

1 AN ACT relating to crimes and punishments.

2 *Be it enacted by the General Assembly of the Commonwealth of Kentucky:*

3 ➔SECTION 1. KRS 526.010 IS REPEALED AND REENACTED TO READ
4 AS FOLLOWS:

5 *As used in this chapter, unless the context otherwise requires:*

6 *(1) "Aggrieved person" means a person who was a party to any intercepted wire,*
7 *oral, or electronic communication or a person against whom the interception was*
8 *directed;*

9 *(2) "Aural transfer" means a transfer containing the human voice at any point*
10 *between and including the point of origin and the point of reception;*

11 *(3) "Communications common carrier" means any person engaged as a common*
12 *carrier for hire in the transmission of wire or electronic communications;*

13 *(4) "Contents," when used with respect to any wire, oral, or electronic*
14 *communication, includes any information concerning the identity of the parties*
15 *to the communication or the existence, substance, purport, or meaning of that*
16 *communication;*

17 *(5) "Eavesdrop" means to overhear, record, amplify, or transmit any part of a wire*
18 *or oral communication of others without the consent of at least one (1) party*
19 *thereto by means of any electronic, mechanical, or other device;*

20 *(6) (a) "Electronic communication" means any transfer of signs, signals, writing,*
21 *images, sounds, data, or intelligence of any nature transmitted in whole or*
22 *in part by a wire, radio, electromagnetic, photoelectronic, or photooptical*
23 *system.*

24 *(b) "Electronic communication" does not include any:*

25 *1. Wire or oral communication;*

26 *2. Communication made through a tone-only paging device; or*

27 *3. Communication from a tracking device;*

1 (7) "Electronic communication service" means any service that provides users of the
2 service the ability to send or receive wire or electronic communications;

3 (8) "Electronic communications system" means any wire, radio, electromagnetic,
4 photooptical, or photoelectronic facilities for the transmission of wire or
5 electronic communications, and any computer facilities or related electronic
6 equipment for the electronic storage of electronic communications;

7 (9) "Electronic, mechanical, or other device" means any device or electronic
8 communication other than:

9 (a) Any telephone or telegraph instrument, equipment, or other facility for the
10 transmission of electronic communications, or any component:

11 1. Furnished to the subscriber or user by a provider of a wire or
12 electronic communication service in the ordinary course of its
13 business and being used by the subscriber or user in the ordinary
14 course of its business, or furnished by the subscriber or user for
15 connection to the facilities of the service and used in the ordinary
16 course of its business; or

17 2. Being used by a communications common carrier in the ordinary
18 course of its business, or by an investigative or law enforcement
19 officer in the ordinary course of his or her duties; or

20 (b) A hearing aid or similar device being used to correct subnormal hearing to
21 not better than normal;

22 (10) "Electronic storage" means:

23 (a) Any temporary, intermediate storage of a wire or electronic communication
24 incidental to the electronic transmission of the communication; and

25 (b) Any storage of a wire or electronic communication by an electronic
26 communication service for purposes of backup protection of the
27 communication;

- 1 (11) "Intercept" or "interception" means the aural or other acquisition of the
2 contents of any wire, electronic, or oral communication through the use of any
3 electronic, mechanical, or other device;
- 4 (12) "Investigative or law enforcement officer" means any officer of the
5 Commonwealth or a political subdivision thereof who is empowered by law to
6 conduct investigations of or to make arrests for offenses enumerated in this
7 chapter, any sworn law enforcement officer of the federal government or of any
8 other state or a political subdivision of another state working with and under the
9 direction of an investigative or law enforcement officer of the Commonwealth or
10 a political subdivision thereof, and any attorney authorized by law to prosecute or
11 participate in the prosecution of these offenses;
- 12 (13) "Judge of competent jurisdiction" means a judge of any Circuit Court within the
13 Commonwealth having jurisdiction over the offense under investigation;
- 14 (14) (a) "Oral communication" means any words spoken to or by any person in
15 private conversation.
- 16 (b) "Oral communication" does not include any electronic communication;
- 17 (15) "Readily accessible to the general public" means, with respect to a radio
18 communication, that the communication is not:
- 19 (a) Scrambled or encrypted;
- 20 (b) Transmitted using modulation techniques the essential parameters of which
21 have been withheld from the public with the intention of preserving the
22 privacy of the communication; or
- 23 (c) Except for tone-only paging device communications, transmitted over
24 frequencies reserved for private use and licensed for private use under
25 federal or state law;
- 26 (16) "User" means any person or entity that:
- 27 (a) Uses an electronic communication service; and

1 (b) Is duly authorized by the provider of the service to engage in that use; and
2 (17) "Wire communication" means any aural transfer made in whole or in part
3 through the use of facilities for the transmission of communications by the aid of
4 wire, cable, or other like connection between the point of origin and the point of
5 reception, including the use of a connection in a switching station, furnished or
6 operated by any person licensed to engage in providing or operating such
7 facilities for the transmission of communications.

