

ENGROSSED HOUSE AMENDMENT
TO
ENGROSSED SENATE BILL NO. 1642

By: Helton of the Senate

and

McCarter and Nance of the
House

An Act relating to common carriers; amending 13 O.S. 2001, Sections 177.1 and 177.4, which relate to definitions and court orders for pen registers and trace devices; clarifying certain definition; stating conditions of court's jurisdiction for certain orders; and declaring an emergency.

AMENDMENT NO. 1. Strike the title, enacting clause and entire bill and insert

"An Act relating to common carriers; amending 13 O.S. 2001, Section 176.8, which relates to disclosure of information; clarifying reference; amending 13 O.S. 2001, Sections 177.1 and 177.4, which relate to definitions and court orders for pen registers and trace devices; modifying definition; specifying jurisdiction of court for certain orders; and declaring an emergency.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 13 O.S. 2001, Section 176.8, is amended to read as follows:

Section 176.8 A. Any law enforcement officer who, by any means authorized by the Security of Communications Act, has obtained knowledge of the contents of any wire, oral or electronic communication or evidence derived therefrom may disclose such contents to another law enforcement officer to the extent that such disclosure is appropriate to the proper performance of the official duties of the officer making or receiving the disclosure.

B. Any law enforcement officer who, by any authorized means, has obtained knowledge of the contents of any wire, oral or electronic

communication or evidence derived therefrom may use such contents to the extent such use is appropriate to the proper performance of his official duties.

C. Any person who has received, by any authorized means, any information concerning a wire, oral or electronic communication or evidence derived therefrom intercepted in accordance with the provisions of the Security of Communications Act may disclose the contents of that communication or such derivative evidence while giving testimony under oath or affirmation in any criminal proceeding in any court of this state or of the United States or in any grand jury proceeding, if such testimony is otherwise admissible.

D. No otherwise privileged wire, oral or electronic communication intercepted in accordance with, or in violation of, the provisions of the Security of Communications Act shall lose its privileged character.

E. When a law enforcement officer, while engaged in intercepting wire, oral or electronic communications in an authorized manner, intercepts wire, oral or electronic communications relating to offenses for which an order or authorization could have been secured or any offense listed in ~~paragraph 5 of~~ Section 571 of Title 57 of the Oklahoma Statutes, which is other than those specified in the order of authorization, the contents thereof and evidence derived therefrom may be disclosed or used as provided in this section. Such contents and any evidence derived therefrom may be used when authorized by a judge of competent jurisdiction when such judge finds on subsequent application that the contents were otherwise intercepted in accordance with the provisions of the Security of Communications Act. Such application shall be made as soon as practicable.

SECTION 2. AMENDATORY 13 O.S. 2001, Section 177.1, is amended to read as follows:

Section 177.1 As used in Sections 177.1 through 177.5 of this title:

1. "Court of competent jurisdiction" means a court of general criminal jurisdiction of this state, including ~~a magistrate of such a court~~ the judges of the district court, associate district judges and special district judges, or any justice of the Supreme Court or judge of the Court of Criminal Appeals or Court of Civil Appeals;

2. "Electronic communication" means any transfer of signs, signals, writing, images, sounds, data or intelligence of any nature transmitted in whole or in part by a wire, radio, electro-magnetic, photo-electronic or photo-optical system, but does not include:

- a. the radio portion of a cordless telephone communication that is transmitted between the cordless telephone headset and the base unit,
- b. any wire or oral communication,
- c. any communication made through a tone-only paging device, or
- d. any communication from a tracking device;

3. ~~"Magistrate" means any justice of the Supreme Court or judge of the Court of Criminal Appeals, Court of Appeals or district court, including associate district judges and special judges;~~

4. "Pen register" means a device which records or decodes electronic or other impulses which identify the numbers dialed or otherwise transmitted on the telephone line to which such device is attached, but such term does not include any device used by a provider or customer of a wire or electronic communication service for billing, or recording as an incident to billing, for communications services provided by such provider or any device used by a provider or customer of a wire communication service for cost accounting or other like purposes in the ordinary course of its business;

~~5.~~ 4. "Trap and trace device" means a device which captures the incoming electronic or other impulses which identify the originating number of an instrument or device from which a wire or electronic communication was transmitted, but does not include devices used by subscribers to identify the originating numbers of calls received by such subscribers; and

~~6.~~ 5. "Wire communication" means any communication made in whole or in part through the use of facilities for the transmission of communications by the aid of wire, cable or other like connection between the point of origin and the point of reception furnished or operated by any person engaged as a communication common carrier in providing or operating such facilities for the transmission of intrastate, interstate or foreign communications.

SECTION 3. AMENDATORY 13 O.S. 2001, Section 177.4, is amended to read as follows:

Section 177.4 A. The court, in considering an application made pursuant to Section ~~3~~ 177.3 of this ~~act~~ title, shall enter an ex parte order authorizing the installation and use of a pen register or a trap and trace device within the jurisdiction of the court if the court finds that the person making the application 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 installation and use of a pen register or a trap and trace device shall be considered to be within the jurisdiction of the court if (a) the law enforcement equipment to be used to collect electronic data is or will be physically installed within the geographical area over which the court has jurisdiction, (b) there are reasonable grounds to believe the telephone device is or will be used within the geographical area over which the court has jurisdiction, or (c) the billing address for the telephone service for the telephone device is located within the geographical area over which the court has jurisdiction.

The order issued under this section:

1. Shall specify:

- a. the identity, if known, of the person to whom is leased or in whose name is listed the telephone line to which the pen register or trap and trace device is to be attached,
- b. the identity, if known, of the person who is the subject of the criminal investigation,
- c. the number and, if known, physical location of the telephone line to which the pen register or trap and trace device is to be attached and, in the case of a trap and trace device, the geographic limits of the trap and trace order, and
- d. a statement of the offense to which the information likely to be obtained by the pen register or trap and trace device relates; and

2. Shall direct, upon the request of the applicant, the furnishing of information, facilities, and technical assistance necessary to accomplish the installation of the pen register or trap and trace device.

B. An order issued pursuant to this section shall authorize the installation and use of a pen register or a trap and trace device for a period not to exceed sixty (60) days. Extensions of such an order may be granted, but only upon application as provided in Section ~~3~~ 177.3 of this ~~act~~ title and upon issuance of an order as required by subsection A of this section. Each period of extension shall be for a period not to exceed sixty (60) days.

C. An order authorizing or approving the installation and use of a pen register or a trap and trace device shall direct that:

1. The order be sealed until otherwise ordered by the court; and
2. The person owning or leasing the line to which the pen register or a trap and trace device is attached, or who has been

ordered by the court to provide assistance to the applicant, not disclose the existence of the pen register or trap and trace device or the existence of the investigation to the listed subscriber, or to any other person, unless or until otherwise ordered by the court.

SECTION 4. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval."

Passed the House of Representatives the 9th day of April, 2002.

Presiding Officer of the House of
Representatives

Passed the Senate the ____ day of _____, 2002.

Presiding Officer of the Senate