

SENATE BILL 1210 “Expanded Anti-Wire Tapping Act of 2016”

Presented by:

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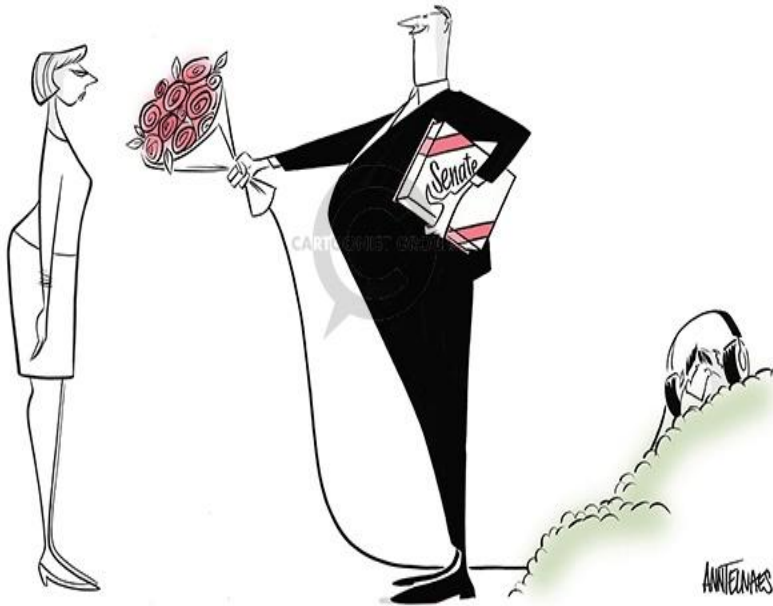
National Privacy Commission

- Senate Bill No. 1210 – An Act Expanding the Scope and Coverage of Republic Act No. 4200, otherwise known as an Act to Prohibit and Penalize Wire Tapping and Other Related Violations of the Privacy of Communication, and for Other Purposes
- October 18, 2016 – Submitted jointly by the Committees on Public Order and Dangerous Drugs and National Defense and Security



Significant Features of the Proposed Bill

- Expanded the scope of “wiretapping”
- Expanded and granted authority to public officers and officials
- Determined the use and disposal of collected materials
- Included the participation of telecommunications or internet service providers
- Considered evidence validly obtained as admissible evidence



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Senate Bill No. 1210 expanded the scope of wiretapping

Section 2

- unlawful to SECRETLY WIRETAP, INTERCEPT, OVERHEAR AND LISTEN TO, SCREEN, READ, SURVEIL, RECORD OR COLLECT, WITH THE USE OF ANY MODE, FORM, KIND OR TYPE OF ELECTRONIC, MECHANICAL OR OTHER EQUIPMENT OR DEVICE OR TECHNOLOGY NOW KNOWN OR MAY HEREAFTER BE KNOWN TO SCIENCE OR WITH THE USE OF ANY OTHER SUITABLE WAYS, ARRANGEMENTS OR MEANS FOR THE ABOVE PURPOSES, PRIVATE COMMUNICATIONS, CONVERSATIONS, DISCUSSION/S, DATA, INFORMATION, MESSAGES IN WHATEVER FORM, KIND OR NATURE, SPOKEN OR WRITTEN WORDS OF ANY PERSON OR PERSONS, WITHOUT ANY AUTHORIZATION FROM ALL THE PARTIES CONCERNED.

Section 3

The sale or importation by manufacturers, distributors or any person of any mode, kind or type of electronic, mechanical or other equipment or device or technology now known or may hereafter be known, knowing or having reason to know that the design or such electronic, mechanical or other equipment or device is primarily intended and useful for wiretapping



Section 4 – Original Section 2 shall be deleted and replaced with the following Prohibited Acts:

- Willfully or knowingly does or causes to be done or who shall aid, abet or permit, any of the acts declared to be unlawful
- Any person who manufactures, assembles, sells, imports, distributes, or otherwise disposes any mode, form, kind or type of electronic, mechanical or other equipment or device or technology primarily intended and useful for wiretapping
- Any person who, having knowledge or reason to know that the design of such electronic, mechanical or other equipment, device or technology is primarily intended and useful for wiretapping