8 ➔Section 2. KRS 526.020 is amended to read as follows:

9 (1) A person is guilty of eavesdropping when he or she intentionally; ~~intentionally~~
10 ~~uses any device to eavesdrop, whether or not he is present at the time.~~

11 ~~(2)~~(a) Intercepts, endeavors to intercept, or procures any other person to
12 intercept or endeavor to intercept any wire, oral, or electronic
13 communication;

14 (b) Uses, endeavors to use, or procures any other person to use or endeavor to
15 use any electronic, mechanical, or other device to intercept any oral
16 communication when the device:

17 1. Is affixed to, or otherwise transmits a signal through, a wire, cable, or
18 other like connection used in wire communication; or

19 2. Transmits communications by radio or interferes with the
20 transmission of such communication;

21 (c) Discloses, or attempts to disclose, to any other person the contents of any
22 wire, oral, or electronic communication, knowing or having reason to know
23 that the information was obtained through the interception of a wire, oral,
24 or electronic communication in violation of this subsection;

25 (d) Uses, or endeavors to use, the contents of any wire, oral, or electronic
26 communication, knowing or having reason to know that the information
27 was obtained through the interception of a wire, oral, or electronic

1 communication in violation of this subsection; or

2 (e) Discloses, or endeavors to disclose, to any other person the contents of any
3 wire, oral, or electronic communication intercepted by means authorized by
4 subsection (2)(b), (3), or (4) of this section or Section 4 or 6 of this Act:

5 1. Knowing or having reason to know that the information was obtained
6 through the interception of a communication in connection with a
7 criminal investigation;

8 2. Having obtained or received the information in connection with a
9 criminal investigation; and

10 3. With intent to improperly obstruct, impede, or interfere with a duly
11 authorized criminal investigation.

12 (2) (a) It is lawful under this chapter for an operator of a switchboard, or an
13 officer, employee, or agent of a provider of wire or electronic
14 communication service, whose facilities are used in the transmission of a
15 wire or electronic communication to intercept, disclose, or use that
16 communication in the normal course of employment while engaged in any
17 activity which is a necessary incident to the rendition of the service or to the
18 protection of the rights or property of the provider of that service. However,
19 a provider of wire communication service to the public shall not utilize
20 service observing or random monitoring except for mechanical or service
21 quality control checks.

22 (b) Notwithstanding any other law, a provider of a wire or electronic
23 communication service, its officers, employees, and agents, and any
24 landlord, custodian, or other specified person is authorized to provide
25 information, facilities, or technical assistance to a person authorized by law
26 to intercept wire, oral, or electronic communications or to conduct
27 electronic surveillance, as defined in Section 101 of the Foreign

1 Intelligence Surveillance Act of 1978, if the provider, its officers, employees,
2 or agents, landlord, custodian, or other specified person has been provided
3 with a:

4 1. Court order directing such assistance or a court order pursuant to
5 Section 704 of the Foreign Intelligence Surveillance Act of 1978
6 signed by the authorizing judge; or

7 2. Certification in writing by a person specified in Section 6 of this Act or
8 the Attorney General of the United States that no warrant or court
9 order is required by law, that all statutory requirements have been met,
10 and that the specified assistance is required;

11 setting forth the period of time during which the provision of the
12 information, facilities, or technical assistance is authorized and specifying
13 the information, facilities, or technical assistance required. A provider of
14 wire or electronic communication service, officer, employee, or agent
15 thereof, or landlord, custodian, or other specified person shall not disclose
16 the existence of any interception or surveillance of the device used to
17 accomplish the interception or surveillance with respect to which the person
18 has been furnished a court order or certification under this chapter, except
19 as may otherwise be required by legal process and then only after prior
20 notification to the Attorney General of the United States or to the principal
21 prosecuting attorney of a state or any political subdivision of a state, as may
22 be appropriate. A cause of action shall not lie in any court against any
23 provider of a wire or electronic communication service, its officers,
24 employees, or agents, or any landlord, custodian, or other specified person
25 for providing information, facilities, or assistance in accordance with the
26 terms of a court order, statutory authorization, or certification under this
27 chapter.

