

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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SENATE BILL 896

Short Title: Electronic Surveillance Act.

(Public)

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Sponsors: Senators Rand, Perdue, and Gulley.

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Referred to: Judiciary II/Election Laws

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May 1, 1995

A BILL TO BE ENTITLED

1 AN ACT TO ENHANCE THE INVESTIGATIVE CAPABILITIES OF LAW  
2 ENFORCEMENT IN CASES OF DRUG TRAFFICKING AND OTHER SERIOUS  
3 CRIMES BY PERMITTING THE USE OF ELECTRONIC SURVEILLANCE IN  
4 LIMITED CIRCUMSTANCES.  
5

6 The General Assembly of North Carolina enacts:

7 Section 1. Article 16 of Chapter 15A of the General Statutes is amended by  
8 adding the heading "Electronic Surveillance" and by adding the following new sections to  
9 read:

10 **"§ 15A-286. Definitions.**

11 As used in this Article, unless the context requires otherwise:

- 12 (1) 'Aggrieved person' means a person who was a party to any intercepted  
13 wire, oral, or electronic communication or a person against whom the  
14 interception was directed.  
15 (2) 'Attorney General' means the Attorney General of the State of North  
16 Carolina, unless otherwise specified.  
17 (3) 'Aural transfer' means a transfer containing the human voice at any point  
18 between and including the point of origin and the point of reception.  
19 (4) 'Chapter 119 of the United States Code' means Chapter 119 of Part I of  
20 Title 18, United States Code, being Public Law 90-351, the Omnibus

- 1                    Crime Control and Safe Streets Act of 1968, as amended by the  
2                    Electronic Communications Privacy Act of 1986.
- 3            (5)        'Communications common carrier' shall have the same meaning which  
4                    is given the term 'common carrier' by Section 153(h) of Title 47 of the  
5                    United States Code.
- 6            (6)        'Contents' when used with respect to any wire, oral, or electronic  
7                    communication means and includes any information concerning the  
8                    substance, purport, or meaning of that communication.
- 9            (7)        'Electronic, mechanical, or other device' means any device or apparatus  
10                    which can be used to intercept a wire, oral, or electronic communication  
11                    other than:
- 12                    a.        Any telephone or telegraph instrument, equipment or facility, or  
13                    any component thereof:
- 14                                1.        Furnished to the subscriber or user by a provider of wire  
15                                or electronic communication service in the ordinary  
16                                course of its business and being used by the subscriber or  
17                                user in the ordinary course of its business or furnished by  
18                                the subscriber or user for connection to the facilities of  
19                                such service and used in the ordinary course of its  
20                                business; or
- 21                                2.        Being used by a provider of wire or electronic  
22                                communication service in the ordinary course of its  
23                                business or by an investigative or law enforcement officer  
24                                in the ordinary course of the officer's duties.
- 25                    b.        A hearing aid or similar device being used to correct subnormal  
26                    hearing to not better than normal.
- 27            (8)        'Electronic communication' means any transfer of signs, signals, writing,  
28                    images, sounds, data, or intelligence of any nature transmitted in whole  
29                    or in part by a wire, radio, electromagnetic, photoelectronic, or  
30                    photooptical system that affects interstate or foreign commerce but does  
31                    not include:
- 32                    a.        The radio portion of a cordless telephone communication that is  
33                    transmitted between the cordless telephone handset and the base  
34                    unit;
- 35                    b.        Any wire or oral communication;
- 36                    c.        Any communication made through a tone-only paging device; or
- 37                    d.        Any communication from a tracking device (as defined in  
38                    Section 3117 of Title 18 of the United States Code).
- 39            (9)        'Electronic communication service' means any service which provides to  
40                    users thereof the ability to send or receive wire or electronic  
41                    communications.
- 42            (10)       'Electronic communication system' means any wire, radio, electronic,  
43                    magnetic, photooptical, or photoelectronic facilities for the transmission

