

STATE OF OKLAHOMA

2nd Session of the 50th Legislature (2006)

SENATE BILL 2039

By: Lamb

AS INTRODUCED

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

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

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

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

1. "Court of competent jurisdiction" means a court of general criminal jurisdiction of this state, including 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. "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;

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

5. "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

~~5.~~ 6. "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. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 177.6 of Title 13, unless there is created a duplication in numbering, reads as follows:

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

1. Install a pen register or trap and trace device, or provide data or information from such a device;

2. Disclose the physical location of any cellular tower with which a particular telephone device is communicating or has recently communicated or the GPS determined location of the device; and

3. Disclose any other information authorized by 18 U.S.C. §2703(C) to be disclosed to a governmental entity.

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

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

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

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

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

A. Any magistrate may issue a search warrant authorizing the installation or use of a tracking device in any moveable container, vehicle or other vessel. Such warrant may authorize the use of that tracking device within the jurisdiction of the magistrate, and outside that jurisdiction if the device is installed within the magistrate's jurisdiction. No such warrant shall issue unless probable cause is shown for believing that such installation or use will lead to the discovery of evidence, fruits, or instrumentalities of the commission of an offense. Any application or affidavit seeking such a search warrant shall inform the magistrate of the name or names of the persons, if known, likely to have a reasonable expectation of privacy in the area where the device is to be installed. No warrant for such installation or use shall be required if not required under the Constitution of the United States of America.

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

C. Within ninety (90) days after the expiration of any period of authorized monitoring of a tracking device, including any extensions thereof, the law enforcement officer who obtained the search warrant shall serve a copy of the search warrant which was obtained pursuant to this section upon the person or persons likely to have a reasonable expectation of privacy in the area where the device was installed. This ninety (90) day period may be extended by the court for good cause shown. The search warrant and supporting affidavit shall also be filed with the clerk of the district court as is required of all other search warrants.

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

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

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

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

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

it was stolen or embezzled, or of any other person in whose possession it may be.

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

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

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

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

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

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