1 (c) If a certification under paragraph (b)2. of this subsection for assistance to
2 obtain foreign intelligence information is based on statutory authority, the
3 certification shall identify the specific statutory provision and shall certify
4 that the statutory requirements have been met.

5 (3) It is lawful under this chapter for an officer, employee, or agent of the Federal
6 Communications Commission, in the normal course of employment and in
7 discharge of the monitoring responsibilities exercised by the Federal
8 Communications Commission in the enforcement of 47 U.S.C. ch. 5 to intercept a
9 wire or electronic communication, or oral communication transmitted by radio,
10 or to disclose or use the information thereby obtained.

11 (4) It is lawful under this chapter for a person acting under color of law to intercept
12 a wire, oral, or electronic communication if the person is a party to the
13 communication or one (1) of the parties to the communication has given prior
14 consent to the interception.

15 (5) It is lawful under this chapter for a person not acting under color of law to
16 intercept a wire, oral, or electronic communication if the person is a party to the
17 communication or one (1) of the parties to the communication has given prior
18 consent to the interception, unless the communication is intercepted for the
19 purpose of committing any criminal or tortious act.

20 (6) It is lawful under this chapter for any person:

21 (a) To intercept or access an electronic communication made through an
22 electronic communications system that is configured so that the electronic
23 communication is readily accessible to the general public;

24 (b) To intercept any radio communication which is transmitted by:

25 1. Any station for the use of the general public, or that relates to ships,
26 aircraft, vehicles, or persons in distress;

27 2. Any governmental, law enforcement, civil defense, private land

1 mobile, or public safety communications system, including police and
2 fire, readily accessible to the general public;

3 3. A station operating on an authorized frequency within the bands
4 allocated to the amateur, citizens band, or general mobile radio
5 services; or

6 4. Any marine or aeronautical communications system;

7 (c) To intercept any wire or electronic communication the transmission of
8 which is causing harmful interference to any lawfully operating station or
9 consumer electronic equipment, to the extent necessary to identify the
10 source of such interference; or

11 (d) For other users of the same frequency to intercept any radio
12 communication made through a system that utilizes frequencies monitored
13 by individuals engaged in the provision or the use of that system, if the
14 communication is not scrambled or encrypted.

15 (7) It is lawful under this chapter for a provider of an electronic communication
16 service to record the fact that a wire or electronic communication was initiated or
17 completed in order to protect that provider, another provider furnishing service
18 toward the completion of the wire or electronic communication, or a user of that
19 service from fraudulent, unlawful, or abusive use of the service.

20 (8) (a) Except as provided in paragraph (b) of this subsection, a person or entity
21 providing an electronic communication service to the public shall not
22 intentionally divulge the contents of any communication while in
23 transmission on that service to any person or entity other than an addressee
24 or intended recipient of the communication or an agent of the addressee or
25 intended recipient.

26 (b) A person or entity providing an electronic communication service to the
27 public may divulge the contents of any such communication:

- 1 1. As otherwise authorized in subsection (2)(a) of this section or Section
- 2 6 of this Act;
- 3 2. With the lawful consent of the originator or any addressee or intended
- 4 recipient of such communication;
- 5 3. To a person employed or authorized, or whose facilities are used, to
- 6 forward the communication to its destination; or
- 7 4. Which was inadvertently obtained by the service provider and which
- 8 appears to pertain to the commission of a crime, if such divulgence is
- 9 made to a law enforcement agency.

10 (9) Eavesdropping is a Class D felony.

11 ➔SECTION 3. KRS 526.040 IS REPEALED AND REENACTED TO READ
12 AS FOLLOWS:

13 (1) Except as otherwise specifically provided in this chapter, any person who
14 manufactures, assembles, possesses, or sells any electronic, mechanical, or other
15 device, knowing or having reason to know that the design of the device renders it
16 primarily useful for the purpose of the surreptitious interception of wire, oral, or
17 electronic communications, is guilty of a Class D felony.