Section 5

- Law enforcement or military officer authorized by a written court order
- crimes of treason, espionage, provoking war and disloyalty in case of war, piracy, mutiny in the high seas, rebellion, conspiracy and proposal to commit rebellion, inciting to rebellion, COUP D'ETAT, CONSPIRACY AND PROPOSAL TO COMMIT COUP D'ETAT, sedition, conspiracy to commit sedition, inciting to sedition, kidnapping, ROBBERY IN BAND, BIRGANDAGE/HIGHWAY ROBBERY, VIOLATIONS OF THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002, VIOLATIONS OF THE ANTI-MONEY LAUNDERING ACT OF 2001, and other offenses against national security



Senate Bill No. 1210 expanded and granted authority to public officers and officials

- Section 6

- The Chief of the PNP, PDEA Director General, NBI Director or Chief of Staff of the AFP or their duly authorized representatives may submit ex parte applications for the issuance of written orders from the Regional Trial Court
- Written application and examination under oath or affirmation of the applicant and witnesses showing:
 1. That there are reasonable grounds to believe that any of the crimes enumerated in Section 3 has been committed or is being committed or is about to be committed;
 2. That there are reasonable grounds to believe that the evidence that will be obtained is essential to the conviction of or to the prevention of any of such crimes; and
 3. That there are no other effective means readily available for obtaining such evidence.

- Effectivity period of judicial authorization – only for the length of time specified in the written order which shall not exceed 60 days from date of receipt of written order
- Authorizing court may, upon application, extend or renew the said application for another non-extendible period of 30 days from expiration of original period
- Written application, supporting documents, and written order granted by the court shall be deemed as classified information



Written order shall specify the following:

1. Identity such as name, address, if known, of the person whose private communications, conversations, discussions, data, information, messages in whatever form, kind or nature, spoken or written words and/or the telephone numbers, if known that are to be secretly wiretapped, intercepted, overheard and listened to, screened, read, surveilled, recorded and collected their locations;
2. Identity of the applicant authorized to secretly wiretap, intercept, overhear and listen to, screen, read, surveil, record and collect private communications in whatever form, kind or nature;
3. Crime or crimes committed, or is being committed, or sought to be prevented;
4. Length of time of authorization;
5. Specific assistance or cooperation needed from telecommunications or internet service provider.

- In no case shall the identity of the authorized applicant be disclosed, except upon written order of the authorizing court
- Custody of intercepted and recorded communications shall, within 48 hours after expiration of period fixed in the authorization or period of extension be deposited with the authorizing court – in a sealed envelope or package with the affidavit of authorized applicant
- Any person who, without written authority from the authorizing court, removes, conceals, destroys, discards or reveals the above mentioned communication or excerpts or any copy thereof shall be penalized

The affidavit of the authorized applicant to be submitted with the sealed package or envelope shall identify the following:

1. All tapes, discs, other storage devices, recordings, notes, memoranda, summaries, excerpts and all copies made in connection therewith;
2. Duration of judicial authorization and dates and times covered by each of such material;
3. Number of tapes, discs, or other storage devices, recordings, notes, memoranda, summaries, excerpts and all copies made in connection therewith that have been included in the deposit; and
4. Certify that no duplicates or copies of the materials have been made and copies are included in the sealed envelope or package.

Senate Bill No. 1210 determined the use and disposition of collected materials



Section 6

- Disposition of deposited material – the sealed envelope or package and its contents shall be deemed as classified information and it shall not be opened, and its contents shall not be disclosed, revealed, read, replayed or used as evidence unless by written order of the authorizing court
- Within 90 days from expiration of the order, individuals whose communications have been intercepted and/or recorded shall be notified of such fact, unless delay in notification is allowed by a written order of the authorizing court



- Destruction of deposited material – After the lapse of 5 years from expiration of period fixed in the order, the authorizing court shall order the destruction of the deposited material unless used in an ongoing investigation or prosecution.



Senate Bill No. 1210 included the participation of telecommunications or internet service providers

Section 6

- Involvement of any telecommunications or internet service provider to assist and cooperate with the law enforcement or military officers in implementing the order of the authorizing court.
- The specific assistance or cooperation needed shall be indicated in the written order.
- The telecommunications or internet service provider shall take measures to ensure that the person whose private communications, conversations, discussions to be secretly wiretapped shall neither detect nor be notified of such fact.