- 1 of electronic communications, and any computer facilities or related  
2 electronic equipment for the storage of such communications.
- 3 (11) 'Electronic surveillance' means the interception of wire, oral, or  
4 electronic communications as provided by this Article.
- 5 (12) 'Electronic storage' means:  
6 a. Any temporary, intermediate storage of a wire or electronic  
7 communication incidental to the electronic transmission thereof;  
8 and  
9 b. Any storage of such communication by an electronic  
10 communication service for the purposes of backup protection of  
11 the communication.
- 12 (13) 'Intercept' means the aural or other acquisition of the contents of any  
13 wire, oral, or electronic communication through the use of any  
14 electronic, mechanical, or other device.
- 15 (14) 'Investigative or law enforcement officer' means any officer of the State  
16 of North Carolina or any political subdivision thereof, who is  
17 empowered by the laws of this State to conduct investigations of or to  
18 make arrests for offenses enumerated in G.S. 15A-290, and any attorney  
19 authorized by the laws of this State to prosecute or participate in the  
20 prosecution of those offenses, including the Attorney General of North  
21 Carolina.
- 22 (15) 'Judge' means any judge of the trial divisions of the General Court of  
23 Justice.
- 24 (16) 'Judicial review panel' means a three-judge body, composed of such  
25 judges as may be assigned by the Chief Justice of the Supreme Court of  
26 North Carolina, which shall review applications for electronic  
27 surveillance orders and may issue orders valid throughout the State  
28 authorizing such surveillance as provided by this Article, and which  
29 shall submit a report of its decision to the Chief Justice.
- 30 (17) 'Oral communication' means any oral communication uttered by a  
31 person exhibiting an expectation that such communication is not subject  
32 to interception under circumstances justifying such expectation, but the  
33 term does not include any electronic communication.
- 34 (18) 'Person' means any employee or agent of the United States or any state  
35 or any political subdivision thereof, and any individual, partnership,  
36 association, joint stock company, trust, or corporation.
- 37 (19) 'Readily accessible to the general public' means, with respect to a radio  
38 communication, that the communication is not:  
39 a. Scrambled or encrypted;  
40 b. Transmitted using modulation techniques whose essential  
41 parameters have been withheld from the public with the intention  
42 of preserving the privacy of the communication;

- 1           c.     Carried on a subcarrier or other signal subsidiary to a radio  
2           transmission;  
3           d.     Transmitted over a communications system provided by a  
4           common carrier, unless the communication is a tone-only paging  
5           system communication; or  
6           e.     Transmitted on frequencies allocated under Part 25, Subpart D,  
7           E, or F or Part 94 of the Rules of the Federal Communications  
8           Commission as provided by 18 U.S.C. § 2510(16)(E).

9           (20) 'User' means any person or entity who:

- 10           a.     Uses an electronic communications service; and  
11           b.     Is duly authorized by the provider of the service to engage in the  
12           use.

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

24     **"§ 15A-287. Interception and disclosure of wire, oral, or electronic communications**  
25     **prohibited.**

26           (a) Except as otherwise specifically provided in this Article, a person is guilty of a  
27           Class H felony if, without the consent of at least one party to the communication, the  
28           person:

29           (1) Willfully intercepts, endeavors to intercept, or procures any other person  
30           to intercept or endeavor to intercept, any wire, oral, or electronic  
31           communication.

32           (2) Willfully uses, endeavors to use, or procures any other person to use or  
33           endeavor to use any electronic, mechanical, or other device to intercept  
34           any oral communication when:

35           a.     The device is affixed to, or otherwise transmits a signal through,  
36           a wire, cable, or other like connection used in wire  
37           communications; or

38           b.     The device transmits communications by radio, or interferes with  
39           the transmission of such communications.

40           (3) Willfully discloses, or endeavors to disclose, to any other person the  
41           contents of any wire, oral, or electronic communication, knowing or  
42           having reason to know that the information was obtained through  
43           violation of this Article; or

1           (4) Willfully uses, or endeavors to use, the contents of any wire or oral  
2 communication, knowing or having reason to know that the information  
3 was obtained through the interception of a wire or oral communication  
4 in violation of this Article.

5       (b) It is not unlawful under this Article for any person to:

6           (1) Intercept or access an electronic communication made through an  
7 electronic communication system that is configured so that the  
8 electronic communication is readily accessible to the general public;

9           (2) Intercept any radio communication which is transmitted:

10           a. For use by the general public, or that relates to ships, aircraft,  
11 vehicles, or persons in distress;

12           b. By any governmental, law enforcement, civil defense, private  
13 land mobile, or public safety communication system, including  
14 police and fire, readily available to the general public;

15           c. By a station operating on any authorized band within the bands  
16 allocated to the amateur, citizens band, or general mobile radio  
17 services; or

18           d. By any marine or aeronautical communication system; or

19           (3) Intercept any communication in a manner otherwise allowed by Chapter  
20 119 of the United States Code.