18 (2) It is lawful under this section to manufacture, assemble, possess, or sell any
19 electronic, mechanical, or other device to:

20 (a) A provider of wire or electronic communication service or an officer, agent,
21 or employee of, or a person under contract with, a service provider, in the
22 normal course of the business of providing that wire or electronic
23 communication service;

24 (b) A person under contract with the United States, a state, a political
25 subdivision of a state, or the District of Columbia, in the normal course of
26 the activities of the United States, a state, a political subdivision of a state,
27 or the District of Columbia;

1 (c) An officer, agent, or employee of the United States in the normal course of
2 his or her lawful activities. However, any sale made under the authority of
3 this paragraph may only be for the purpose of disposing of obsolete or
4 surplus devices; or

5 (d) An officer, agent, or employee of a law enforcement agency of the
6 Commonwealth or a political subdivision thereof in the normal course of
7 his or her lawful activities, if the particular officer, agent, or employee is
8 specifically authorized by the chief administrator of the employer law
9 enforcement agency to manufacture, assemble, or possess the device for a
10 particular law enforcement purpose and the device is registered in
11 accordance with Section 9 of this Act. However, any sale made under the
12 authority of this paragraph may only be for the purpose of disposing of
13 obsolete or surplus devices.

14 ➔SECTION 4. A NEW SECTION OF KRS CHAPTER 526 IS CREATED TO
15 READ AS FOLLOWS:

16 (1) The Attorney General, any Commonwealth's attorney, or any county attorney
17 may apply to a judge of competent jurisdiction, and the judge, in accordance with
18 the provisions of Section 6 of this Act, may grant an order authorizing the
19 interception of wire, oral, or electronic communications by investigative or law
20 enforcement officers when the interception may provide or has provided evidence
21 of the commission of:

22 (a) Engaging in organized crime, as defined in KRS 506.120; or

23 (b) Criminal gang activity or recruitment, as defined in KRS 506.140.

24 (2) An application or order shall not be required if the interception is lawful under
25 subsection (2) of Section 2 of this Act.

26 ➔SECTION 5. A NEW SECTION OF KRS CHAPTER 526 IS CREATED TO
27 READ AS FOLLOWS:

- 1 (1) Any investigative or law enforcement officer who, by any means authorized by
2 this chapter, has obtained knowledge of the contents of any wire, oral, or
3 electronic communication, or evidence derived therefrom, may disclose the
4 contents to another investigative or law enforcement officer of any state, or any
5 political subdivision of a state, the United States, or any territory, protectorate, or
6 possession of the United States, including the District of Columbia, to the extent
7 that the disclosure is appropriate to the proper performance of the official duties
8 of the officer making or receiving the disclosure.
- 9 (2) Any investigative or law enforcement officer who, by any means authorized by
10 this chapter, has obtained knowledge of the contents of any wire, oral, or
11 electronic communication, or evidence derived therefrom, or an investigative or
12 law enforcement officer of any state or any political subdivision of a state, the
13 United States or any territory, protectorate, or possession of the United States,
14 including the District of Columbia, who obtains that knowledge by lawful
15 disclosure may use the contents to the extent that the use is appropriate to the
16 proper performance of his or her official duties.
- 17 (3) Any person who has received, by any means authorized by this chapter, any
18 information concerning a wire, oral, or electronic communication, or evidence
19 derived therefrom, intercepted in accordance with this chapter, may disclose the
20 contents of that communication or the derivative evidence while giving testimony
21 under oath or affirmation in any proceeding held under the authority of any state
22 or any political subdivision of a state, the United States, or any territory,
23 protectorate, or possession of the United States, including the District of
24 Columbia.
- 25 (4) An otherwise privileged wire, oral, or electronic communication intercepted in
26 accordance with, or in violation of, this chapter does not lose its privileged
27 character.

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

12 ➔SECTION 6. A NEW SECTION OF KRS CHAPTER 526 IS CREATED TO
 13 READ AS FOLLOWS:

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

19 1. The identity of the investigative or law enforcement officer making the
 20 application and the officer authorizing the application;

21 2. A full and complete statement of the facts and circumstances relied
 22 upon by the applicant to justify the belief that an order should be
 23 issued, including:

24 a. Details as to the particular offense that has been, is being, or is
 25 about to be committed;

26 b. Except as provided in paragraph (b) of this subsection, a
 27 particular description of the nature and location of the facilities

1 from which or the place where the communication is to be
2 intercepted;

