

1                   **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2                               STATE OF OKLAHOMA

3                               2nd Session of the 56th Legislature (2018)

4 COMMITTEE SUBSTITUTE  
5 FOR  
6 HOUSE BILL NO. 3072

By: Worthen

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8                               COMMITTEE SUBSTITUTE

9           An Act relating to common carriers; amending 13 O.S.  
10           2011, Sections 176.2, 176.8 and 176.10, which relate  
11           to the Security of Communications Act; modifying  
12           definition; allowing for the disclosure of certain  
13           types of information under certain conditions;  
14           requiring certain information be filed with certain  
15           official; amending 13 O.S. 2011, Sections 177.1,  
16           177.2 and 177.6, which relate to pen registers or  
17           trap and trace devices; modifying definitions;  
18           clarifying references; providing exception to certain  
19           prohibition; providing for the authorization of  
20           certain monitoring; and providing an effective date.

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

22           SECTION 1.           AMENDATORY           13 O.S. 2011, Section 176.2, is  
23           amended to read as follows:

24           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;

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

4       3. "Aural transfer" means a transfer containing the human voice  
5 at any point between and including the point of origin and the point  
6 of reception;

7       4. "Communication common carrier" means, for the purposes of  
8 the Security of Communications Act only, any telephone or telegraph  
9 company, rural telephone cooperative, communications transmission  
10 company or other public communications company under the laws of  
11 this state;

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

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

20       7. "Electronic communication" means any transfer of signs,  
21 signals, writing, images, sounds, data, or intelligence of any  
22 nature transmitted in whole or in part by a wire, radio,  
23 electromagnetic, photoelectronic or photooptical system, but does  
24 not include:

- a. any wire or oral communication,
- b. any communication made through a tone-only paging device, or
- c. any communication from a tracking device;

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

9. "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;

10. "Judge of competent jurisdiction" means the presiding judge for a multi-county grand jury, or the Presiding or Vice-Presiding Judge of the Court of Criminal Appeals;

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

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

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

14       14. "Wire communication" means any aural transfer made in whole  
15 or in part through the use of facilities for the transmission of  
16 communications by the aid of wire, cable or other like connection  
17 between the point of origin and the point of reception, including  
18 the use of such connection in a switching station, furnished or  
19 operated by any person engaged in providing or operating such  
20 facilities for the transmission of intrastate, interstate or foreign  
21 communications or communications affecting intrastate, interstate or  
22 foreign commerce.

23       SECTION 2.        AMENDATORY        13 O.S. 2011, Section 176.8, is  
24 amended to read as follows:

1       Section 176.8   A.   Any law enforcement officer who, by any means  
2   authorized by the Security of Communications Act, has obtained  
3   knowledge of the contents of any wire, oral or electronic  
4   communication or evidence derived therefrom may disclose such  
5   contents to another law enforcement officer and to a municipal,  
6   county or state law enforcement officer of another state to the  
7   extent that such disclosure is appropriate to the proper performance  
8   of the official duties of the officer making or receiving the  
9   disclosure.

10       B.   Any law enforcement officer who, by any authorized means,  
11   has obtained knowledge of the contents of any wire, oral or  
12   electronic communication or evidence derived therefrom may use such  
13   contents to the extent such use is appropriate to the proper  
14   performance of his official duties.

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

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

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

19 SECTION 3. AMENDATORY 13 O.S. 2011, Section 176.10, is  
20 amended to read as follows:

21 Section 176.10 A. The contents of any wire, oral or electronic  
22 communication intercepted by any means authorized by the Security of  
23 Communications Act shall, if possible, be recorded on tape or wire  
24 or other comparable device. The recording of the contents shall be

1 securely kept in order to guarantee protection of the recording from  
2 editing or other alterations. Immediately upon the expiration of  
3 the period of the order and any extensions, the recordings shall be  
4 made available to the judge of competent jurisdiction issuing such  
5 order and shall be sealed under his directions. Custody of the  
6 recordings shall be determined by the judge of competent  
7 jurisdiction. Such recordings shall not be destroyed except upon an  
8 order of the issuing judge of competent jurisdiction and shall be  
9 kept for at least ten (10) years. Duplicate recordings may be made  
10 for use or disclosure in the conduct of investigations pursuant to  
11 the provisions of subsections A and B of Section 176.8 of this  
12 title.

