

3 Senate Bill No. 2039

4 SENATE BILL NO. 2039 - By: LAMB of the Senate and SULLIVAN of the
5 House.

6 An Act relating to common carriers and criminal procedure;
7 amending 13 O.S. 2001, Section 177.1, as amended by Section
8 2, Chapter 224, O.S.L. 2002 (13 O.S. Supp. 2005, Section
9 177.1), which relates to definitions; adding definition;
10 authorizing installation of certain devices and disclosure
11 of certain information under specified circumstances;
12 establishing guidelines for certain installation and
13 disclosure; authorizing certain search warrants; requiring
14 certain service; amending 22 O.S. 2001, Sections 1221 and
15 1222, relating to search warrants; modifying definition;
16 adding grounds for issuance of search warrant; providing for
17 codification; and providing an effective date.

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

19 SECTION 1. AMENDATORY 13 O.S. 2001, Section 177.1, as
20 amended by Section 2, Chapter 224, O.S.L. 2002 (13 O.S. Supp. 2005,
21 Section 177.1), is amended to read as follows:

22 Section 177.1 As used in Sections 177.1 through 177.5 of this
23 title and Section 3 of this act:

24 1. "Court of competent jurisdiction" means a court of general
25 criminal jurisdiction of this state, including the judges of the
26 district court, associate district judges and special district
27 judges, or any justice of the Supreme Court or judge of the Court of
28 Criminal Appeals or Court of Civil Appeals;

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

5 a. the radio portion of a cordless telephone
6 communication that is transmitted between the cordless
7 telephone headset and the base unit,

8 b. any wire or oral communication,

9 c. any communication made through a tone-only paging
10 device, or

11 d. any communication from a tracking device;

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

22 4. "Tracking device" means an electronic or mechanical device
23 which permits the tracking of the movement of a person or object;

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

7 ~~5.~~ 6. "Wire communication" means any communication made in
8 whole or in part through the use of facilities for the transmission
9 of communications by the aid of wire, cable or other like connection
10 between the point of origin and the point of reception furnished or
11 operated by any person engaged as a communication common carrier in
12 providing or operating such facilities for the transmission of
13 intrastate, interstate or foreign communications.

14 SECTION 2. NEW LAW A new section of law to be codified
15 in the Oklahoma Statutes as Section 177.6 of Title 13, unless there
16 is created a duplication in numbering, reads as follows:

17 A. Notwithstanding any other provision of law, when there are
18 reasonable grounds to believe an emergency situation exists which
19 involves immediate danger of death or serious bodily injury to any
20 person, or conspiratorial activities characteristic of organized
21 crime, a provider of wire or electronic communication service,
22 without being provided a court order, may:

- 1 1. Install a pen register or trap and trace device, or provide
2 data or information from such a device;
- 3 2. Disclose the physical location of any cellular tower with
4 which a particular telephone device is communicating or has recently
5 communicated or the GPS determined location of the device; and
- 6 3. Disclose any other information authorized by 18 U.S.C.
7 §2703(C) to be disclosed to a governmental entity.

8 The above authorization shall apply only when there are grounds
9 upon which an order could be entered under this act to authorize
10 such installation and use of a pen register or trap and trace device
11 or disclosure of information, and only if, within forty-eight (48)
12 hours after the installation or disclosure has occurred, a court
13 order is issued in accordance with Section 177.4 of Title 13 of the
14 Oklahoma Statutes.

15 B. When a pen register or trap and trace device is installed or
16 information disclosed to a governmental entity without a court order
17 as provided for in subsection A of this section, the use of such
18 device or disclosure of such information shall immediately terminate
19 when all of the information sought is obtained, when the application
20 for the order is denied or when forty-eight (48) hours have lapsed
21 since the installation of the pen register device or disclosure of
22 the information, whichever is earlier.

1 C. The knowing of installation or use by any investigative or
2 law enforcement officer of a pen register or trap and trace device
3 pursuant to subsection A of this section without application for the
4 authorizing order within forty-eight (48) hours of the installation
5 shall constitute a violation of Section 177.2 of Title 13 of the
6 Oklahoma Statutes.

