

CHAPTER 142

AN ACT concerning interception of computer trespasser communications and supplementing Title 2A of New Jersey Statutes.

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

C.2A:156A-4.1 Interception of wire, electronic communications, certain; permitted.

1. a. It shall not be a violation of any provision of P.L.1968, c.409 (C.2A:156A-1 et seq.) for a person acting under color of law to intercept the wire or electronic communications of a suspected computer trespasser transmitted to, through, or from a computer or any other device with Internet capability, if:

(1) the owner or operator of the computer or other device authorizes the interception of the computer trespasser's wire or electronic communications on the computer;

(2) the person acting under color of law is lawfully engaged in an investigation;

(3) the person acting under color of law has reasonable grounds to believe that the contents of the computer trespasser's wire or electronic communications will be relevant to the investigation; and

(4) such interception does not acquire communications other than those transmitted to or from the computer trespasser.

b. For purposes of this section, "computer trespasser" means a person who accesses a computer or any other device with Internet capability without authorization and thus has no reasonable expectation of privacy in any communication transmitted to, through, or from the computer or other device. The term "computer trespasser" does not include a person known by the owner or operator of the computer or other device with Internet capability to have an existing contractual relationship with the owner or operator of the computer or other device for access to all or part of the computer or other device.

c. Any aggrieved person in any trial, hearing, or proceeding in or before any court or other authority of this State may move to suppress the contents of any wire or electronic communication intercepted in accordance with subsection a. of this section, or evidence derived therefrom, on the grounds that the communication was unlawfully intercepted or the interception was not made in conformity with the provisions of this section. The motion shall be made at least 10 days before the trial, hearing, or proceeding unless there was no opportunity to make the motion or the moving party was not aware of the grounds for the motion. Motions by coindictes are to be heard in a single consolidated hearing. The court, upon the filing of such motion by the aggrieved person, shall make available to the aggrieved person or his counsel for inspection such portions of the intercepted communication, or evidence derived therefrom, as the court determines to be in the interests of justice. If the motion is granted, the entire contents of all intercepted wire or electronic communications obtained during or after any interception which is determined to be in violation of P.L.1968, c.409 (C.2A:156A-1 et seq.) or evidence derived therefrom, shall not be received in evidence in the trial, hearing or proceeding.

In addition to any other right to appeal, the State shall have the right to appeal from an order granting a motion to suppress upon certification to the court that the appeal is not taken for purposes of delay. The appeal shall be taken within the time specified by the Rules of Court and shall be diligently prosecuted.

2. This act shall take effect immediately.

Approved October 19, 2009.