21       (c) It is not unlawful under this Article for an operator of a switchboard, or an  
22 officer, employee, or agent of a provider of electronic communication service, whose  
23 facilities are used in the transmission of a wire or electronic communication, to intercept,  
24 disclose, or use that communication in the normal course of employment while engaged  
25 in any activity that is a necessary incident to the rendition of his or her service or to the  
26 protection of the rights or property of the provider of that service, provided that a  
27 provider of wire or electronic communication service may not utilize service observing or  
28 random monitoring except for mechanical or service quality control checks.

29       (d) It is not unlawful under this Article for an officer, employee, or agent of the  
30 Federal Communications Commission, in the normal course of his employment and in  
31 discharge of the monitoring responsibilities exercised by the Commission in the  
32 enforcement of Chapter 5 of Title 47 of the United States Code, to intercept a wire or  
33 electronic communication, or oral communication transmitted by radio, or to disclose or  
34 use the information thereby obtained.

35       (e) Any person who, as a result of the person's official position or employment,  
36 has obtained knowledge of the contents of any wire, oral, or electronic communication  
37 lawfully intercepted pursuant to an electronic surveillance order or of the pendency or  
38 existence of or implementation of an electronic surveillance order who shall knowingly  
39 and willfully disclose such information for the purpose of hindering or thwarting any  
40 investigation or prosecution relating to the subject matter of the electronic surveillance  
41 order, except as is necessary for the proper and lawful performance of the duties of his  
42 position or employment or as shall be required or allowed by law, shall be guilty of a  
43 Class G felony.

1       (f) Any person who shall, knowingly or with gross negligence, divulge the  
2 existence of or contents of any electronic surveillance order in a way likely to hinder or  
3 thwart any investigation or prosecution relating to the subject matter of the electronic  
4 surveillance order or anyone who shall, knowingly or with gross negligence, release the  
5 contents of any wire, oral, or electronic communication intercepted under an electronic  
6 surveillance order, except as is necessary for the proper and lawful performance of the  
7 duties of his position or employment or as is required or allowed by law, shall be guilty  
8 of a Class 1 misdemeanor.

9       (g) Any public officer who shall violate subsection (a) or (d) of this section or who  
10 shall knowingly violate subsection (e) of this section shall be removed from any public  
11 office he may hold and shall thereafter be ineligible to hold any public office, whether  
12 elective or appointed.

13 **"§ 15A-288. Manufacture, distribution, possession, and advertising of wire, oral, or**  
14 **electronic communication intercepting devices prohibited.**

15       (a) Except as otherwise specifically provided in this Article, a person is guilty of a  
16 Class H felony if the person:

17       (1) Manufactures, assembles, possesses, purchases, or sells any electronic,  
18 mechanical, or other device, knowing or having reason to know that the  
19 design of the device renders it primarily useful for the purpose of the  
20 surreptitious interception of wire, oral, or electronic communications; or

21       (2) Places in any newspaper, magazine, handbill, or other publication, any  
22 advertisement of:

23       a. Any electronic, mechanical, or other device knowing or having  
24 reason to know that the design of the device renders it primarily  
25 useful for the purpose of the surreptitious interception of wire,  
26 oral, or electronic communications; or

27       b. Any other electronic, mechanical, or other device where the  
28 advertisement promotes the use of the device for the purpose of  
29 the surreptitious interception of wire, oral, or electronic  
30 communications.

31       (b) It is not unlawful under this section for the following persons to manufacture,  
32 assemble, possess, purchase, or sell any electronic, mechanical, or other device, knowing  
33 or having reason to know that the design of the device renders it primarily useful for the  
34 purpose of the surreptitious interception of wire, oral, or electronic communications:

35       (1) A communications common carrier or an officer, agent, or employee of,  
36 or a person under contract with, a communications common carrier,  
37 acting in the normal course of the communications common carrier's  
38 business, or

39       (2) An officer, agent, or employee of, or a person under contract with, the  
40 State, acting in the course of the activities of the State, and with the  
41 written authorization of the Attorney General.

42 **"§ 15A-289. Confiscation of wire, oral, or electronic communication interception**  
43 **devices.**

1 Any electronic, mechanical, or other device used, sent, carried, manufactured,  
2 assembled, possessed, sold, or advertised in violation of G.S. 15A-288 may be seized and  
3 forfeited to this State.

