136 this act or any other provision of the general statutes.

137 Sec. 6. (NEW) (*Effective October 1, 2007*) (a) Notwithstanding the  
138 provisions of sections 1 to 5, inclusive, of this act, any law enforcement  
139 officer, specially designated by the Chief State's Attorney or a state's  
140 attorney, who reasonably determines (1) an emergency situation exists

141 that involves (A) immediate danger of death or serious physical injury  
142 to any person, or (B) conspiratorial activities characteristic of a threat  
143 to life or property through terrorism, that requires the installation and  
144 use of a pen register or a trap and trace device before an order  
145 authorizing the installation and use of a pen register or a trap and trace  
146 device can, with due diligence, be obtained pursuant to section 4 of  
147 this act, and (2) there are grounds upon which an order could be  
148 issued pursuant to section 4 of this act to authorize such installation  
149 and use, may have installed and use a pen register or a trap and trace  
150 device if, within forty-eight hours after such installation has occurred  
151 or begins to occur, an order authorizing the installation and use of a  
152 pen register or a trap and trace device is issued in accordance with  
153 section 4 of this act.

154 (b) In the absence of a court order authorizing such installation and  
155 use, such use shall immediately terminate when (1) the information  
156 sought is obtained, (2) the application for the order is denied, or (3)  
157 forty-eight hours have elapsed since the installation of the pen register  
158 or trap and trace device, whichever is earlier.

159 (c) The knowing installation or use by any law enforcement officer  
160 of a pen register or trap and trace device pursuant to subsection (a) of  
161 this section without application for the authorizing order being made  
162 within forty-eight hours of such installation shall constitute a violation  
163 of section 2 of this act.

164 (d) A provider of a wire or electronic communication service,  
165 landlord, custodian or other person who furnishes facilities or  
166 technical assistance pursuant to this section shall be reasonably  
167 compensated for such reasonable expenses incurred in providing such  
168 facilities and assistance.

169 Sec. 7. (NEW) (*Effective October 1, 2007*) Not later than January 15,  
170 2009, and annually thereafter, the Chief State's Attorney shall submit a  
171 report to the joint standing committee of the General Assembly having  
172 cognizance of matters relating to criminal law and procedure in

173 accordance with the provisions of section 11-4a of the general statutes.  
174 Such report shall be based on reports for the prior calendar year filed  
175 with the Chief State's Attorney by each state's attorney and shall  
176 include: (1) The number of applications made for the issuance of an  
177 order authorizing the installation and use of a pen register or a trap  
178 and trace device; (2) the number of orders issued; (3) the number of  
179 extensions of orders issued, and the duration of such extensions; (4)  
180 the offenses specified in the orders or extensions of orders; (5) the  
181 number of investigations involved; and (6) the number and nature of  
182 the facilities affected.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2007</i>	New section
Sec. 2	<i>October 1, 2007</i>	New section
Sec. 3	<i>October 1, 2007</i>	New section
Sec. 4	<i>October 1, 2007</i>	New section
Sec. 5	<i>October 1, 2007</i>	New section
Sec. 6	<i>October 1, 2007</i>	New section
Sec. 7	<i>October 1, 2007</i>	New section

**Statement of Purpose:**

To establish a uniform procedure for state prosecutors to apply for the issuance by a court of an order for the installation and use of a pen register or a trap and trace device.

*[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]*