

GENERAL ASSEMBLY OF NORTH CAROLINA
1997 SESSION

S.L. 1997-435
SENATE BILL 897

AN ACT TO MAKE TECHNICAL AMENDMENTS TO THE ELECTRONIC
SURVEILLANCE LAW.

The General Assembly of North Carolina enacts:

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

"(21) 'Wire communication' means any aural transfer 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 (including the use of such connection in a switching station) furnished or operated by any person engaged in providing or operating such facilities for the transmission of interstate or foreign communications or communications affecting interstate or foreign commerce and the term includes any electronic storage of such ~~communication, but the term does not include the radio portion of a cordless telephone communication that is transmitted between the cordless telephone handset and the base unit.~~ communication."

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

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

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

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

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

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

- (1) The identity of the office requesting the application;
- (2) A full and complete statement of the facts and circumstances relied upon by the applicant, to justify his belief that an order should be issued, including:
 - a. Details as to the particular offense that has been, or is being committed;
 - b. A particular description of the nature and location of the facilities from which or the place where the communication is to be intercepted;
 - c. A particular description of the type of communications sought to be intercepted; and
 - d. The identity of the person, if known, committing the offense and whose communications are to be intercepted;
- (3) A full and complete statement as to whether or not other investigative procedures have been tried and failed or why they reasonably appear to be unlikely to succeed if tried or to be too dangerous;
- (4) A statement of the period of time for which the interception is required to be maintained. If the nature of the investigation is such that the authorization for interception should not automatically terminate when the described type of communication has been obtained, a particular description of facts establishing probable cause to believe that additional communications of the same type will occur thereafter must be added;
- (5) A full and complete statement of the facts concerning all previous applications known to the individual authorizing and making

adjudication, made to a judicial review panel for authorization to intercept, or for approval of interceptions of wire, oral, or electronic communications involving any of the same persons, facilities, or places specified in the application, and the action taken by that judicial review panel on each such application; and

- (6) Where the application is for the extension of an order, a statement setting forth the results thus far obtained from the interception, or a reasonable explanation of the failure to obtain such results.

(e) Before acting on the application, the judicial review panel may examine on oath the person requesting the application or any other person who may possess pertinent information, but information other than that contained in the affidavit may not be considered by the panel in determining whether probable cause exists for the issuance of the order unless the information is either recorded or contemporaneously summarized in the record or on the face of the order by the panel."

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

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

- (1) There is probable cause for belief that an individual is committing, has committed, or is about to commit an offense set out in G.S. 15A-290;
- (2) There is probable cause for belief that particular communications concerning that offense will be obtained through such interception;
- (3) Normal investigative procedures have been tried and have failed or reasonably appear to be unlikely to succeed if tried or to be too dangerous; and
- (4) There is probable cause for belief that the facilities from which, or the place where, the wire, oral, or electronic communications are to be intercepted are being used, or are about to be used, in connection with the commission of such offense, or are leased to, listed in the name of, or commonly used by the individual described in subdivision (1) of this subsection."

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

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

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

"§ 15A-298. Subpoena authority.

Pursuant to rules issued by the Attorney General, the Director of the State Bureau of Investigation or ~~his~~ the Director's designee may issue an administrative subpoena to a

communications common carrier or an electronic communications service to compel production of business records if the records:

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

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

In the General Assembly read three times and ratified this the 19th day of August, 1997.

s/ Marc Basnight
President Pro Tempore of the Senate

s/ Harold J. Brubaker
Speaker of the House of Representatives

s/ James B. Hunt, Jr.
Governor

Approved 10:18 a.m. this 28th day of August, 1997