

Pub. L. 101-650, title III, §321, Dec. 1, 1990, 104 Stat. 5117.)

HISTORICAL AND REVISION NOTES

Section 627 of title 18, U.S.C., 1940 ed., relating to the filing of search warrants and companion papers, was omitted as unnecessary in view of Rule 41(f) of the Federal Rules of Criminal Procedure.

REFERENCES IN TEXT

Rule 41(f), referred to in text, was redesignated 41(g) by 1972 amendment eff. Oct. 1, 1972.

AMENDMENTS

1968—Pub. L. 90-578 substituted “Magistrates” for “Commissioners”.

CHANGE OF NAME

Words “magistrate judge” substituted for “magistrate” in section catchline and “Magistrate judges” substituted for “Magistrates” in text pursuant to section 321 of Pub. L. 101-650, set out as a note under section 631 of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90-578 effective Oct. 17, 1968, except when a later effective date is applicable, which is the earlier of date when implementation of amendment by appointment of magistrates [now United States magistrate judges] and assumption of office takes place or third anniversary of enactment of Pub. L. 90-578 on Oct. 17, 1968, see section 403 of Pub. L. 90-578, set out as a note under section 631 of Title 28, Judiciary and Judicial Procedure.

§ 3117. Mobile tracking devices

(a) IN GENERAL.—If a court is empowered to issue a warrant or other order for the installation of a mobile tracking device, such order may authorize the use of that device within the jurisdiction of the court, and outside that jurisdiction if the device is installed in that jurisdiction.

(b) DEFINITION.—As used in this section, the term “tracking device” means an electronic or mechanical device which permits the tracking of the movement of a person or object.

(Added Pub. L. 99-508, title I, §108(a), Oct. 21, 1986, 100 Stat. 1858.)

CODIFICATION

Another section 3117 was renumbered section 3118 of this title.

EFFECTIVE DATE

Section effective 90 days after Oct. 21, 1986, and, in case of conduct pursuant to court order or extension, applicable only with respect to court orders and extensions made after such date, with special rule for State authorizations of interceptions, see section 111 of Pub. L. 99-508, set out as an Effective Date of 1986 Amendment note under section 2510 of this title.

§ 3118. Implied consent for certain tests

(a) CONSENT.—Whoever operates a motor vehicle in the special maritime and territorial jurisdiction of the United States consents thereby to a chemical test or tests of such person’s blood, breath, or urine, if arrested for any offense arising from such person’s driving while under the influence of a drug or alcohol in such jurisdiction. The test or tests shall be administered upon the request of a police officer having rea-

sonable grounds to believe the person arrested to have been driving a motor vehicle upon the special maritime and territorial jurisdiction of the United States while under the influence of drugs or alcohol in violation of the laws of a State, territory, possession, or district.

(b) EFFECT OF REFUSAL.—Whoever, having consented to a test or tests by reason of subsection (a), refuses to submit to such a test or tests, after having first been advised of the consequences of such a refusal, shall be denied the privilege of operating a motor vehicle upon the special maritime and territorial jurisdiction of the United States during the period of a year commencing on the date of arrest upon which such test or tests was refused, and such refusal may be admitted into evidence in any case arising from such person’s driving while under the influence of a drug or alcohol in such jurisdiction. Any person who operates a motor vehicle in the special maritime and territorial jurisdiction of the United States after having been denied such privilege under this subsection shall be treated for the purposes of any civil or criminal proceedings arising out of such operation as operating such vehicle without a license to do so.

(Added Pub. L. 100-690, title VI, §6477(b)(1), Nov. 18, 1988, 102 Stat. 4381, §3117; renumbered §3118, Pub. L. 101-647, title XXXV, §3574, Nov. 29, 1990, 104 Stat. 4929.)

AMENDMENTS

1990—Pub. L. 101-647 renumbered second section 3117 of this title as this section.

CHAPTER 206—PEN REGISTERS AND TRAP AND TRACE DEVICES

Sec.	
3121.	General prohibition on pen register and trap and trace device use; exception.
3122.	Application for an order for a pen register or a trap and trace device.
3123.	Issuance of an order for a pen register or a trap and trace device.
3124.	Assistance in installation and use of a pen register or a trap and trace device.
3125.	Emergency pen register and trap and trace device installation.
3126.	Reports concerning pen registers and trap and trace devices.
3127.	Definitions for chapter.

AMENDMENTS

1988—Pub. L. 100-690, title VII, §§7068, 7092(c), Nov. 18, 1988, 102 Stat. 4405, 4411, substituted “trap and trace” for “trap or trace” in item 3123, added item 3125, and redesignated former items 3125 and 3126 as 3126 and 3127, respectively.

§ 3121. General prohibition on pen register and trap and trace device use; exception

(a) IN GENERAL.—Except as provided in this section, no person may install or use a pen register or a trap and trace device without first obtaining a court order under section 3123 of this title or under the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.).