3 c. A particular description of the type of communications sought to
4 be intercepted; and

5 d. The identity of the person, if known, committing the offense and
6 whose communications are to be intercepted;

7 3. A full and complete statement as to whether other investigative
8 procedures have been tried and failed, why they reasonably appear to
9 be unlikely to succeed if tried, or why they would be too dangerous;

10 4. A statement of the period of time for which the interception is required
11 to be maintained. If the nature of the investigation is such that the
12 authorization for interception should not automatically terminate
13 when the described type of communication has been first obtained, the
14 application shall include a particular description of facts establishing
15 probable cause to believe additional communications of the same type
16 will occur thereafter;

17 5. A full and complete statement of the facts concerning all previous
18 applications known to the individual authorizing and making the
19 application, made to any judge for authorization to intercept wire,
20 oral, or electronic communications involving any of the same persons,
21 facilities, or places specified in the application, and the action taken by
22 the judge on each application; and

23 6. If the application is for the extension of an order, a statement setting
24 forth the results thus far obtained from the interception or a
25 reasonable explanation of the failure to obtain the results.

26 (b) 1. In the case of an application authorizing the interception of an oral
27 communication, a particular description of the nature and location of

- 1 the facilities from which or the place where the communication is to
2 be intercepted is not required if the application:
- 3 a. Is by an investigative or law enforcement officer;
4 b. Is approved by the Attorney General, any Commonwealth's
5 attorney, or any county attorney;
6 c. Contains a full and complete statement as to why specification of
7 the nature and location of the facilities from which or the place
8 where the communication is to be intercepted is not practical;
9 and
10 d. Identifies the individual committing the offense and whose
11 communications are to be intercepted.
- 12 2. In the case of an application authorizing the interception of a wire or
13 electronic communication, a particular description of the nature and
14 location of the facilities from which or the place where the
15 communication is to be intercepted is not required if the application:
- 16 a. Is by an investigative or law enforcement officer;
17 b. Is approved by the Attorney General, any Commonwealth's
18 attorney, or any county attorney;
19 c. Identifies the individual believed to be committing the offense
20 and whose communications are to be intercepted;
21 d. Makes a showing that there is probable cause to believe that the
22 individual's actions could have the effect of thwarting
23 interception from a specified facility; and
24 e. Specifies that interception will be limited to any period of time
25 when the investigative or law enforcement officer has a
26 reasonable, articulable belief that the individual identified in the
27 application will be proximate to the communication device and

1 will be using the communication device through which the
2 communication will be transmitted.

3 (2) The judge may require the applicant to furnish additional testimony or
4 documentary evidence in support of the application.

5 (3) (a) Upon the application the judge may enter an ex parte order, as requested or
6 as modified, authorizing interception of wire, oral, or electronic
7 communications within the territorial jurisdiction permitted under
8 paragraphs (b) and (c) of this subsection, if the judge determines on the
9 basis of the facts submitted by the applicant that:

10 1. There is probable cause for belief that an individual is committing,
11 has committed, or is about to commit a particular offense enumerated
12 in Section 4 of this Act;

13 2. There is probable cause for belief that particular communications
14 concerning that offense will be obtained through the interception;

15 3. Normal investigative procedures have been tried and have failed, or
16 reasonably appear to be unlikely to succeed if tried or to be too
17 dangerous; and

18 4. There is probable cause for belief that the:

19 a. Facilities from which, or the place where, the wire, oral, or
20 electronic communications are to be intercepted are being used,
21 or are about to be used, in connection with the commission of the
22 offense, or are leased to, listed in the name of, or commonly used
23 by the person in accordance with subsection (1)(a) of this
24 section; or

25 b. Actions of the individual whose communications are to be
26 intercepted could have the effect of thwarting an interception
27 from a specified facility in accordance with subsection (1)(b) of

1 this section.

2 (b) Except as provided in paragraphs (c) and (d) of this subsection, an ex parte
3 order issued under paragraph (a) of this subsection may authorize the
4 interception of wire, oral, or electronic communications only within the
5 territorial jurisdiction of the court in which the application was filed.

6 (c) If an application for an ex parte order is made by the Attorney General, any
7 Commonwealth's attorney, or any county attorney, an order issued under
8 paragraph (a) of this subsection may authorize the interception of
9 communications received or sent by a communication device anywhere
10 within the Commonwealth so as to permit the interception of the
11 communications regardless of whether the communication device is
12 physically located within the jurisdiction of the court in which the
13 application was filed at the time of the interception. The application must
14 allege that the offense being investigated may transpire in the jurisdiction of
15 the court in which the application is filed.

