

ภาคผนวก

ภาคผนวก ก.

ร่างพระราชบัญญัติแก้ไขเพิ่มเติมประมวลกฎหมายวิธีพิจารณาความอาญา (ฉบับที่ ..)

พ.ศ.

ร่าง
พระราชบัญญัติ
แก้ไขเพิ่มเติมประมวลกฎหมายวิธีพิจารณาความอาญา (ฉบับที่ ..)
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มาตรา 1 พระราชบัญญัตินี้เรียกว่า “พระราชบัญญัติแก้ไขเพิ่มเติมประมวลกฎหมายวิธีพิจารณาความอาญา (ฉบับที่ ..) พ.ศ.”

มาตรา 2 พระราชบัญญัตินี้ให้ใช้บังคับตั้งแต่วันถัดจากวันประกาศในราชกิจจานุเบกษาเป็นต้นไป

มาตรา 3 ให้เพิ่มความดังต่อไปนี้ เป็นมาตรา 105/1 และมาตรา 105/2 ของหมวด 2 คั่นของลักษณะ 5 จับ ขัง จำคุก คั่น ปล່อยชั่วคราว ในภาค 1 ข้อความเบื้องต้นแห่งประมวลกฎหมายวิธีพิจารณาความอาญา

“มาตรา 105/1 ในกรณีที่มีเหตุอันควรเชื่อว่าเอกสารหรือข้อมูลข่าวสารอื่นใด ซึ่งส่งทางไปรษณีย์ โทรเลข โทรศัพท์ โทรสาร คอมพิวเตอร์ เครื่องมือหรืออุปกรณ์ในการสื่อสารสื่ออิเล็กทรอนิกส์ หรือสื่อทางเทคโนโลยีสารสนเทศใด ถูกใช้หรืออาจถูกใช้เพื่อประโยชน์ในการกระทำความผิดที่เป็นคดีความผิดเกี่ยวกับความมั่นคงแห่งราชอาณาจักรหรือคดีความผิดเกี่ยวกับการก่อการร้ายตามประมวลกฎหมายอาญา คดีความผิดที่เป็นการกระทำขององค์กรอาชญากรรมหรือคดีความผิดที่มีความซับซ้อนซึ่งมีอัตราโทษจำคุกอย่างสูงตั้งแต่สิบปีขึ้นไป พนักงานฝ่ายปกครอง ผู้มีหน้าที่สืบสวนสอบสวนซึ่งได้รับอนุมัติจากผู้ว่าราชการจังหวัดหรืออธิบดีกรมการปกครอง หรือตำรวจผู้มีหน้าที่สืบสวนสอบสวนซึ่งได้รับอนุมัติจากผู้บังคับการตำรวจขึ้นไป แล้วแต่กรณีจะยื่นคำขอฝ่ายเดียวต่ออธิบดีผู้พิพากษาศาลอาญาหรือผู้พิพากษาหัวหน้าศาลจังหวัดที่มีเขตอำนาจ เพื่อมีคำสั่งอนุญาตในการเข้าถึงและได้มาซึ่งเอกสารหรือข้อมูลข่าวสารดังกล่าวก็ได้

คำขอดังกล่าวต้องระบุเหตุผลและความจำเป็นในการยื่นคำขอ รายละเอียดเกี่ยวกับประเภทและลักษณะของเอกสารหรือข้อมูลข่าวสารที่ต้องการซึ่งให้มีผลกระทบต่อสิทธิส่วนบุคคลน้อยที่สุดวิธีการที่ใช้ในการเข้าถึงและได้มาซึ่งเอกสารหรือข้อมูลข่าวสารดังกล่าว รวมทั้งระยะเวลาที่จำเป็นต้องใช้ในการดำเนินการ

การอนุญาตตามวรรคหนึ่ง ให้อธิบดีผู้พิพากษาศาลอาญา หรือผู้พิพากษาหัวหน้าศาลจังหวัดพิจารณาถึงผลกระทบต่อสิทธิส่วนบุคคลหรือสิทธิอื่นใด ประกอบกับเหตุผลและความจำเป็นดังต่อไปนี้