4 **"§ 15A-290. Offenses for which orders for electronic surveillance may be granted.**

5 (a) Orders authorizing or approving the interception of wire, oral, or electronic  
6 communications may be granted, subject to the provisions of this Article and Chapter 119  
7 of the United States Code, when the interception:

8 (1) May provide or has provided evidence of the commission of, or any  
9 conspiracy to commit:

10 a. Any of the drug-trafficking violations listed in G.S. 90-95(h); or

11 b. A continuing criminal enterprise in violation of G.S. 90-95.1.

12 (2) May expedite the apprehension of persons indicted for the commission  
13 of, or any conspiracy to commit, an offense listed in subdivision (1) of  
14 this subsection.

15 (b) Orders authorizing or approving the interception of wire, oral, or electronic  
16 communications may be granted, subject to the provisions of this Article and Chapter 119  
17 of the United States Code, when the interception may provide, or has provided, evidence  
18 of any offense that involves the commission of, or any conspiracy to commit, murder,  
19 kidnapping, hostage taking, robbery, extortion, bribery, rape, or any sexual offense, or  
20 when the interception may expedite the apprehension of persons indicted for the  
21 commission of these offenses.

22 (c) Orders authorizing or approving the interception of wire, oral, or electronic  
23 communications may be granted, subject to the provisions of this Article and Chapter 119  
24 of the United States Code, when the interception may provide, or has provided, evidence  
25 of any of the following offenses, or any conspiracy to commit these offenses, or when the  
26 interception may expedite the apprehension of persons indicted for the commission of  
27 these offenses:

28 (1) Any felony offense against a minor, including any violation of G.S. 14-  
29 27.7 (Intercourse and sexual offenses with certain victims; consent no  
30 defense), G.S. 14-41 (Abduction of children), G.S. 14-190.16 (First  
31 degree sexual exploitation of a minor), G.S. 14-190.17 (Second degree  
32 sexual exploitation of a minor), G.S. 14-190.18 (Promoting prostitution  
33 of a minor), G.S. 14-190.19 (Participating in prostitution of a minor), or  
34 G.S. 14-202.1 (Taking indecent liberties with children).

35 (2) Any felony obstruction of a criminal investigation, including any  
36 violation of G.S. 14-221.1 (Altering, destroying, or stealing evidence of  
37 criminal conduct).

38 (3) Any felony offense involving interference with, or harassment or  
39 intimidation of, jurors or witnesses, including any violation of G.S. 14-  
40 225.2 or G.S. 14-226.

41 (4) Any felony offense involving assault or threats against any executive or  
42 legislative officer in violation of Article 5A of Chapter 14 of the

1 General Statutes or assault with a firearm or other deadly weapon upon  
2 governmental officers or employees in violation of G.S. 14-34.2.

3 (5) Any offense involving the manufacture, assembly, possession, storage,  
4 transportation, sale, purchase, delivery, or acquisition of weapons of  
5 mass death or destruction in violation of G.S. 14-288.8 or the  
6 adulteration or misbranding of food, drugs, cosmetics, etc., with the  
7 intent to cause serious injury in violation of G.S. 14-34.4.

8 (d) When an investigative or law enforcement officer, while engaged in  
9 intercepting wire, oral, or electronic communications in the manner authorized, intercepts  
10 wire, electronic, or oral communications relating to offenses other than those specified in  
11 the order of authorization or approval, the contents thereof, and evidence derived  
12 therefrom, may be disclosed or used as provided in G.S. 15A-294(a) and (b). Such  
13 contents and any evidence derived therefrom may be used in accordance with G.S. 15A-  
14 294(c) when authorized or approved by a judicial review panel where the panel finds, on  
15 subsequent application made as soon as practicable, that the contents were otherwise  
16 intercepted in accordance with this Article or Chapter 119 of the United States Code.

17 (e) No otherwise privileged wire, oral, or electronic communication intercepted in  
18 accordance with, or in violation of, the provisions of this Article or Chapter 119 of the  
19 United States Code, shall lose its privileged character.

