

STATEMENT OF THE BOSTON BAR ASSOCIATION ON REFORM OF THE WIRETAP STATUTE

While the Massachusetts wiretap statute, G.L. c. 272, § 99, has served the Commonwealth well both in protecting the privacy of citizens and enabling the investigation of serious crimes, after forty-eight years, certain reforms to the law have become necessary.

The BBA recommends that these changes include: (1) modernizing the statute to recognize developments in wireless communications technology; (2) adding to the list of “designated offenses” the serious profit-driven organized crime offenses as human trafficking, trafficking in firearms, manufacturing child pornography, and money laundering; and (3) adding first-degree murder without regard to whether or not committed in connection with organized crime, so as to make wiretap authority and investigatory one-party consent recordings available in the investigation of any first-degree murder offense.

The need for this last reform has been repeatedly emphasized by the Chief Justice Ralph Gants of the Supreme Judicial Court and other Justices. In two recent opinions, he noted that the current wiretap law, in limiting electronic surveillance to apply only where there is a nexus to the supplying of illegal goods and services, has resulted in “the loss of electronic surveillance . . . as an investigative tool” in many gang-related homicide investigations. He also observed that such crimes are among the “most difficult to solve because the witnesses to these crimes are so reluctant to come forward to provide information and testimony for fear of violence, retaliation, and social ostracism.” Adding first-degree murder to the list of designated offenses would make wiretaps by warrant and one-party consent recordings available in first-degree murder investigations.

At the same time, the wiretap statute is also a privacy-protection law. As such, any update should include requirements for modern, accessible and informative reporting on wiretapping. The current wiretap statute includes an annual reporting requirement, §99 (R), but that reporting is severely dated. Reports should be filed electronically and made available on the public websites of both reporting and reported-to offices. The law should also require that more substantive information be reported.