

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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SENATE BILL 897
House Committee Substitute Favorable 6/18/97

Short Title: Amend Elec. Surveillance Law.

(Public)

Sponsors:

Referred to:

April 16, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO MAKE TECHNICAL AMENDMENTS TO THE ELECTRONIC
3 SURVEILLANCE LAW.

4 The General Assembly of North Carolina enacts:

5 Section 1. G.S. 15A-286(21) reads as rewritten:

6 "(21) 'Wire communication' means any aural transfer made in whole or in part
7 through the use of facilities for the transmission of communications by
8 the aid of wire, cable, or other like connection between the point of
9 origin and the point of reception (including the use of such connection
10 in a switching station) furnished or operated by any person engaged in
11 providing or operating such facilities for the transmission of interstate or
12 foreign communications or communications affecting interstate or
13 foreign commerce and the term includes any electronic storage of such
14 communication, but the term does not include the radio portion of a cordless
15 telephone communication that is transmitted between the cordless telephone
16 handset and the base unit communication."

17 Section 2. G.S. 15A-291 reads as rewritten:

18 "**§ 15A-291. Application for electronic surveillance order; judicial review panel.**

1 (a) The Attorney General or the Attorney General's designee may, pursuant to the
2 provisions of section 2516(2) of Chapter 119 of the United States Code, apply to a
3 judicial review panel for an order authorizing or approving the interception of wire, oral,
4 or electronic communications by investigative or law enforcement officers having
5 responsibility for the investigation of the offenses as to which the application is made,
6 and for such offenses and causes as are enumerated in G.S. 15A-290. A judicial review
7 panel shall be composed of such judges as may be assigned by the Chief Justice of the
8 Supreme Court of North ~~Carolina, Carolina~~ or an Associate Justice acting as the Chief
9 Justice's designee, which shall review applications for electronic surveillance orders and
10 may issue orders valid throughout the State authorizing such surveillance as provided by
11 this Article, and which shall submit a report of its decision to the Chief Justice. A judicial
12 review panel may be appointed by the Chief Justice or an Associate Justice acting as the
13 Chief Justice's designee pursuant to the Attorney General's written notification upon the
14 notification of the Attorney General's Office of his ~~the~~ intent to apply for an electronic
15 surveillance order.

16 (b) A judicial review panel is hereby authorized to grant orders valid throughout
17 the State for the interception of wire, oral, or electronic communications. Applications for
18 such orders may be made by the Attorney General or the Attorney General's designee.
19 ~~and by no other person.~~ The Attorney General, General or the Attorney General's designee
20 in applying for such orders, and a judicial review panel in granting such orders, shall
21 comply with all procedural requirements of section 2518 of Chapter 119 of the United
22 States Code. The Attorney General or the Attorney General's designee may make
23 emergency applications as provided by section 2518 of Chapter 119 of the United States
24 Code. In applying section 2518 the word "judge" in that section shall be construed to
25 refer to the judicial review panel, unless the context otherwise indicates. The judicial
26 review panel may stipulate any special conditions it feels necessary to assure compliance
27 with the terms of this act.

28 (c) No judge who sits as a member of a judicial review panel shall preside at any
29 trial or proceeding resulting from or in any manner related to information gained pursuant
30 to a lawful electronic surveillance order issued by that panel.

31 (d) Each application for an order authorizing or approving the interception of a
32 wire, oral, or electronic communication must be made in writing upon oath or affirmation
33 to the judicial review panel. Each application must include the following information:

- 34 (1) The identity of the office requesting the application;
- 35 (2) A full and complete statement of the facts and circumstances relied
36 upon by the applicant, to justify his belief that an order should be
37 issued, including:
 - 38 a. Details as to the particular offense that has been, or is being
39 committed;
 - 40 b. A particular description of the nature and location of the facilities
41 from which or the place where the communication is to be
42 intercepted;

- 1 c. A particular description of the type of communications sought to
2 be intercepted; and
- 3 d. The identity of the person, if known, committing the offense and
4 whose communications are to be intercepted;
- 5 (3) A full and complete statement as to whether or not other investigative
6 procedures have been tried and failed or why they reasonably appear to
7 be unlikely to succeed if tried or to be too dangerous;
- 8 (4) A statement of the period of time for which the interception is required
9 to be maintained. If the nature of the investigation is such that the
10 authorization for interception should not automatically terminate when
11 the described type of communication has been obtained, a particular
12 description of facts establishing probable cause to believe that additional
13 communications of the same type will occur thereafter must be added;
- 14 (5) A full and complete statement of the facts concerning all previous
15 applications known to the individual authorizing and making
16 adjudication, made to a judicial review panel for authorization to
17 intercept, or for approval of interceptions of wire, oral, or electronic
18 communications involving any of the same persons, facilities, or places
19 specified in the application, and the action taken by that judicial review
20 panel on each such application; and
- 21 (6) Where the application is for the extension of an order, a statement
22 setting forth the results thus far obtained from the interception, or a
23 reasonable explanation of the failure to obtain such results.
- 24 (e) Before acting on the application, the judicial review panel may examine on
25 oath the person requesting the application or any other person who may possess pertinent
26 information, but information other than that contained in the affidavit may not be
27 considered by the panel in determining whether probable cause exists for the issuance of
28 the order unless the information is either recorded or contemporaneously summarized in
29 the record or on the face of the order by the panel."

30 Section 2.1. G.S. 15A-293(a) reads as rewritten:

31 "(a) Upon application by the Attorney ~~General~~, General pursuant to the procedures
32 in G.S. 15A-291, a judicial review panel may enter an ex parte order, as requested or as
33 modified, authorizing the interception of wire, oral, or electronic communications, if the
34 panel determines on the basis of the facts submitted by the applicant that:

- 35 (1) There is probable cause for belief that an individual is committing, has
36 committed, or is about to commit an offense set out in G.S. 15A-290;
- 37 (2) There is probable cause for belief that particular communications
38 concerning that offense will be obtained through such interception;
- 39 (3) Normal investigative procedures have been tried and have failed or
40 reasonably appear to be unlikely to succeed if tried or to be too
41 dangerous; and
- 42 (4) There is probable cause for belief that the facilities from which, or the
43 place where, the wire, oral, or electronic communications are to be

1 intercepted are being used, or are about to be used, in connection with
2 the commission of such offense, or are leased to, listed in the name of,
3 or commonly used by the individual described in subdivision (1) of this
4 subsection."

5 Section 3. G.S. 15A-294 is amended by adding a new subsection to read:

6 "(d1) The notification required pursuant to G.S. 15A-294(d) may be delayed if the
7 judicial review panel has probable cause to believe that notification would substantially
8 jeopardize the success of an electronic surveillance or a criminal investigation. Delay of
9 notification shall be only by order of the judicial review panel. The period of delay shall
10 be designated by the judicial review panel and may be extended from time to time until
11 the jeopardy to the electronic surveillance or the criminal investigation dissipates."

12 Section 4. G.S. 15A-298 reads as rewritten:

13 **"§ 15A-298. Subpoena authority.**

14 Pursuant to rules issued by the Attorney General, the Director of the State Bureau of
15 Investigation or ~~his~~ the Director's designee may issue an administrative subpoena to a
16 communications common carrier or an electronic communications service to compel
17 production of business records if the records:

- 18 (1) Disclose information concerning local or long-distance telephone-toll
19 billing records or subscriber information; and
20 (2) Are material to an active criminal investigation being conducted by the
21 State Bureau of Investigation."

22 Section 5. This act is effective when it becomes law and applies to all
23 applications filed on or after that date.