- (1) มีเหตุอันควรเชื่อว่าจะมีการกระทำความผิดหรือจะมีการกระทำความผิดตามวรรคหนึ่ง
- (2) มีเหตุอันควรเชื่อว่าจะได้เอกสารหรือข้อมูลข่าวสารเกี่ยวกับการกระทำความผิดตามวรรคหนึ่งจากการเข้าถึงเอกสารหรือข้อมูลข่าวสารดังกล่าว
- (3) ไม่อาจใช้วิธีการอื่นใดที่เหมาะสมหรือมีประสิทธิภาพมากกว่าได้

การอนุญาตตามวรรคหนึ่ง ให้อธิบดีผู้พิพากษาศาลอาญาหรือผู้พิพากษาหัวหน้าศาลจังหวัดสั่งอนุญาตได้คราวละไม่เกินเก้าสิบวัน โดยจะกำหนดเงื่อนไขใดๆก็ได้ และให้ผู้เกี่ยวข้องกับเอกสารหรือข้อมูลข่าวสารตามคำสั่งดังกล่าว จะต้องให้ความร่วมมือเพื่อให้เป็นไปตามความในมาตรานี้ ภายหลังจากที่มีคำสั่งอนุญาต หากปรากฏข้อเท็จจริงว่าเหตุผลหรือความจำเป็นไม่เป็นไปตามที่ระบุหรือพฤติการณ์เปลี่ยนแปลงไป อธิบดีผู้พิพากษาศาลอาญาหรือผู้พิพากษาหัวหน้าศาลจังหวัดอาจเปลี่ยนแปลงคำสั่งอนุญาตได้ตามที่เห็นสมควร

ให้ผู้ได้รับอนุญาตรายงานผลการดำเนินงานต่ออธิบดีผู้พิพากษาศาลอาญา หรือผู้พิพากษาหัวหน้าศาลจังหวัดทราบทุกสามสิบวัน

การยื่นคำขออนุญาต การอนุญาต และการรายงานผลการดำเนินการให้ศาลทราบ ให้เป็นไปตามหลักเกณฑ์และวิธีการที่กำหนดในข้อบังคับของประธานศาลฎีกา

บรรดาเอกสารหรือข้อมูลข่าวสารที่ได้มาตามวรรคหนึ่ง ให้เก็บรักษาเฉพาะเอกสารหรือข้อมูลข่าวสารที่เกี่ยวกับการกระทำความผิดซึ่งได้รับอนุญาตตามวรรคหนึ่ง และให้ใช้ประโยชน์ในการสืบสวนหรือใช้เป็นพยานหลักฐานเฉพาะในการดำเนินคดีดังกล่าวเท่านั้น ส่วนเอกสารหรือข้อมูลข่าวสารอื่นให้ทำลายแล้วรายงานต่ออธิบดีผู้พิพากษาศาลอาญา หรือผู้พิพากษาหัวหน้าศาลจังหวัด ทั้งนี้ ตามระเบียบที่รัฐมนตรีว่าการกระทรวงมหาดไทยหรือผู้บัญชาการตำรวจแห่งชาติแล้วแต่กรณีกำหนด

ในกรณีที่กฎหมายใดกำหนดกระบวนการในการเข้าถึงและได้มาซึ่งเอกสารหรือข้อมูลข่าวสารตามวรรคหนึ่งเป็นการเฉพาะแล้ว ให้เจ้าพนักงานตามกฎหมายดังกล่าวดำเนินการตามที่กฎหมายนั้นบัญญัติไว้

เพื่อประโยชน์แห่งมาตรานี้ องค์กรอาชญากรรม หมายความว่า ผู้กระทำรวมตัวกันตั้งแต่สามคนขึ้นไปและร่วมกันกระทำความผิดซึ่งมีอัตราโทษจำคุกอย่างสูงตั้งแต่สิบปีขึ้นไป โดยมีการแบ่งหน้าที่กันทำ มีการประสานงาน มีการติดต่อสื่อสารและมีการแบ่งปันผลประโยชน์อันเป็นกระบวนการที่ต่อเนื่อง

มาตรา 105/2 ผู้ใคร่รู้หรืออาจรู้เอกสารหรือข้อมูลข่าวสารที่ได้มาตามมาตรา 105/1 กระทำการด้วยประการใดๆ ให้ผู้อื่นรู้หรืออาจรู้เอกสารหรือข้อมูลข่าวสารดังกล่าว ต้องระวางโทษจำคุกไม่เกินสามปี หรือปรับไม่เกินหกหมื่นบาท หรือทั้งจำทั้งปรับ เว้นแต่เป็นการปฏิบัติตามอำนาจหน้าที่หรือตามกฎหมาย