16 (d) In accordance with this subsection, a judge of competent jurisdiction may
17 authorize continued interception within the Commonwealth, both within
18 and outside the judge's jurisdiction, if the original interception occurred
19 within the judge's jurisdiction.

20 (4) (a) Each order authorizing the interception of any wire, oral, or electronic
21 communication shall specify:

22 1. The identity of the person, if known or required under subsection
23 (1)(b) of this section, whose communications are to be intercepted;

24 2. The nature and location of the communications facilities as to which,
25 or the place where, authority to intercept is granted, if known;

26 3. A particular description of the type of communication sought to be
27 intercepted, and a statement of the particular offense to which it

1 relates;

2 4. The identity of the agency authorized to intercept the communications,
3 and of the person authorizing the application; and

4 5. The period of time during which the interception is authorized,
5 including a statement as to whether or not the interception shall
6 automatically terminate when the described communication has been
7 first obtained.

8 (b) An order authorizing the interception of a wire, oral, or electronic
9 communication, upon request of the applicant, shall direct that a provider
10 of wire or electronic communication service, landlord, custodian, or other
11 person furnish the applicant immediately all information, facilities, and
12 technical assistance necessary to accomplish the interception unobtrusively
13 and with a minimum of interference with the services that the service
14 provider, landlord, custodian, or person is providing the person whose
15 communications are to be intercepted. Any provider of wire or electronic
16 communication service, landlord, custodian, or other person furnishing the
17 facilities or technical assistance shall be compensated by the applicant for
18 reasonable expenses incurred in providing facilities or assistance.

19 (5) (a) An order entered under this section may not authorize the interception of
20 any wire, oral, or electronic communication for any period longer than is
21 necessary to achieve the objective of the authorization and in no event
22 longer than thirty (30) days. The thirty (30) day period begins on the earlier
23 of the day on which the investigative or law enforcement officer first begins
24 to conduct an interception under the order or ten (10) days after the order is
25 entered.

26 (b) Extensions of an order may be granted, but only upon application for an
27 extension made in accordance with subsection (1) of this section and the

1 court making the findings required by subsection (3) of this section. The
2 period of extension shall be no longer than the authorizing judge deems
3 necessary to achieve the purposes for which it was granted and in no event
4 for longer than thirty (30) days.

5 (c) Every order and extension thereof shall contain a provision that the
6 authorization to intercept shall be executed as soon as practicable, shall be
7 conducted in such a way as to minimize the interception of communications
8 not otherwise subject to interception under this chapter, and shall terminate
9 upon attainment of the authorized objective or in any event in thirty (30)
10 days.

11 (d) If the intercepted communication is in a code or foreign language, and an
12 expert in that foreign language or code is not reasonably available during
13 the interception period, minimization may be accomplished as soon as
14 practicable after the interception. An interception under this chapter may be
15 conducted in whole or in part by federal, state, or local government
16 personnel, or by an individual operating under a contract with the
17 Commonwealth or a political subdivision of the Commonwealth, acting
18 under the supervision of an investigative or law enforcement officer
19 authorized to conduct the interception.

20 (6) Whenever an order authorizing interception is entered pursuant to this chapter,
21 the order shall require reports to be made to the judge who issued the order
22 showing what progress has been made toward achievement of the authorized
23 objective and the need for continued interception. The reports shall be made at
24 the intervals the judge requires.

25 (7) (a) The contents of any wire, oral, or electronic communication intercepted by
26 any means authorized by this chapter shall be recorded, if possible. The
27 recording of the contents of any wire, oral, or electronic communication

1 under this subsection shall be done in a way that will protect the recording
2 from editing or other alterations. Immediately upon the expiration of the
3 period of the order, or extensions thereof, the recordings shall be made
4 available to the judge issuing such order and sealed under the judge's
5 directions. Custody of the recordings shall be wherever the judge orders.
6 The recordings may not be destroyed except upon an order of the issuing or
7 denying judge and in any event shall be kept for ten (10) years. Duplicate
8 recordings may be made for use or disclosure pursuant to subsections (1)
9 and (2) of Section 5 of this Act. The presence of the seal provided for by this
10 subsection, or a satisfactory explanation for its absence, shall be a
11 prerequisite for the use or disclosure of the contents of any wire, oral, or
12 electronic communication or evidence derived therefrom under subsection
13 (3) of Section 5 of this Act.

