

## LEGISLATIVE SUMMARIES

### ***Criminal Law—N.J. Wiretapping and Electronic Surveillance Control Act—N.J. Stat. Ann. §§ 2A:156A-3, -5, -8, -12.***

On June 1, 1989, the New Jersey Legislature approved an Act amending the New Jersey Wiretapping and Electronic Surveillance Control Act of 1969.<sup>1</sup>

Pursuant to the amendment, a party is guilty of a third degree crime if he purposefully performs or attempts to perform the interception of a transmitted communication,<sup>2</sup> discloses or utilizes any information knowingly obtained from the interception,<sup>3</sup> or purposefully possesses, sells, distributes, manufactures or advertises an intercepting device.<sup>4</sup> An advertising party will not be held accountable unless he is aware that the tool is mainly used for the illegal gathering of information or if the advertisement promotes this illegal purpose.<sup>5</sup> Prior to this amendment, such parties were guilty of a misdemeanor punishable by a fine not to exceed \$10,000 and/or incarceration not to exceed five years.<sup>6</sup>

The following parties may apply to the appropriate judge for an order authorizing a legal interception of transmitted communication: the Attorney General, a county prosecutor, the Chairman of the State Commission of Investigation with the approval of the Attorney General and a majority of the Commission's members, or any appointed substitute.<sup>7</sup> The Chairman of the State Commission of Investigation cannot authorize an investigation which involves personnel of the Department of Law and Public Safety.<sup>8</sup>

The interception will be authorized if it will reveal evidence of murder, kidnapping, gambling, robbery, bribery, wrongful credit practices, terroristic threats, leadership in a narcotics traf-

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<sup>1</sup> N.J. STAT. ANN. §§ 2A:156A-1 to -28 (West Supp. 1989).

<sup>2</sup> *Id.* § 2A:156A-3.

<sup>3</sup> *Id.*

<sup>4</sup> *Id.* § 2A:156A-5.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.* §§ 2A:156A-3, -5.

<sup>7</sup> *Id.* § 2A:156A-8.

<sup>8</sup> *Id.*

ficking network, operation of a controlled substance facility, manufacturing and distribution of drugs, unlicensed casino gambling, all forms of cheating in licensed casinos, possession of an illegally manufactured or sold device, arson, burglary, theft, escape, forgery, tampering with automobile identification numbers, unlawful manufacture, acquisition, utilization and transfer of firearms or any destructive devices, racketeering, leadership in an organized crime ring, organized criminal activity concerning toxic substances, endangering a child's welfare, or conspiracy to commit any of the aforementioned offenses.<sup>9</sup> Obtaining evidence for the following offenses will no longer justify an interception: extortion, loansharking, mayhem, violations of the New Jersey Controlled Dangerous Substances Act, embezzlement, receipt of stolen property or larceny.<sup>10</sup>

The order authorizing an interception must state the authority of the issuing judge, the location of the interception, the type of communication to be intercepted and its related offense, the identity of the applicant and the party performing the interception and the allowed duration of the interception.<sup>11</sup> The interception is allowed to continue until the necessary information is retrieved.<sup>12</sup> However, this period is not to exceed twenty days.<sup>13</sup> A maximum of two extension periods, not to exceed ten days each, may be authorized.<sup>14</sup> The Act allows an extension not to exceed 30 days for an interception providing evidence of racketeering, leadership in organized crime or narcotics trafficking.<sup>15</sup> An unlimited number of thirty day maximum renewal periods may be authorized.<sup>16</sup> However, the total of these extensions must not exceed six months.<sup>17</sup>

The judge's order may require that he receive periodic progress reports of the interception.<sup>18</sup> The applicant may request that the order instruct the communication common carrier to

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<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *Id.* § 2A:156A-12(a)-(f).

<sup>12</sup> *Id.* § 2A:156A-12(f).

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> *Id.* § 2A:156A-12(g).

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> *Id.* § 2A:156A-12(h).

provide data, facilities or technical aid.<sup>19</sup> The applicant may also request an in-progress trace.<sup>20</sup> When a county prosecutor requests an in-progress trace, the request must be approved by the Attorney General before being submitted to the judge.<sup>21</sup> The carrier will be compensated for his assistance and immunized from any liability.<sup>22</sup>

Any party who knowingly utilizes or reveals the contents or existence of an order will be guilty of a third degree crime.<sup>23</sup>

*Janet Allegro*

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<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> *Id.* § 2A:156A-19.