20 **"§ 15A-291. Application for electronic surveillance order; judicial review panel.**

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

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

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

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

7           (1) The identity of the office requesting the application;

8           (2) A full and complete statement of the facts and circumstances relied  
9 upon by the applicant, to justify his belief that an order should be  
10 issued, including:

11           a. Details as to the particular offense that has been, or is being  
12 committed;

13           b. A particular description of the nature and location of the facilities  
14 from which or the place where the communication is to be  
15 intercepted;

16           c. A particular description of the type of communications sought to  
17 be intercepted; and

18           d. The identity of the person, if known, committing the offense and  
19 whose communications are to be intercepted;

20           (3) A full and complete statement as to whether or not other investigative  
21 procedures have been tried and failed or why they reasonably appear to  
22 be unlikely to succeed if tried or to be too dangerous;

23           (4) A statement of the period of time for which the interception is required  
24 to be maintained. If the nature of the investigation is such that the  
25 authorization for interception should not automatically terminate when  
26 the described type of communication has been obtained, a particular  
27 description of facts establishing probable cause to believe that additional  
28 communications of the same type will occur thereafter must be added;

29           (5) A full and complete statement of the facts concerning all previous  
30 applications known to the individual authorizing and making  
31 adjudication, made to a judicial review panel for authorization to  
32 intercept, or for approval of interceptions of wire, oral, or electronic  
33 communications involving any of the same persons, facilities, or places  
34 specified in the application, and the action taken by that judicial review  
35 panel on each such application; and

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

39       (e) Before acting on the application, the judicial review panel may examine on  
40 oath the person requesting the application or any other person who may possess pertinent  
41 information, but information other than that contained in the affidavit may not be  
42 considered by the panel in determining whether probable cause exists for the issuance of

1 the order unless the information is either recorded or contemporaneously summarized in  
2 the record or on the face of the order by the panel.

3 **"§ 15A-292. Request for application for electronic surveillance order.**

4 (a) The head of any municipal, county, or State law enforcement agency or any  
5 district attorney may submit a written request to the Attorney General that the Attorney  
6 General apply to a judicial review panel for an electronic surveillance order to be  
7 executed within the requesting agency's jurisdiction. The written requests shall be on a  
8 form approved by the Attorney General and shall provide sufficient information to form  
9 the basis for an application for an electronic surveillance order. The head of a law  
10 enforcement agency shall also submit a copy of the request to the district attorney, who  
11 shall review the request and forward it to the Attorney General along with any comments  
12 he may wish to include. The Attorney General is authorized to review the request and  
13 decide whether it is appropriate to submit an application to a judicial review panel for an  
14 electronic surveillance order. If a request for an application is deemed inappropriate, the  
15 Attorney General shall send a signed, written statement to the person submitting the  
16 request, and to the district attorney, summarizing the reasons for failing to make an  
17 application. If the Attorney General decides to submit an application to a judicial review  
18 panel, he shall so notify the requesting agency head, the district attorney, and the head of  
19 the local law enforcement agency which has the primary responsibility for enforcing the  
20 criminal laws in the location in which it is anticipated the majority of the surveillance  
21 will take place, if not the same as the requesting agency head, unless the Attorney  
22 General has probable cause to believe that the latter notifications should substantially  
23 jeopardize the success of the surveillance or the investigation in general. If a judicial  
24 review panel grants an electronic surveillance order, a copy of such order shall be sent to  
25 the requesting agency head and the district attorney, and a summary of the order shall be  
26 sent to the head of the local law enforcement agency with primary responsibility for  
27 enforcing the criminal laws in the jurisdiction where the majority of the surveillance will  
28 take place, if not the same as the requesting agency head, unless the judicial review panel  
29 finds probable cause to believe that the latter notifications would substantially jeopardize  
30 the success of the surveillance or the investigation.

31 (b) This Article does not limit the authority of the Attorney General to apply for  
32 electronic surveillance orders independent of, or contrary to, the requests of law  
33 enforcement agency heads, nor does it limit the discretion of the Attorney General in  
34 determining whether an application is appropriate under any given circumstances.

35 (c) The Chief Justice of the North Carolina Supreme Court shall receive a report  
36 concerning each decision of a judicial review panel.