7 D. When any person listed in Section 177.3 of Title 13 of the
8 Oklahoma Statutes certifies in writing that an emergency situation
9 as described in subsection A of this section exists, all provisions
10 of Section 177.5 of Title 13 of the Oklahoma Statutes, including
11 compensation and immunity from liability, apply as if a court order
12 had been obtained prior to the installation of the device or
13 disclosure of the information.

14 SECTION 3. NEW LAW A new section of law to be codified
15 in the Oklahoma Statutes as Section 177.7 of Title 13, unless there
16 is created a duplication in numbering, reads as follows:

17 A. Any magistrate may issue a search warrant authorizing the
18 installation or use of a tracking device in any moveable container,
19 vehicle or other vessel. Such warrant may authorize the use of that
20 tracking device within the jurisdiction of the magistrate, and
21 outside that jurisdiction if the device is installed within the
22 magistrate's jurisdiction. No such warrant shall issue unless
23 probable cause is shown for believing that such installation or use

1 will lead to the discovery of evidence, fruits, or instrumentalities
2 of the commission of an offense. Any application or affidavit
3 seeking such a search warrant shall inform the magistrate of the
4 name or names of the persons, if known, likely to have a reasonable
5 expectation of privacy in the area where the device is to be
6 installed. No warrant for such installation or use shall be
7 required if not required under the Constitution of the United States
8 of America.

9 B. Search warrants issued under this section may authorize
10 intrusions into the container, vehicle or vessel for the purpose of
11 installing the device or for maintenance or retrieval of the device.
12 No search warrant issued under this section shall permit the
13 monitoring of a tracking device for longer than sixty (60) days
14 unless an extension warrant is issued by the magistrate upon a
15 renewed showing of probable cause as required in subsection A of
16 this section.

17 C. Within ninety (90) days after the expiration of any period
18 of authorized monitoring of a tracking device, including any
19 extensions thereof, the law enforcement officer who obtained the
20 search warrant shall serve a copy of the search warrant which was
21 obtained pursuant to this section upon the person or persons likely
22 to have a reasonable expectation of privacy in the area where the
23 device was installed. This ninety (90) day period may be extended

1 by the court for good cause shown. The search warrant and
2 supporting affidavit shall also be filed with the clerk of the
3 district court as is required of all other search warrants.

4 SECTION 4. AMENDATORY 22 O.S. 2001, Section 1221, is
5 amended to read as follows:

6 Section 1221. A search warrant is an order in writing, in the
7 name of the state, signed by a magistrate, directed to a peace
8 officer, commanding him to search for ~~personal~~ information or
9 property and bring it before the magistrate.

10 SECTION 5. AMENDATORY 22 O.S. 2001, Section 1222, is
11 amended to read as follows:

12 Section 1222. A search warrant may be issued and property
13 seized upon any of the following grounds:

14 First: When the property was stolen or embezzled, in which case
15 it may be taken on the warrant, from any house or other place in
16 which it is concealed, or from the possession of the person by whom
17 it was stolen or embezzled, or of any other person in whose
18 possession it may be.

19 Second: When it was used as the means of committing a felony,
20 in which case it may be taken on the warrant from any house or other
21 place in which it is concealed, or from the possession of the person
22 by whom it was used in the commission of the offense, or of any
23 other person in whose possession it may be.

1 Third: When it is in the possession of any person, with the
2 intent to use it as the means of committing a public offense, or in
3 the possession of another to whom he may have delivered it for the
4 purpose of concealing it or preventing its being discovered, in
5 which case it may be taken on the warrant from such person, or from
6 a house or other place occupied by him, or under his control, or
7 from the possession of the person to whom he may have so delivered
8 it.

9 Fourth: When the property constitutes evidence that an offense
10 was committed or that a particular person participated in the
11 commission of an offense.

12 Fifth: For the installation or use of a tracking device as
13 provided in Section 3 of this act.

14 SECTION 6. This act shall become effective November 1, 2006.

15 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY, dated 2-21-06 - DO
16 PASS, As Coauthored.