

STATE OF OKLAHOMA

2nd Session of the 49th Legislature (2004)

COMMITTEE SUBSTITUTE
FOR ENGROSSED
SENATE BILL NO. 1331

By: Wilkerson of the Senate

and

Nance of the House

COMMITTEE SUBSTITUTE

An Act relating to the Security of Communications Act; amending 13 O.S. 2001, Sections 176.2, 176.7 and 176.9, which relate to definitions and application for court order; modifying definition; adding certain offenses for which an order of interception may be obtained; updating gender references; providing for emergency oral authorization to intercept certain electronic communications and specifying time limitation of authorization; defining certain circumstances; setting out procedures for making emergency oral application and subsequent written application; prohibiting the use of certain information in any court or proceeding under certain circumstances; correcting statutory reference; and providing an effective date.

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

SECTION 1. AMENDATORY 13 O.S. 2001, Section 176.2, is amended to read as follows:

Section 176.2 As used in the Security of Communications Act:

1. "Aggrieved person" means a person who was a party to any intercepted wire, oral or electronic communication or a person against whom the interception was directed;

2. "Aural acquisition" means obtaining knowledge of a communication through the sense of hearing which is contemporaneous with the communication;

3. "Communication common carrier" means, for the purposes of the Security of Communications Act only, any telephone or telegraph company, rural telephone cooperative, communications transmission

company or other public communications company under the laws of this state;

4. "Communication facility" means any and all public and private instrumentalities used or useful in the transmission of writing, signs, signals, pictures, or sounds of all kinds and includes mail, telephone, wire, radio, and all other means of communication;

5. "Contents", when used with respect to any wire, oral or electronic communication, includes any information concerning the substance, purport or meaning of that communication;

6. "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, electromagnetic, photoelectronic or photooptical 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,
- ~~e.~~ b. any communication made through a tone-only paging device, or
- ~~d.~~ c. any communication from a tracking device;

7. "Electronic, mechanical or other device" means any device or apparatus which can be used to intercept a wire, oral or electronic communication other than:

- a. any telephone or telegraph instrument, equipment or facility or any component thereof furnished to the subscriber or user by a communication common carrier or other lawful supplier in the ordinary course of its business which is being used by the subscriber or user in the ordinary course of its business, or being used by a communication common carrier in the ordinary

course of business or being used by a law enforcement officer in the ordinary course of ~~his~~ duties,

- b. a hearing aid or similar device being used to correct subnormal hearing to not better than normal;

8. "Intercept" means the aural acquisition of the contents of any wire, oral or electronic communication through the use of any electronic, mechanical or other device;

9. "Judge of competent jurisdiction" means the Presiding Judge of the Court of Criminal Appeals;

10. "Law enforcement officer" means any person who is employed by the United States, this state or political subdivision thereof and is empowered by law to conduct investigations of, or to make arrests for, offenses enumerated in the Security of Communications Act or similar federal offenses and any attorney authorized by law to prosecute or participate in the prosecution of such offenses;

11. "Oral communication" means any communication uttered by a person exhibiting an expectation that such communication is not subject to interception under circumstance justifying such expectation;

12. "Person" means any individual, partnership, association, joint-stock company, trust, corporation or political subdivision including an employee or agent thereof; and

13. "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 2. AMENDATORY 13 O.S. 2001, Section 176.7, is amended to read as follows:

Section 176.7 The Attorney General, upon application by a district attorney, may make application to a judge of competent jurisdiction for, and such judge may grant in conformity with the Security of Communications Act, an order authorizing the interception of wire, oral or electronic communications by any law enforcement agency of this state or any political subdivision thereof having responsibility for the investigation of the offense as to which the application is made, when such interception may provide evidence of acts of biochemical terrorism, terrorism, terrorism hoax, and biochemical assault as defined in Section 1268.1 of Title 21 of the Oklahoma Statutes, the commission of the offense of murder, the cultivation or manufacture or distribution of narcotic drugs or other controlled dangerous substances as defined in the Uniform Controlled Dangerous Substances Act, or trafficking in illegal drugs, as defined in the Trafficking in Illegal Drugs Act, and any conspiracy to commit the crimes specifically enumerated in this section.

SECTION 3. AMENDATORY 13 O.S. 2001, Section 176.9, is amended to read as follows:

Section 176.9 A. Each application for an order authorizing or approving the interception of a wire, oral or electronic communication shall be made in writing upon oath or affirmation to a judge of competent jurisdiction and shall state the authority of the Attorney General to make such application. Each application shall include the following information:

1. The identity of the law enforcement officer initiating the application and the district attorney authorizing the application to the Attorney General;

2. A full and complete statement of the facts and circumstances relied upon by the Attorney General 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 wire, oral or electronic communications are to be intercepted,
- c. a particular description of the type of communications sought to be intercepted, and
- d. the identity of the person, if known, committing the offense and whose wire, oral or electronic communications are to be intercepted;

3. A full and complete statement as to whether or not other investigative procedures have been tried and failed or why they reasonably appear to be either unlikely to succeed if tried or are too dangerous;

4. A statement of the period of time for which the interception is required to be maintained, and, if the nature of the investigation is such that the authorization for interception should not automatically be terminated 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. A full and complete statement of the facts concerning:

- a. all previous applications made for authorization to intercept wire, oral or electronic communications involving any of the same persons, facilities or places specified in the application, and
- b. the action taken on each such application; and

6. When the application is for the extension of an order, a statement setting forth the results thus far obtained from the interception or a reasonable explanation of the failure to obtain such results.