- Responsible person/s who unjustifiably refuses to comply with the order of the court shall be cited for contempt and ordered to pay a fine
- No administrative, criminal or civil liability shall lie against employees or officials of telecommunications or internet service provider for having assisted or cooperated with the law enforcement or military officers



Senate Bill No. 1210 considered evidence validly obtained as admissible evidence

Section 7

Any private communication, in whatever form, kind or nature shall not be admissible as evidence in any judicial, quasi-judicial, legislative or administrative hearing or investigation. Provided that use of any evidence validly obtained pursuant to Sections 3-A to 3-H shall be allowed

Proposal of the National Privacy Commission

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Section 2

- Use of the record or any copies, whether obtained unlawfully or by authority of proper court, be subject to the rules on privileged communication



Section 5

- Exclude from the list of crimes or offenses Republic Act No. 9160, as amended, otherwise known as the Anti-Money Laundering Act of 2001
- Include a provision stating that irrelevant information or private communications unrelated to the cases shall not be collected or stored



Section 6

- Exclude the Chief of the Armed Forces of the Philippines from the list of public officers and officials who can apply for a written authorization



Section 6

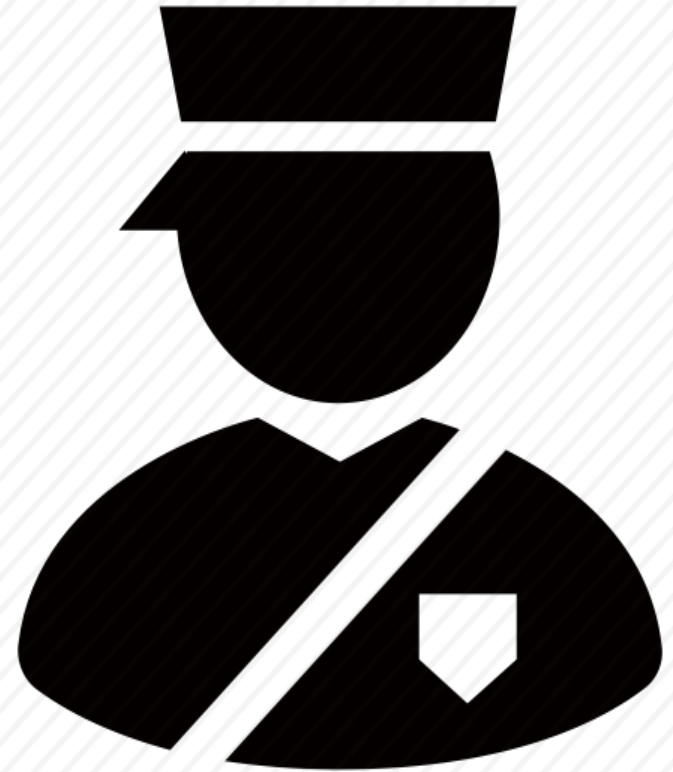
To include and indicate the contents of the application for written order:

1. Identity of the law enforcement officer making the application, and the officer authorizing the application;
1. 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: (a) details as to the particular offense that has been, is being, or is about to be committed; (b) a particular description of the nature and location of the facilities from which or the place where the communication is to be intercepted; (c) particular description of the type of communications sought to be intercepted; (d) identity of the person, if known, committing the offense and whose communications are to be intercepted.

3. A full and complete statement as to whether or not investigative procedures have been tried and failed, or why they reasonably appear to be unlikely to succeed if tried or to be too dangerous;
4. Statement of the period of time for which interception is required or to be maintained. if the nature of the investigation is such that the authorization 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;
5. Full and complete statement of facts concerning all previous applications known to the individual authorizing and making the application and the action taken by the judge; and
6. For the extension of an order, a statement setting forth the results thus far obtained or a reasonable explanation of the failure to obtain such result.

Section 6

- Insert a provision for a substitute authorized person in case of death, physical disability, resignation or cessation from office of the original applicant named in the original written order, the application for extension or renewal shall be filed by the member of the team next-in-rank to the original applicant.
- Indicate that the contents of the court authorization and extension shall be declared as classified information while the investigation is on going.



Section 6

- Reiterate that the disclosure, revelation or utilization of the deposited material shall always be under the control and supervision of the authorizing court. The deposited material shall not be opened, or the recordings replayed, or used in evidence, or their contents revealed, except upon order of the court, which shall not be granted except upon motion, with due notice and opportunity to be heard to the individual/s whose private communications have been intercepted and/or recorder.
- Indicate that evidence secured through the intercept may be introduced into evidence within 10 days advance notice to parties.

Section 7

- Delete the provision allowing the use of any evidence validly obtained pursuant to Sections 3-A to 3-H in relation to any of the offenses mentioned in Section 3 of the Act.



Thank you!

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