(b) EXCEPTION.—The prohibition of subsection (a) does not apply with respect to the use of a pen register or a trap and trace device by a provider of electronic or wire communication service—

(1) relating to the operation, maintenance, and testing of a wire or electronic communication service or to the protection of the rights or property of such provider, or to the protection of users of that service from abuse of service or unlawful use of service; or

(2) to record the fact that a wire or electronic communication was initiated or completed in order to protect such provider, another provider furnishing service toward the completion of the wire communication, or a user of that service, from fraudulent, unlawful or abusive use of service; or (3) where the consent of the user of that service has been obtained.

(c) **LIMITATION.**—A government agency authorized to install and use a pen register or trap and trace device under this chapter or under State law shall use technology reasonably available to it that restricts the recording or decoding of electronic or other impulses to the dialing, routing, addressing, and signaling information utilized in the processing and transmitting of wire or electronic communications so as not to include the contents of any wire or electronic communications.

(d) **PENALTY.**—Whoever knowingly violates subsection (a) shall be fined under this title or imprisoned not more than one year, or both.

(Added Pub. L. 99-508, title III, §301(a), Oct. 21, 1986, 100 Stat. 1868; amended Pub. L. 103-414, title II, §207(b), Oct. 25, 1994, 108 Stat. 4292; Pub. L. 107-56, title II, §216(a), Oct. 26, 2001, 115 Stat. 288.)

REFERENCES IN TEXT

The Foreign Intelligence Surveillance Act of 1978, referred to in subsec. (a), is Pub. L. 95-511, Oct. 25, 1978, 92 Stat. 1783, as amended, which is classified principally to chapter 36 (§1801 et seq.) of Title 50, War and National Defense. For complete classification of this Act to the Code, see Short Title note set out under section 1801 of Title 50 and Tables.

AMENDMENTS

2001—Subsec. (c). Pub. L. 107-56 inserted “or trap and trace device” after “pen register” and “, routing, addressing,” after “dialing” and substituted “the processing and transmitting of wire or electronic communications so as not to include the contents of any wire or electronic communications” for “call processing”.

1994—Subsecs. (c), (d). Pub. L. 103-414 added subsec. (c) and redesignated former subsec. (c) as (d).

EFFECTIVE DATE

Pub. L. 99-508, title III, §302, Oct. 21, 1986, 100 Stat. 1872, provided that:

“(a) **IN GENERAL.**—Except as provided in subsection (b), this title and the amendments made by this title [enacting this chapter and section 1367 of this title] shall take effect ninety days after the date of the enactment of this Act [Oct. 21, 1986] and shall, in the case of conduct pursuant to a court order or extension, apply only with respect to court orders or extensions made after this title takes effect.

“(b) **SPECIAL RULE FOR STATE AUTHORIZATIONS OF INTERCEPTIONS.**—Any pen register or trap and trace device order or installation which would be valid and lawful without regard to the amendments made by this title shall be valid and lawful notwithstanding such amendments if such order or installation occurs during the period beginning on the date such amendments take effect and ending on the earlier of—

“(1) the day before the date of the taking effect of changes in State law required in order to make orders

or installations under Federal law as amended by this title; or

“(2) the date two years after the date of the enactment of this Act [Oct. 21, 1986].”

§ 3122. Application for an order for a pen register or a trap and trace device

(a) **APPLICATION.**—(1) An attorney for the Government may make application for an order or an extension of an order under section 3123 of this title authorizing or approving the installation and use of a pen register or a trap and trace device under this chapter, in writing under oath or equivalent affirmation, to a court of competent jurisdiction.

(2) Unless prohibited by State law, a State investigative or law enforcement officer may make application for an order or an extension of an order under section 3123 of this title authorizing or approving the installation and use of a pen register or a trap and trace device under this chapter, in writing under oath or equivalent affirmation, to a court of competent jurisdiction of such State.

(b) **CONTENTS OF APPLICATION.**—An application under subsection (a) of this section shall include—

(1) the identity of the attorney for the Government or the State law enforcement or investigative officer making the application and the identity of the law enforcement agency conducting the investigation; and

(2) a certification by the applicant that the information likely to be obtained is relevant to an ongoing criminal investigation being conducted by that agency.

(Added Pub. L. 99-508, title III, §301(a), Oct. 21, 1986, 100 Stat. 1869.)

§ 3123. Issuance of an order for a pen register or a trap and trace device

(a) **IN GENERAL.**—

(1) **ATTORNEY FOR THE GOVERNMENT.**—Upon an application made under section 3122(a)(1), the court shall enter an ex parte order authorizing the installation and use of a pen register or trap and trace device anywhere within the United States, if the court finds that the attorney for the Government has certified to the court that the information likely to be obtained by such installation and use is relevant to an ongoing criminal investigation. The order, upon service of that order, shall apply to any person or entity providing wire or electronic communication service in the United States whose assistance may facilitate the execution of the order. Whenever such an order is served on any person or entity not specifically named in the order, upon request of such person or entity, the attorney for the Government or law enforcement or investigative officer that is serving the order shall provide written or electronic certification that the order applies to the person or entity being served.

(2) **STATE INVESTIGATIVE OR LAW ENFORCEMENT OFFICER.**—Upon an application made under section 3122(a)(2), the court shall enter an ex parte order authorizing the installation and use of a pen register or trap and trace de-