ถ้าการกระทำความผิดตามวรรคหนึ่งเป็นการกระทำโดยพนักงานฝ่ายปกครองหรือตำรวจ ซึ่งปฏิบัติหน้าที่ตามมาตรา 105/1 วรรคหนึ่ง ผู้กระทำความผิดต้องระวางโทษเป็นสามเท่าของโทษที่กำหนดไว้ในวรรคหนึ่ง”

ผู้รับสนองพระราชโองการ

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นายกรัฐมนตรี

ภาคผนวก ข

กฎหมายของสหรัฐอเมริกา

Title III of The Omnibus Crime Control and Safe Streets Act of 1968

(Wiretap Act)

Title III of the Omnibus Crime Control and Safe Streets Act of 1968, (Pub. L. 90-351; 6/19/68), also known as the "Wiretap Act":

(1) prohibits the unauthorized, nonconsensual interception of "wire, oral, or electronic communications" by government agencies as well as private parties,

(2) establishes procedures for obtaining warrants to authorize wiretapping by government officials, and

(3) regulates the disclosure and use of authorized intercepted communications by investigative and law enforcement officers.

18 U.S. Code § 2516 - Authorization for interception of wire, oral, or electronic communications

(1) The Attorney General, Deputy Attorney General, Associate Attorney General, or any Assistant Attorney General, any acting Assistant Attorney General, or any Deputy Assistant Attorney General or acting Deputy Assistant Attorney General in the Criminal Division or National Security Division specially designated by the Attorney General, may authorize an application to a Federal judge of competent jurisdiction for, and such judge may grant in conformity with section 2518 of this chapter an order authorizing or approving the interception of wire or oral communications by the Federal Bureau of Investigation, or a Federal agency having responsibility for the investigation of the offense as to which the application is made, when such interception may provide or has provided evidence of

(a) any offense punishable by death or by imprisonment for more than one year under sections 2122 and 2274 through 2277 of title 42 of the United States Code (relating to the enforcement of the Atomic Energy Act of 1954), section 2284 of title 42 of the United States Code (relating to sabotage of nuclear facilities or fuel), or under the following chapters of this title: chapter 10 (relating to biological weapons), chapter 37 (relating to espionage), chapter 55 (relating to kidnapping), chapter 90 (relating to protection of trade secrets), chapter 105 (relating to sabotage), chapter 115 (relating to treason), chapter 102 (relating to riots), chapter 65 (relating to malicious mischief), chapter 111 (relating to destruction of vessels), or chapter 81 (relating to piracy);

(b) a violation of section 186 or section 501(c) of title 29, United States Code (dealing with restrictions on payments and loans to labor organizations), or any offense which involves murder, kidnapping, robbery, or extortion, and which is punishable under this title;

(c) any offense which is punishable under the following sections of this title: section 37 (relating to violence at international airports), section 43 (relating to animal enterprise terrorism), section 81 (arson within special maritime and territorial jurisdiction), section 201 (bribery of public officials and witnesses), section 215 (relating to bribery of bank officials), section 224 (bribery in sporting contests), subsection (d), (e), (f), (g), (h), or (i) of section 844 (unlawful use of explosives), section 1032 (relating to concealment of assets), section 1084 (transmission of wagering information), section 751 (relating to escape), section 832 (relating to nuclear and weapons of mass destruction threats), section 842 (relating to explosive materials), section 930 (relating to possession of weapons in Federal facilities), section 1014 (relating to loans and credit applications generally; renewals and discounts), section 1114 (relating to officers and employees of the United States), section 1116 (relating to protection of foreign officials), sections 1503, 1512, and 1513 (influencing or injuring an officer, juror, or witness generally), section 1510 (obstruction of criminal investigations), section 1511 (obstruction of State or local law enforcement), section 1581 (peonage), section 1584 (involuntary servitude), section 1589 (forced labor), section 1590 (trafficking with respect to peonage, slavery, involuntary servitude, or forced labor), section 1591 (sex trafficking of children by force, fraud, or coercion), section 1592 (unlawful conduct with respect to documents in furtherance of trafficking, peonage, slavery, involuntary servitude, or forced labor), section 1751 (Presidential and Presidential staff assassination, kidnapping, and assault), section 1951 (interference with commerce by threats or violence), section 1952 (interstate and foreign travel or transportation in aid of racketeering enterprises), section 1958 (relating to use of interstate commerce facilities in the commission of murder for hire), section 1959 (relating to violent crimes in aid of racketeering activity), section 1954 (offer, acceptance, or solicitation to influence operations of employee benefit plan), section 1955 (prohibition of business enterprises of gambling), section 1956 (laundering of monetary instruments), section 1957 (relating to engaging in monetary transactions in property derived from specified unlawful activity), section 659 (theft from interstate shipment), section 664 (embezzlement from pension and welfare funds), section 1343 (fraud by wire, radio, or