37 **"§ 15A-293. Issuance of order for electronic surveillance; procedures for**  
38 **implementation.**

39 (a) Upon application by the Attorney General, a judicial review panel may enter  
40 an ex parte order, as requested or as modified, authorizing the interception of wire, oral,  
41 or electronic communications, if the panel determines on the basis of the facts submitted  
42 by the applicant that:

- 1           (1) There is probable cause for belief that an individual is committing, has  
2           committed, or is about to commit an offense set out in G.S. 15A-290;  
3           (2) There is probable cause for belief that particular communications  
4           concerning that offense will be obtained through such interception;  
5           (3) Normal investigative procedures have been tried and have failed or  
6           reasonably appear to be unlikely to succeed if tried or to be too  
7           dangerous; and  
8           (4) There is probable cause for belief that the facilities from which, or the  
9           place where, the wire, oral, or electronic communications are to be  
10           intercepted are being used, or are about to be used, in connection with  
11           the commission of such offense, or are leased to, listed in the name of,  
12           or commonly used by the individual described in subdivision (1) of this  
13           subsection.
- 14        (b) Each order authorizing the interception of any wire, oral, or electronic  
15        communications must specify:
- 16           (1) The identity of the person, if known, whose communications are to be  
17           intercepted;  
18           (2) The nature and location of the communications facilities as to which, or  
19           the place where, authority to intercept is granted, and the means by  
20           which such interceptions may be made;  
21           (3) A particular description of the type of communication sought to be  
22           intercepted and a statement of the particular offense to which it relates;  
23           (4) The identity of the agency authorized to intercept the communications  
24           and of the person requesting the application; and  
25           (5) The period of time during which such interception is authorized,  
26           including a statement as to whether or not the interception automatically  
27           terminates when the described communication has been first obtained.
- 28        (c) No order entered under this Article may authorize the interception of any wire,  
29        oral, or electronic communication for any period longer than is necessary to achieve the  
30        objective of the authorization, nor in any event longer than 30 days. Extensions of an  
31        order may be granted, but only upon application for an extension made in accordance  
32        with G.S. 15A-291 and the panel making the findings required by subsection (a) of this  
33        section. The period of extension may be no longer than the panel determines to be  
34        necessary to achieve the purpose for which it was granted and in no event for longer than  
35        15 days. Every order and extension thereof must contain a provision that the  
36        authorization to intercept be executed as soon as practicable, be conducted in such a way  
37        as to minimize the interception of communications not otherwise subject to interception  
38        under this Article, and terminate upon attainment of the authorized objective, or in any  
39        event in 30 days or 15 days, as is appropriate.
- 40        (d) Whenever an order authorizing interception is entered pursuant to this Article,  
41        the order may require reports to be made to the issuing judicial review panel showing that  
42        progress has been made toward achievement of the authorized objective and the need for

1 continued interception. Such reports must be made at such intervals as the panel may  
2 require.

3 (1) The contents of any wire, oral, or electronic communication intercepted  
4 by any means authorized by this Article must be recorded on tape, wire,  
5 or electronic or other comparable device. The recording of the contents  
6 of any wire, electronic, or oral communication under this subsection  
7 must be done in such way as will protect the recording from editing or  
8 other alterations. Immediately upon the expiration of the period of the  
9 order, or extensions thereof, the recordings must be made available to  
10 the judicial review panel and sealed under its direction. Custody of the  
11 recordings is wherever the panel orders. They may not be destroyed  
12 except upon an order of the issuing panel and in any event must be kept  
13 for 10 years. Duplicate recordings may be made for use or disclosure  
14 pursuant to the provisions of G.S. 15A-294(a) and (b) for investigations.  
15 The contents of any wire, oral, or electronic communication or evidence  
16 derived therefrom may not be disclosed or used under G.S. 15A-294(c)  
17 unless they have been kept sealed.

18 (2) Applications made and orders granted under this Article must be sealed  
19 by the panel. Custody of the applications and orders may be disclosed  
20 only upon a showing of good cause before the issuing panel and may  
21 not be destroyed except on its order and in any event must be kept for  
22 10 years.

23 (3) Any violation of the provisions of this subsection may be punished as  
24 for contempt.

25 (e) The State Bureau of Investigation may own or control, and may operate any  
26 equipment used to implement electronic surveillance orders issued by a judicial review  
27 panel, and may operate or use in implementing any electronic surveillance order  
28 electronic surveillance equipment in which a local government or any of its agencies has  
29 a property interest.

30 (f) The Attorney General shall establish procedures for the use of electronic  
31 surveillance equipment in assisting local law enforcement agencies implementing  
32 electronic surveillance orders. The Attorney General shall supervise such assistance  
33 given to local law enforcement agencies and is authorized to conduct statewide training  
34 sessions for investigative and law enforcement officers regarding this Article.