14 (b) Applications made and orders granted under this chapter shall be sealed by
15 the judge. Custody of the applications and orders shall be wherever the
16 judge directs. The applications and orders shall be disclosed only upon a
17 showing of good cause before a judge of competent jurisdiction and shall
18 not be destroyed except on order of the issuing or denying judge, and in any
19 event shall be kept for ten (10) years.

20 (c) Any violation of this subsection may be punished as contempt of the issuing
21 or denying judge.

22 (d) Within a reasonable time, but not later than ninety (90) days after the
23 termination of the period of an order or extension of an order, the issuing
24 judge shall cause to be served on the persons named in the order, and on
25 the other parties to intercepted communications as the judge may determine
26 in the judge's discretion is in the interest of justice, an inventory which
27 shall include notice of the:

- 1 1. Fact of the entry of the order;
- 2 2. Date of the entry and the period of authorized interception; and
- 3 3. Fact that during the period wire, oral, or electronic communications
4 were or were not intercepted.
- 5 (e) The judge, upon the filing of a motion, shall make available to the person or
6 the person's counsel for inspection portions of the intercepted
7 communications, applications, and orders pertaining to that person and the
8 alleged crime.
- 9 (f) On an ex parte showing of good cause to the judge, the serving of the
10 inventory required by this subsection may be postponed. The periods of
11 postponement may not be longer than the authorizing judge deems
12 necessary to achieve the purposes for which they were granted and in no
13 event for longer than thirty (30) days. No more than three (3) periods of
14 postponement may be granted. Any order issued extending the time in
15 which the inventory notice is to be served shall be under seal of the court
16 and treated in the same manner as the order authorizing interception.
- 17 (8) The contents of any intercepted wire, oral, or electronic communication or
18 evidence derived therefrom may not be received in evidence or otherwise
19 disclosed in any trial, hearing, or other proceeding in the courts of the
20 Commonwealth unless each party, not less than ten (10) days before the trial,
21 hearing, or proceeding, has been furnished with a copy of the court order and
22 accompanying application under which the interception was authorized. Where
23 no application or order is required under this chapter, each party, not less than
24 ten (10) days before the trial, hearing, or proceeding, shall be furnished with
25 information concerning when, where, and how the interception took place and
26 why no application or order was required. This ten (10) day period may be waived
27 by the judge if the judge finds that it was not possible to furnish the party with the

1 information required under this subsection ten (10) days before the trial, hearing,
2 or proceeding, and that the party will not be prejudiced by the delay in receiving
3 the information.

4 (9) (a) Any aggrieved person in any trial, hearing, or proceeding in or before any
5 court, department, officer, agency, regulatory body, or other authority of the
6 Commonwealth or a political subdivision thereof may move to suppress the
7 contents of any intercepted wire, oral, or electronic communication, or
8 evidence derived therefrom, on the grounds that the:

9 1. Communication was unlawfully intercepted;

10 2. Order of authorization under which it was intercepted is insufficient
11 on its face, or was not obtained or issued in strict compliance with this
12 chapter; or

13 3. Interception was not made in conformity with the order of
14 authorization.

15 (b) If the motion is granted, the contents of the intercepted wire, oral, or
16 electronic communication, or evidence derived therefrom, shall be treated
17 as having been obtained in violation of this chapter. The judge, in his or her
18 discretion, upon the filing of the motion by the aggrieved person, may make
19 available to the aggrieved person or the aggrieved person's counsel for
20 inspection such portions of the intercepted communication or evidence
21 derived therefrom as the judge determines to be in the interests of justice.

22 (c) In addition to any other right to appeal, the Commonwealth shall have the
23 right to appeal from the denial of an application for an order of approval if
24 the prosecuting attorney certifies to the judge or other official denying the
25 application that the appeal is not taken for purposes of delay. The appeal
26 shall be taken within thirty (30) days after the date the order was entered
27 and shall be diligently prosecuted.