television), section 1344 (relating to bank fraud), section 1992 (relating to terrorist attacks against mass transportation), sections 2251 and 2252 (sexual exploitation of children), section 2251A (selling or buying of children), section 2252A (relating to material constituting or containing child pornography), section 1466A (relating to child obscenity), section 2260 (production of sexually explicit depictions of a minor for importation into the United States), sections 2421, 2422, 2423, and 2425 (relating to transportation for illegal sexual activity and related crimes), sections 2312, 2313, 2314, and 2315 (interstate transportation of stolen property), section 2321 (relating to trafficking in certain motor vehicles or motor vehicle parts), section 2340A (relating to torture), section 1203 (relating to hostage taking), section 1029 (relating to fraud and related activity in connection with access devices), section 3146 (relating to penalty for failure to appear), section 3521(b)(3) (relating to witness relocation and assistance), section 32 (relating to destruction of aircraft or aircraft facilities), section 38 (relating to aircraft parts fraud), section 1963 (violations with respect to racketeer influenced and corrupt organizations), section 115 (relating to threatening or retaliating against a Federal official), section 1341 (relating to mail fraud), a felony violation of section 1030 (relating to computer fraud and abuse), section 351 (violations with respect to congressional, Cabinet, or Supreme Court assassinations, kidnapping, and assault), section 831 (relating to prohibited transactions involving nuclear materials), section 33 (relating to destruction of motor vehicles or motor vehicle facilities), section 175 (relating to biological weapons), section 175c (relating to variola virus), section 956 (conspiracy to harm persons or property overseas), a felony violation of section 1028 (relating to production of false identification documentation), section 1425 (relating to the procurement of citizenship or nationalization unlawfully), section 1426 (relating to the reproduction of naturalization or citizenship papers), section 1427 (relating to the sale of naturalization or citizenship papers), section 1541 (relating to passport issuance without authority), section 1542 (relating to false statements in passport applications), section 1543 (relating to forgery or false use of passports), section 1544 (relating to misuse of passports), section 1546 (relating to fraud and misuse of visas, permits, and other documents), or section 555 (relating to construction or use of international border tunnels);

(d) any offense involving counterfeiting punishable under section 471, 472, or 473 of this title;

(e) any offense involving fraud connected with a case under title 11 or the manufacture, importation, receiving, concealment, buying, selling, or otherwise dealing in narcotic drugs, marihuana, or other dangerous drugs, punishable under any law of the United States;

(f) any offense including extortionate credit transactions under sections 892, 893, or 894 of this title;

(g) a violation of section 5322 of title 31, United States Code (dealing with the reporting of currency transactions), or section 5324 of title 31, United States Code (relating to structuring transactions to evade reporting requirement prohibited);

(h) any felony violation of sections 2511 and 2512 (relating to interception and disclosure of certain communications and to certain intercepting devices) of this title;

(i) any felony violation of chapter 71 (relating to obscenity) of this title;

(j) any violation of section 60123(b) (relating to destruction of a natural gas pipeline), section 46502 (relating to aircraft piracy), the second sentence of section 46504 (relating to assault on a flight crew with dangerous weapon), or section 46505(b)(3) or (c) (relating to explosive or incendiary devices, or endangerment of human life, by means of weapons on aircraft) of title 49;

(k) any criminal violation of section 2778 of title 22 (relating to the Arms Export Control Act);

(l) the location of any fugitive from justice from an offense described in this section;