B. The judge of competent jurisdiction may require the applicant to furnish additional testimony or documentary evidence in support of the application.

C. Upon the submission of the application, an ex parte order may be entered, as requested or as modified, authorizing interception of wire, oral or electronic communications within the territorial jurisdiction of the judicial district of the district attorney requesting the order if the judge of competent jurisdiction determines on the basis of the facts submitted by the applicant that:

1. There is probable cause for belief that an individual is committing, has committed or is about to commit a particular offense enumerated in Section 176.7 of this title;

2. There is probable cause to believe that particular communications concerning the offense will be obtained through such interception;

3. Normal investigative procedures have been tried and have failed or reasonably appear to be either unlikely to succeed if tried or are too dangerous; or

4. There is probable cause to believe that the facilities from which, or the place where the wire, oral or electronic communications are to be intercepted, are being used by an individual or are about to be used in connection with the commission of such offense or are leased to, listed in the name of or commonly used by such person.

D. Each order authorizing the interception of any wire, oral or electronic communication shall specify:

1. The identity of the person, if known, whose communications are to be intercepted;

2. The nature and location of the communications facilities as to which, or the place where, authority to intercept is granted;

3. A particular description of the type of communication sought to be intercepted and a statement of the particular offense to which it relates;

4. The identity of the agency authorized to intercept the communications and of the person authorizing the application;

5. The period of time during which such interception is authorized, including a statement as to whether or not the interception shall automatically terminate when the described communication has been first obtained; and

6. An order authorizing the interception of a wire, oral or electronic communication shall, upon request of the applicant, direct that a communication common carrier, landlord, custodian or other person shall furnish the applicant as soon as possible all information, facilities and technical assistance necessary to accomplish the interception with a minimum of interference with the services that such carrier, landlord, custodian or person is furnishing to the person whose communications are sought to be intercepted. Any communication common carrier, landlord, custodian or other person furnishing such facilities or technical assistance pursuant to the Security of Communications Act shall be compensated therefor by the applicant at the prevailing rates and shall be immune from any civil or criminal action or liability for compliance to an order under this or any other state or local law, rule, regulation or ordinance by reason of furnishing any such information, facilities or technical assistance.

E. No order entered pursuant to this section may authorize the interception of any wire, oral or electronic communication for any period longer than is necessary to achieve the objective of the authorization, or in any event, longer than thirty (30) days. Extensions of an order may be granted, but only upon application for an extension made in accordance with subsection A of this section and upon the meeting of the requirements of subsection C of this

section. The period of extension shall be no longer than the judge of competent jurisdiction deems necessary to achieve the purposes for which the extension was granted, and in no event for longer than thirty (30) days. Every order and extension thereof shall contain a provision that the authorization to intercept shall be executed as soon as practicable, shall be conducted in such a way as to minimize the interception of communications not otherwise subject to interception under the Security of Communications Act and must terminate upon attainment of the authorized objective or within the time authorized as provided by this section.

F. Whenever an order authorizing interception is entered pursuant to the Security of Communications Act, the order may require reports to be made to the Attorney General and the judge of competent jurisdiction who issued the order showing what progress has been made toward achievement of the authorized objective and the need for continued interception. The reports shall be made at such intervals as the judge of competent jurisdiction may require.

G. Any other provision of this act notwithstanding, a judge of competent jurisdiction or a judge of the district court may grant emergency oral authorization to a law enforcement officer to intercept wire, oral or electronic communications for a period not to exceed twenty-four (24) hours under the following circumstances:

1. When any emergency situation exists which poses the risk of death or bodily injury to any person, and there are reasonable grounds to believe that such interception would avert such death or bodily injury; or

2. When a law enforcement officer is investigating any offense of murder or conspiracy to commit murder, and there are reasonable grounds to believe that such interception may prevent the destruction of key evidence or the flight or escape of a suspect or material witness.

Application of such emergency authorization shall be made orally by the Attorney General, a district attorney in whose territorial jurisdiction the interception is to occur, or any such Assistant Attorney General or assistant district attorney as they may designate in writing. The oral application shall be made to a judge of competent jurisdiction or a judge of the district court, and either the prosecuting attorney making application or a law enforcement officer shall orally provide the relevant probable cause and emergency circumstances to the judge of competent jurisdiction or a judge of the district court, all of which shall be electronically recorded. Any such emergency interception shall terminate upon attainment of the authorized objective or at the end of twenty-four (24) hours, whichever comes first. If the assistance of a communication common carrier is needed to implement the interception, the person obtaining the emergency authorization shall certify in writing to the communication common carrier that emergency oral authorization has been obtained and no warrant or order is required. The communication common carrier shall provide the same facilities, information, and assistance as required under subsection D of this section, and shall enjoy the same immunity from civil and criminal penalties as is provided for therein.

Following such oral authorization, the district attorney or assistant district attorney shall apply through the Attorney General for an order pursuant to Section 176.7 of this title. The application shall be made as soon as is practicable, and in no event later than forty-eight (48) hours after termination of the interception pursuant to the oral authorization. The written application shall include an intelligible copy of the electronic recording of the conversation in which the oral authorization was granted. If the district attorney or the assistant district attorney fails to make such written application within forty-eight (48) hours after termination of the interception, or if written

authorization to intercept communications is denied, no information
obtained pursuant to the emergency interception shall be admitted in
any court or other proceeding.

SECTION 4. This act shall become effective November 1, 2004.

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