1 ➔SECTION 7. A NEW SECTION OF KRS CHAPTER 526 IS CREATED TO
2 READ AS FOLLOWS:

3 (1) Within thirty (30) days after the expiration of the total period of an order,
4 including each extension entered under Section 6 of this Act, or within thirty (30)
5 days after denial of an application for an order or extension, the judge who
6 issued the order or denied the application shall report to the Administrative
7 Office of the Courts the:

8 (a) Fact that an order or extension was applied for;

9 (b) Kind of order or extension applied for;

10 (c) Fact that the order or extension was granted as applied for, was modified,
11 or was denied;

12 (d) Period of interceptions authorized by the order and the number and
13 duration of any extensions of the order;

14 (e) Offense specified in the order or application or extension of an order;

15 (f) Identity of the applying investigative or law enforcement officer and agency
16 making the application and the person authorizing the application; and

17 (g) Nature of the facilities from which or the place where communications were
18 to be intercepted.

19 (2) In January of each year, the Attorney General, Commonwealth's attorneys, and
20 county attorneys shall report to the Administrative Office of the Courts:

21 (a) The information required by subsection (1) of this section with respect to
22 each application for an order or extension made during the preceding
23 calendar year;

24 (b) A general description of the interceptions made under the order or
25 extension, including the approximate:

26 1. Nature and frequency of incriminating communications intercepted;

27 2. Nature and frequency of other communications intercepted;

- 1 3. Number of persons whose communications were intercepted; and
2 4. Nature, amount, and cost of the manpower and other resources used
3 in the interceptions;
4 (c) The number of arrests resulting from interceptions made under the order or
5 extension and the offenses for which arrests were made;
6 (d) The number of trials resulting from the interceptions;
7 (e) The number of motions to suppress made with respect to the interceptions
8 and the number granted or denied;
9 (f) The number of convictions resulting from the interceptions, the offenses for
10 which the convictions were obtained, and a general assessment of the
11 importance of the interceptions to the convictions; and
12 (g) The information required by paragraphs (b) to (f) of this subsection with
13 respect to orders or extensions obtained in a preceding calendar year.

14 (3) By March 1 of each year, the Administrative Office of the Courts shall transmit to
15 the General Assembly a full and complete report concerning the number of
16 applications for orders authorizing or approving the interception of wire or oral
17 communications and the number of orders and extensions granted or denied
18 during the preceding calendar year. The report shall include a summary and
19 analysis of the data required to be filed with the Administrative Office of the
20 Courts under subsections (1) and (2) of this section.

21 ➔SECTION 8. A NEW SECTION OF KRS CHAPTER 526 IS CREATED TO
22 READ AS FOLLOWS:

23 (1) Any person whose wire, oral, or electronic communication is intercepted,
24 disclosed, or used in violation of this chapter shall have a civil cause of action
25 against any person who intercepts, discloses, or uses the communication, or
26 procures any other person to intercept, disclose, or use the communication, and
27 shall be entitled to recover from any person:

1 (a) Actual damages but not less than liquidated damages computed at the rate
2 of one hundred dollars (\$100) a day for each day of violation or one
3 thousand dollars (\$1,000), whichever is higher;

4 (b) Punitive damages; and

5 (c) A reasonable attorney's fee and other litigation costs reasonably incurred.

6 (2) A good-faith reliance on a court order or legislative authorization shall constitute
7 a complete defense to any civil or criminal action brought under this chapter or
8 under any other law.

9 ➔SECTION 9. A NEW SECTION OF KRS CHAPTER 526 IS CREATED TO
10 READ AS FOLLOWS:

11 (1) Law enforcement agencies in the Commonwealth shall register with the
12 Department of Kentucky State Police all electronic, mechanical, or other devices
13 whose design renders them primarily useful for the purpose of the surreptitious
14 interception of wire, oral, or electronic communications which are owned by
15 them or possessed by or in the control of the agency or its employees or agents.
16 All devices shall be registered within ten (10) days of the effective date of this Act
17 for devices owned or possessed by or in the control of the agency on the effective
18 date of this Act, or within ten (10) days from the date on which the devices come
19 into the possession or control of the agency or its employees or agents.

20 (2) Information to be furnished with the registration shall include the name and
21 address of the agency as well as a detailed description of each device registered
22 and further information as the Administrative Office of the Courts may require.

23 (3) The Department of Kentucky State Police shall issue a serial number for each
24 device registered pursuant to this section, which shall be affixed or indicated on
25 the device in question.

26 ➔Section 10. The following KRS sections are repealed:

27 526.060 Divulging illegally obtained information.

- 1 526.070 Eavesdropping -- Exceptions.