(m) a violation of section 274, 277, or 278 of the Immigration and Nationality Act (8 U.S.C. 1324, 1327, or 1328) (relating to the smuggling of aliens);

(n) any felony violation of sections 922 and 924 of title 18, United States Code (relating to firearms);

(o) any violation of section 5861 of the Internal Revenue Code of 1986 (relating to firearms);

(p) a felony violation of section 1028 (relating to production of false identification documents), section 1542 (relating to false statements in passport applications), section 1546 (relating to fraud and misuse of visas, permits, and other documents), section 1028A (relating to

aggravated identity theft) of this title or a violation of section 274, 277, or 278 of the Immigration and Nationality Act (relating to the smuggling of aliens); or

(q) any criminal violation of section 229 (relating to chemical weapons) or section 2332, 2332a, 2332b, 2332d, 2332f, 2332g, 2332h 2339, 2339A, 2339B, 2339C, or 2339D of this title (relating to terrorism);

(r) any criminal violation of section 1 (relating to illegal restraints of trade or commerce), 2 (relating to illegal monopolizing of trade or commerce), or 3 (relating to illegal restraints of trade or commerce in territories or the District of Columbia) of the Sherman Act (15 U.S.C. 1, 2, 3);

(s) any violation of section 670 (relating to theft of medical products); or

(t) any conspiracy to commit any offense described in any subparagraph of this paragraph.

(2) The principal prosecuting attorney of any State, or the principal prosecuting attorney of any political subdivision thereof, if such attorney is authorized by a statute of that State to make application to a State court judge of competent jurisdiction for an order authorizing or approving the interception of wire, oral, or electronic communications, may apply to such judge for, and such judge may grant in conformity with section 2518 of this chapter and with the applicable State statute an order authorizing, or approving the interception of wire, oral, or electronic communications by investigative or law enforcement officers having responsibility for the investigation of the offense as to which the application is made, when such interception may provide or has provided evidence of the commission of the offense of murder, kidnapping³ human trafficking, child sexual exploitation, child pornography production,, gambling, robbery, bribery, extortion, or dealing in narcotic drugs, marihuana or other dangerous drugs, or other crime dangerous to life, limb, or property, and punishable by imprisonment for more than one year, designated in any applicable State statute authorizing such interception, or any conspiracy to commit any of the foregoing offenses.

(3) Any attorney for the Government (as such term is defined for the purposes of the Federal Rules of Criminal Procedure) may authorize an application to a Federal judge of competent jurisdiction for, and such judge may grant, in conformity with section 2518 of this title, an order authorizing or approving the interception of electronic communications by an

investigative or law enforcement officer having responsibility for the investigation of the offense as to which the application is made, when such interception may provide or has provided evidence of any Federal felony.

18 U.S. Code § 2518 - Procedure for interception of wire, oral, or electronic communications

(1) Each application for an order authorizing or approving the interception of a wire, oral, or electronic communication under this chapter shall be made in writing upon oath or affirmation to a judge of competent jurisdiction and shall state the applicant's authority to make such application. Each application shall include the following information:

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

(b) a full and complete statement of the facts and circumstances relied upon by the applicant, to justify his belief that an order should be issued, including (i) details as to the particular offense that has been, is being, or is about to be committed, (ii) except as provided in subsection (11), a particular description of the nature and location of the facilities from which or the place where the communication is to be intercepted, (iii) a particular description of the type of communications sought to be intercepted, (iv) the identity of the person, if known, committing the offense and whose communications are to be intercepted;

(c) a full and complete statement as to whether or not other investigative procedures have been tried and failed or why they reasonably appear to be unlikely to succeed if tried or to be too dangerous;

(d) a statement of the period of time for which the interception is required to be maintained. If the nature of the investigation is such that the authorization for interception should not automatically terminate when the described type of communication has been first obtained, a particular description of facts establishing probable cause to believe that additional communications of the same type will occur thereafter;

(e) a full and complete statement of the facts concerning all previous applications known to the individual authorizing and making the application, made to any judge for authorization to intercept, or for approval of interceptions of, wire, oral, or electronic

communications involving any of the same persons, facilities or places specified in the application, and the action taken by the judge on each such application; and

(f) where the application is for the extension of an order, a statement setting forth the results thus far obtained from the interception, or a reasonable explanation of the failure to obtain such results.