13 B. The presence of the seal provided for by this section, or a  
14 satisfactory explanation for the absence thereof as determined by  
15 the court where presented, shall be a prerequisite for the use or  
16 disclosure of the contents of any wire, oral or electronic  
17 communication or evidence derived therefrom under subsection C of  
18 Section 176.8 of this title.

19 C. Applications made and orders granted under the Security of  
20 Communications Act shall be sealed by the judge of competent  
21 jurisdiction. Custody of the applications and orders shall be  
22 determined by the judge of competent jurisdiction. Such  
23 applications and orders shall be disclosed only upon a showing of  
24 good cause before a judge of competent jurisdiction and shall not be

1 destroyed except on order of the issuing or denying judge of  
2 competent jurisdiction and shall be kept for at least ten (10)  
3 years.

4 D. In addition to that which is otherwise provided in this  
5 section, recordings, applications, orders and pleadings granted or  
6 reviewed by the judge in conformance with this act shall be filed  
7 with the Clerk of the Appellate Courts.

8 E. Within a reasonable time but not later than ninety (90) days  
9 after the termination of the period of an order or extension  
10 thereof, the issuing judge of competent jurisdiction shall cause to  
11 be served, on the persons named in the order or the application, and  
12 such other parties to intercepted communications as the judge of  
13 competent jurisdiction may determine in his discretion are in the  
14 interest of justice, an inventory which shall include notice of:

15 1. The entry of the order or application;

16 2. The date of such entry and the period of authorized,  
17 approved interception, or the date of denial of the application; and

18 3. Whether or not during such period, wire, oral or electronic  
19 communications were or were not intercepted.

20 ~~E.~~ F. The judge of competent jurisdiction, upon the filing of a  
21 motion, may make available to the person named in the order or  
22 application or his counsel for inspection such portions of the  
23 intercepted communications, applications and orders as the judge of  
24 competent jurisdiction determines to be in the interest of justice.

1 On an ex parte showing of good cause to a judge of competent  
2 jurisdiction, the serving of the inventory required by this  
3 subsection may be postponed.

4 ~~F.~~ G. Any violation of the provisions of this section is  
5 punishable as contempt of the issuing judge of competent  
6 jurisdiction.

7 SECTION 4. AMENDATORY 13 O.S. 2011, Section 177.1, is  
8 amended to read as follows:

9 Section 177.1 As used in Sections 177.1 through ~~177.5 of this~~  
10 ~~title and Section 3~~ 177.6 of this ~~act~~ title:

11 1. "Court of competent jurisdiction" means a court of general  
12 criminal jurisdiction of this state, including the judges of the  
13 district court, associate district judges and special district  
14 judges, or any justice of the Supreme Court or judge of the Court of  
15 Criminal Appeals or Court of Civil Appeals;

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

- 20 a. any wire or oral communication,  
21 b. any communication made through a tone-only paging  
22 device, or  
23 c. any communication from a tracking device;

24

1        3. "Pen register" means a device or process which records or  
2 decodes ~~electronic or other impulses which identify the numbers~~  
3 ~~dialed or otherwise transmitted on the telephone line to which such~~  
4 ~~device is attached~~ dialing, routing, addressing or signaling  
5 information transmitted by an instrument or facility from which a  
6 wire or electronic communication is transmitted; provided however,  
7 that such information shall not include the contents of any  
8 communication, but and such term does not include any device or  
9 process used by a provider or customer of a wire or electronic  
10 communication service for billing, or recording as an incident to  
11 billing, for communications services provided by such provider or  
12 any device or process used by a provider or customer of a wire  
13 communication service for cost accounting or other like purposes in  
14 the ordinary course of its business;

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

17        5. "Trap and trace device" means a device or process which  
18 captures the incoming electronic or other impulses which identify  
19 the originating number ~~of an instrument or device from which a wire~~  
20 ~~or electronic communication was transmitted, but does not include~~  
21 ~~devices used by subscribers to identify the originating numbers of~~  
22 ~~calls received by such subscribers~~ or other dialing, routing,  
23 addressing and signaling information reasonably likely to identify  
24 the source of a wire or electronic communication; provided however,

1 that such information shall not include the contents of any  
2 communication; and

3       6. "Wire communication" means any aural transfer made in whole  
4 or in part through the use of facilities for the transmission of  
5 communications by the aid of wire, cable or other like connection  
6 between the point of origin and the point of reception, including  
7 the use of such connection in a switching station furnished or  
8 operated by any person engaged in providing or operating such  
9 facilities for the transmission of intrastate, interstate or foreign  
10 communications or communications affecting intrastate, interstate or  
11 foreign commerce.

