

1 STATE OF OKLAHOMA

2 2nd Session of the 53rd Legislature (2012)

3 SENATE BILL 1757

By: Sykes

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5  
6 AS INTRODUCED

7 An Act relating to communications; amending 13 O.S.  
8 2011, Section 176.9, which relates to application for  
9 court orders for certain wire, oral or electronic  
10 communications; providing certain interceptions of  
11 certain communications shall be considered within  
12 certain jurisdiction of the court under certain  
13 circumstances; and providing an effective date.

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

15 SECTION 1. AMENDATORY 13 O.S. 2011, Section 176.9, is  
16 amended to read as follows:

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

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

1           2. A full and complete statement of the facts and circumstances  
2 relied upon by the Attorney General to justify that an order should  
3 be issued, including:

4           a. details as to the particular offense that has been, is  
5 being or is about to be committed,

6           b. a particular description of the nature and location of  
7 the facilities from which, or the place where the  
8 wire, oral or electronic communications are to be  
9 intercepted,

10          c. a particular description of the type of communications  
11 sought to be intercepted, and

12          d. the identity of the person, if known, committing the  
13 offense and whose wire, oral or electronic  
14 communications are to be intercepted;

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

19          4. A statement of the period of time for which the interception  
20 is required to be maintained, and, if the nature of the  
21 investigation is such that the authorization for interception should  
22 not automatically be terminated when the described type of  
23 communication has been first obtained, a particular description of  
24

1 facts establishing probable cause to believe that additional  
2 communications of the same type will occur thereafter;

3 5. A full and complete statement of the facts concerning:

4 a. all previous applications made for authorization to  
5 intercept wire, oral or electronic communications  
6 involving any of the same persons, facilities or  
7 places specified in the application, and

8 b. the action taken on each such application; and

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

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

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

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

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

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

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

16 D. The interception of any wire, oral or electronic  
17 communication shall be considered to be within the jurisdiction of  
18 the court if:

19 1. The law enforcement equipment to be used to collect the  
20 wire, oral or electronic communication is or will be physically  
21 installed within the geographical area over which the court has  
22 jurisdiction;

1       2. There are reasonable grounds to believe the wire, oral or  
2 electronic device is or will be used within the geographical area  
3 over which the court has jurisdiction; or

4       3. The billing address for the service for the wire, oral or  
5 electronic communication device is located within the geographical  
6 area over which the court has jurisdiction.

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

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

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

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

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

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

22       6. An order authorizing the interception of a wire, oral or  
23 electronic communication shall, upon request of the applicant,  
24 direct that a communication common carrier, landlord, custodian or

1 other person shall furnish the applicant as soon as possible all  
2 information, facilities and technical assistance necessary to  
3 accomplish the interception with a minimum of interference with the  
4 services that such carrier, landlord, custodian or person is  
5 furnishing to the person whose communications are sought to be  
6 intercepted. Any communication common carrier, landlord, custodian  
7 or other person furnishing such facilities or technical assistance  
8 pursuant to the Security of Communications Act shall be compensated  
9 therefor by the applicant at the prevailing rates and shall be  
10 immune from any civil or criminal action or liability for compliance  
11 to an order under this or any other state or local law, rule,  
12 regulation or ordinance by reason of furnishing any such  
13 information, facilities or technical assistance.

14 E. F. No order entered pursuant to this section may authorize  
15 the interception of any wire, oral or electronic communication for  
16 any period longer than is necessary to achieve the objective of the  
17 authorization, or in any event, longer than thirty (30) days.  
18 Extensions of an order may be granted, but only upon application for  
19 an extension made in accordance with subsection A of this section  
20 and upon the meeting of the requirements of subsection C of this  
21 section. The period of extension shall be no longer than the judge  
22 of competent jurisdiction deems necessary to achieve the purposes  
23 for which the extension was granted, and in no event for longer than  
24 thirty (30) days. Every order and extension thereof shall contain a

1 provision that the authorization to intercept shall be executed as  
2 soon as practicable, shall be conducted in such a way as to minimize  
3 the interception of communications not otherwise subject to  
4 interception under the Security of Communications Act and must  
5 terminate upon attainment of the authorized objective or within the  
6 time authorized as provided by this section.

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

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

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

23 2. When a law enforcement officer is investigating any offense  
24 of murder or conspiracy to commit murder, and there are reasonable

1 grounds to believe that such interception may prevent the  
2 destruction of key evidence or the flight or escape of a suspect or  
3 material witness.

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

1       Following such oral authorization, the district attorney or  
2 assistant district attorney shall apply through the Attorney General  
3 for an order pursuant to Section 176.7 of this title. The  
4 application shall be made as soon as is practicable, and in no event  
5 later than forty-eight (48) hours after termination of the  
6 interception pursuant to the oral authorization. The written  
7 application shall include an intelligible copy of the electronic  
8 recording of the conversation in which the oral authorization was  
9 granted. If the district attorney or the assistant district  
10 attorney fails to make such written application within forty-eight  
11 (48) hours after termination of the interception, or if written  
12 authorization to intercept communications is denied, no information  
13 obtained pursuant to the emergency interception shall be admitted in  
14 any court or other proceeding.

15       SECTION 2. This act shall become effective November 1, 2012.

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