8 U.S. Code § 2518 - Procedure for interception of wire, oral, or electronic communications

(4) Upon such application the judge may enter an ex parte order, as requested or as modified, authorizing or approving interception of wire, oral, or electronic Communications within the territorial jurisdiction of the court in which the judge is sitting (and outside that jurisdiction but within the United States in the case of a mobile interception device authorized by a Federal court within such jurisdiction), if the judge determines on the basis of the facts submitted by the applicant that—

(a) there is probable cause for belief that an individual is committing, has committed, or is about to commit a particular offense enumerated in section 2516 of this chapter;

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

(c) normal investigative procedures have been tried and have failed or reasonably appear to be unlikely to succeed if tried or to be too dangerous;

(d) except as provided in subsection (11), there is probable cause for belief that the facilities from which, or the place where, the wire, oral, or electronic communications are to be intercepted are being used, or are about to be used, in connection with the commission of such offense, or are leased to, listed in the name of, or commonly used by such person.

§2517. Authorization for disclosure and use of intercepted wire, oral, or electronic communications.

(1) Any investigative or law enforcement officer who, by any means authorized by this chapter, has obtained knowledge of the contents of any wire, oral, or electronic communication, or evidence derived therefrom, may disclose such contents to another investigative or law enforcement officer to the extent that such disclosure is appropriate to the proper performance of the official duties of the officer making or receiving the disclosure.

(2) Any investigative or law enforcement officer who, by any means authorized by this chapter, has obtained knowledge of the contents of any wire, oral, or electronic communication or evidence derived therefrom may use such contents to the extent such use is appropriate to the proper performance of his official duties.

(3) Any person who has received, by any means authorized by this chapter, any information concerning a wire, oral, or electronic communication, or evidence derived therefrom intercepted in accordance with the provisions of this chapter may disclose the contents of that communication or such derivative evidence while giving testimony under oath or affirmation in any proceeding held under the authority of the United States or of any State or political subdivision thereof.

(4) No otherwise privileged wire, oral, or electronic communication intercepted in accordance with, or in violation of, the provisions of this chapter shall lose its privileged character.

(5) When an investigative or law enforcement officer, while engaged in intercepting wire, oral, or electronic communications in the manner authorized herein, intercepts wire, oral, or electronic communications relating to offenses other than those specified in the order of authorization or approval, the contents thereof, and evidence derived therefrom, may be disclosed or used as provided in subsections (1) and (2) of this section. Such contents and any evidence derived therefrom may be used under subsection (3) of this section when authorized or approved by a judge of competent jurisdiction where such judge finds on subsequent application that the contents were otherwise intercepted in accordance with the provisions of this chapter. Such application shall be made as soon as practicable.

§2517. Authorization for disclosure and use of intercepted wire, oral, or electronic communications (8)(a).

The contents of any wire, oral, or electronic communication intercepted by any means authorized by this chapter shall, if possible, be recorded on tape or wire or other comparable device. The recording of the contents of any wire, oral, or electronic communication under this subsection shall be done in such a way as will protect the recording from editing or other alterations. Immediately upon the expiration of the period of the order, or extensions thereof, such

recordings shall be made available to the judge issuing such order and sealed under his directions. Custody of the recordings shall be wherever the judge orders. They shall not be destroyed except upon an order of the issuing or denying judge and in any event shall be kept for ten years. Duplicate recordings may be made for use or disclosure pursuant to the provisions of subsections (1) and (2) of section 2517 of this chapter for investigations. The presence of the seal provided for by this subsection, or a satisfactory explanation for the absence thereof, shall be a prerequisite for the use or disclosure of the contents of any wire, oral, or electronic communication or evidence derived therefrom under subsection (3) of section 2517.

18 U.S. Code § 2520 - Recovery of civil damages authorized

(g) IMPROPER DISCLOSURE IS VIOLATION.—

Any willful disclosure or use by an investigative or law enforcement officer or governmental entity of information beyond the extent permitted by section 2517 is a violation of this chapter for purposes of section 2520(a)

18 U.S. Code § 2520 - Recovery of civil damages authorized

(a) IN GENERAL.—

Except as provided in section 2511(2)(a)(ii), any person whose wire, oral, or electronic communication is intercepted, disclosed, or intentionally used in violation of this chapter may in a civil action recover from the person or entity, other than the United States, which engaged in that violation such relief as may be appropriate.