12       SECTION 5.       AMENDATORY       13 O.S. 2011, Section 177.2, is  
13 amended to read as follows:

14       Section 177.2 A. Except as otherwise provided in this section,  
15 no person shall install or use a pen register or a trap and trace  
16 device without first obtaining a court order as provided by Section  
17 ~~4~~ 177.4 of this ~~act~~ title.

18       B. The prohibition of subsection A of this section shall not  
19 apply with respect to the use of a pen register or a trap and trace  
20 device by a provider of electronic or wire communication service:

21       1. Relating to the operation, maintenance and testing of a wire  
22 or electronic communication service or to the protection of the  
23 rights or property of such provider, or to the protection of users  
24 of that service from abuse of service or unlawful use of service;

1        2. To record the fact that a wire or electronic communication  
2 was initiated or completed in order to protect such provider,  
3 another provider furnishing service toward the completion of the  
4 wire or electronic communication or a user of that service, from  
5 fraudulent, unlawful or abusive use of service; ~~or~~

6        3. Where the consent of the user of that service has been  
7 obtained; or

8        4. Upon the request of a law enforcement officer, where an  
9 emergency exists that involves an immediate danger of death or  
10 serious bodily injury to any person that requires the installation  
11 and use of a pen register or a trap and trace device before an order  
12 authorizing such installation and use can, with due diligence, be  
13 obtained. In order to qualify for the exception provided in this  
14 paragraph, there must be grounds upon which an order may be entered  
15 pursuant to provisions contained in Sections 176.1 through 177.6 of  
16 this title to authorize the installation and use of a pen register  
17 or a trap and trace device.

18        C. Any person knowingly violating the provisions of subsection  
19 A of this section, upon conviction, shall be guilty of a misdemeanor  
20 and shall be punishable by a fine not exceeding One Thousand Dollars  
21 (\$1,000.00) or by imprisonment of not more than one (1) year, or by  
22 both such fine and imprisonment.

23        SECTION 6.        AMENDATORY        13 O.S. 2011, Section 177.6, is  
24 amended to read as follows:

1       Section 177.6   A.   Any magistrate may issue a search warrant  
2 authorizing the installation or use of a tracking device in any  
3 moveable item, container, vehicle or other vessel.   Such warrant may  
4 authorize the use or monitoring of that tracking device within the  
5 jurisdiction of the magistrate, and outside that jurisdiction if the  
6 tracking device is installed within the magistrate's jurisdiction.  
7 If court-authorized monitoring is sought for a tracking device where  
8 a physical installation would be unnecessary, monitoring may be  
9 authorized for a tracking device under such circumstances by any  
10 magistrate outside of the magistrate's jurisdiction where there is  
11 probable-cause evidence that an offense has been committed, is being  
12 committed, or may be committed in the jurisdiction of the  
13 magistrate.

14       B.   No such warrant shall issue unless probable cause is shown  
15 for believing that such installation or use will lead to the  
16 discovery of evidence, fruits, or instrumentalities of the  
17 commission or attempted commission of an offense.   Any application  
18 or affidavit seeking such a search warrant shall inform the  
19 magistrate of the name or names of the persons, if known, likely to  
20 have a reasonable expectation of privacy in the area where the  
21 tracking device is to be installed or in the area being monitored.  
22 Nothing here shall be construed as requiring a warrant for such  
23 installation or use if a warrant is not required under the  
24 Constitution of the United States of America.

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

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

20       SECTION 7. This act shall become effective November 1, 2018.  
21

22 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY, dated 02/07/2018 - DO  
23 PASS, As Amended.  
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