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

- (1) such preliminary and other equitable or declaratory relief as may be appropriate;
- (2) damages under subsection (c) and punitive damages in appropriate cases; and
- (3) a reasonable attorney's fee and other litigation costs reasonably incurred.

18 U.S. Code § 2520 - Recovery of civil damages authorized

(e) LIMITATION.—

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

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THE GERMAN CODE OF CRIMINAL PROCEDURE (StPO), Section 100a.

(1) Telecommunications may be intercepted and recorded also without the knowledge of the persons concerned if

1. certain facts give rise to the suspicion that a person, either as perpetrator or as inciter or accessory, has committed a serious criminal offence referred to in subsection (2) or, in cases where there is criminal liability for attempt, has attempted to commit such an offence or has prepared such an offence by committing a criminal offence; and

2. the offence is one of particular gravity in the individual case as well; and

3. other means of establishing the facts or determining the accused's whereabouts would be much more difficult or offer no prospect of success.

(2) Serious criminal offences for the purposes of subsection (1), number 1, shall be:

1. pursuant to the Criminal Code:

a) crimes against peace, high treason, endangering the democratic state based on the rule of law, treason and endangering external security pursuant to sections 80 to 82, 84 to 86, 87 to 89a and 94 to 100a;

b) taking of bribes by, and offering of bribes to, mandate holders pursuant to section 108e;

c) crimes against the national defence pursuant to sections 109d to 109h;

d) crimes against public order pursuant to sections 129 to 130;

e) counterfeiting money and official stamps pursuant to sections 146 and 151, in each case also in conjunction with section 152, as well as section 152a subsection (3) and section 152b subsections (1) to (4);

f) crimes against sexual self-determination in the cases referred to in sections 176a, 176b, 177 subsection (2), number 2, and section 179 subsection (5), number 2;

g) dissemination, purchase and possession of pornographic writings involving children and involving juveniles, pursuant to section 184b subsections (1) to (3), section 184c subsection (3);

h) murder and manslaughter pursuant to sections 211 and 212;

i) crimes against personal liberty pursuant to sections 232 to 233a, 234, 234a, 239a and 239b;

j) gang theft pursuant to section 244 subsection (1), number 2, and aggravated gang theft pursuant to section 244a;

k) crimes of robbery or extortion pursuant to sections 249 to 255;

l) commercial handling of stolen goods, gang handling of stolen goods and commercial gang handling of stolen goods pursuant to sections 260 and 260a;

m) money laundering or concealment of unlawfully acquired assets pursuant to section 261 subsections (1), (2) and (4);

n) fraud and computer fraud subject to the conditions set out in section 263 subsection (3), second sentence, and in the case of section 263 subsection (5), each also in conjunction with section 263a subsection (2);

o) subsidy fraud subject to the conditions set out in section 264 subsection (2), second sentence, and in the case of section 264 subsection (3), in conjunction with section 263 subsection (5);

p) criminal offences involving falsification of documents under the conditions set out in section 267 subsection (3), second sentence, and in the case of section 267 subsection (4), in each case also in conjunction with section 268 subsection (5) or section 269 subsection (3), as well as pursuant to sections 275 subsection (2) and section 276 subsection (2);

q) bankruptcy subject to the conditions set out in section 283a, second sentence;

r) crimes against competition pursuant to section 298 and, subject to the conditions set out in section 300, second sentence, pursuant to section 299;

s) crimes endangering public safety in the cases referred to in sections 306 to 306c, section 307 subsections (1) to (3), section 308 subsections (1) to (3), section 309 subsections (1) to (4), section 310 subsection (1), sections 313, 314, 315 subsection (3), section 315b subsection (3), as well as sections 361a and 361c;

t) taking and offering a bribe pursuant to sections 332 and 334;

2. pursuant to the Fiscal Code:

a) tax evasion under the conditions set out in section 370 subsection (3), second sentence, number 5;

b) commercial, violent and gang smuggling pursuant to section 373;

c) handling tax-evaded property as defined in section 374 subsection (2);

3. pursuant to the Pharmaceutical Products Act:
criminal offences pursuant to section 95 subsection (1), number 2a, subject to the conditions set out in section 95 subsection (3), second sentence, number 2, letter b;
4. pursuant to the Asylum Procedure Act:
 - a) inducing an abusive application for asylum pursuant to section 84 subsection (3);
 - b) commercial and gang inducement to make an abusive application for asylum pursuant to section 84a;
5. pursuant to the Residence Act:
 - a) smuggling of aliens pursuant to section 96 subsection (2);
 - b) smuggling resulting in death and commercial and gang smuggling pursuant to section 97;
6. pursuant to the Foreign Trade and Payments Act:
wilful criminal offences pursuant to sections 17 and 18 of the Foreign Trade and Payments Act;
7. pursuant to the Narcotics Act:
 - a) criminal offences pursuant to one of the provisions referred to in section 29 subsection (3), second sentence, number 1, subject to the conditions set out therein;
 - b) criminal offences pursuant to section 29a, section 30 subsection (1), numbers 1, 2 and 4, as well as sections 30a and 30b;
8. pursuant to the Precursors Control Act:
criminal offences pursuant to section 19 subsection (1), subject to the conditions set out in section 19 subsection (3), second sentence;
9. pursuant to the War Weapons Control Act.
 - a) criminal offences pursuant to section 19 subsections (1) to (3) and section 20 subsections (1) and (2), as well as section 20a subsections (1) to (3), each also in conjunction with section 21;
 - b) criminal offences pursuant to section 22a subsections (1) to (3);
10. pursuant to the Code of Crimes against International Law:
 - a) genocide pursuant to section 6;
 - b) crimes against humanity pursuant to section 7;

c) war crimes pursuant to sections 8 to 12;

11. pursuant to the Weapons Act:

a) criminal offences pursuant to section 51 subsections (1) to (3);

b) criminal offences pursuant to section 52 subsection (1), number 1 and number 2, letters c and d, as well as section 52 subsections (5) and (6).

(3) Such order may be made only against the accused or against persons in respect of whom it may be assumed, on the basis of certain facts, that they are receiving or transmitting messages intended for, or transmitted by, the accused, or that the accused is using their telephone connection.

(4) If there are factual indications for assuming that only information concerning the core area of the private conduct of life would be acquired through a measure pursuant to subsection (1), the measure shall be inadmissible. Information concerning the core area of the private conduct of life which is acquired during a measure pursuant to subsection (1) shall not be used. Any records thereof shall be deleted without delay. The fact that they were obtained and deleted shall be documented.

Section 100b (1).

(1) Measures pursuant to Section 100a may be ordered by the court only upon application by the public prosecution office. In exigent circumstances, the public prosecution office may also issue an order. An order issued by the public prosecution office shall become ineffective if it is not confirmed by the court within three working days. The order shall be limited to a maximum duration of three months. An extension by not more than three months each time shall be admissible if the conditions for the order continue to exist, taking into account the information acquired during the investigation.

(2) The order shall be given in writing. The operative part of the order shall indicate

1. where known, the name and address of the person against whom the measure is directed;

2. the telephone number or other code of the telephone connection or terminal equipment to be intercepted, insofar as there are no particular facts indicating that they are not at the same time assigned to another piece of terminal equipment;

3. the type, extent and duration of the measure specifying the time at which it will be concluded.

(3) On the basis of this order all persons providing, or contributing to the provision of, telecommunications services on a commercial basis shall enable the court, the public prosecution office and officials working in the police force to assist it (section 152 of the Courts Constitution Act), to implement measures pursuant to Section 100a and shall provide the required information without delay. Whether and to what extent measures are to be taken in this respect shall follow from the Telecommunications Act and from the Telecommunications Interception Ordinance issued thereunder. Section 95 subsection (2) shall apply *mutatis mutandis*

(4) If the conditions for making the order no longer prevail, the measures implemented on the basis of the order shall be terminated without delay. Upon termination of the measure, the court which issued the order shall be notified of the results thereof.

(5) The Länder and the Federal Public Prosecutor General shall submit a report to the Federal Office of Justice every calendar year by the 30th June of the year following the reporting year, concerning measures ordered pursuant to Section 100a within their area of competence. The Federal Office of Justice shall produce a summary of the measures ordered nationwide during the reporting year and shall publish it on the Internet.