35 **"§ 15A-294. Authorization for disclosure and use of intercepted wire, oral or**  
36 **electronic communications.**

37 (a) Any investigative or law enforcement officer who, by any means authorized by  
38 this Article or Chapter 119 of the United States Code, has obtained knowledge of the  
39 contents of any wire, oral, or electronic communication, or evidence derived therefrom,  
40 may disclose such contents to another investigative or law enforcement officer to the  
41 extent that such disclosure is appropriate to the proper performance of the official duties  
42 of the officer making or receiving the disclosure.

1       **(b)** Any investigative or law enforcement officer, who by any means authorized by  
2 this Article or Chapter 119 of the United States Code, has obtained knowledge of the  
3 contents of any wire, oral, or electronic communication, or evidence derived therefrom,  
4 may use such contents to the extent such use is appropriate to the proper performance of  
5 the officers' official duties.

6       **(c)** Any person who has received, by any means authorized by this Article or  
7 Chapter 119 of the United States Code, any information concerning a wire, oral, or  
8 electronic communication, or evidence derived therefrom, intercepted in accordance with  
9 the provisions of this Article, may disclose the contents of that communication or such  
10 derivative evidence while giving testimony under oath or affirmation in any proceeding  
11 in any court or before any grand jury in this State, or in any court of the United States or  
12 of any state, or in any federal or state grand jury proceeding.

13       **(d)** Within a reasonable time, but no later than 90 days after the filing of an  
14 application for an order or the termination of the period of an order or the extensions  
15 thereof, the issuing judicial review panel must cause to be served on the persons named in  
16 the order or the application and such other parties as the panel in its discretion may  
17 determine, an inventory that includes notice of:

18           **(1)** The fact of the entry of the order or the application;

19           **(2)** The date of the entry and the period of the authorized interception; and

20           **(3)** The fact that during the period wire, oral, or electronic communications  
21 were or were not intercepted.

22       **(e)** The issuing judicial review panel, upon the filing of a motion, may in its  
23 discretion, make available to such person or his counsel for inspection, such portions of  
24 the intercepted communications, applications, and orders as the panel determines to be  
25 required by law or in the interest of justice.

26       **(f)** The contents of any intercepted wire, oral, or electronic communication, or  
27 evidence derived therefrom, may not be received in evidence or otherwise disclosed in  
28 any trial, hearing, or other proceeding in any court of this State unless each party, not less  
29 than 20 working days before the trial, hearing, or other proceeding, has been furnished  
30 with a copy of the order and accompanying application, under which the interception was  
31 authorized.

32       **(g)** Any aggrieved person in any trial, hearing, or proceeding in or before any  
33 court, department, officer, agency, regulatory body, or other authority of this State, or a  
34 political subdivision thereof, may move to suppress the contents of any intercepted wire,  
35 oral, or electronic communication, or evidence derived therefrom, on the grounds that:

36           **(1)** The communication was unlawfully intercepted;

37           **(2)** The order of authorization under which it was intercepted is insufficient  
38 on its face; or

39           **(3)** The interception was not made in conformity with the order of  
40 authorization.

41       Such motion must be made before the trial, hearing, or proceeding unless there was no  
42 opportunity to make such motion or the person was not aware of the grounds of this  
43 motion. If the motion is granted, the contents of the intercepted wire, oral, or electronic

1 communication, or evidence derived therefrom, must be treated as having been obtained  
2 in violation of this Article.

3 (h) In addition to any other right to appeal, the State may appeal:

4 (1) From an order granting a motion to suppress made under subdivision (1)  
5 of this subsection, if the district attorney certifies to the judge granting  
6 the motion that the appeal is not taken for purposes of delay. The  
7 appeal must be taken within 30 days after the date the order of  
8 suppression was entered and must be prosecuted as are other  
9 interlocutory appeals; or

10 (2) From an order denying an application for an order of authorization, and  
11 the appeal may be made ex parte and must be considered in camera and  
12 in preference to all other pending appeals.

13 **"§ 15A-295. Reports concerning intercepted wire, oral, or electronic**  
14 **communications.**

15 In January of each year, the Attorney General of this State must report to the  
16 Administrative Office of the United States Court the information required to be filed by  
17 Section 2519 of Title 18 of the United States Code, as heretofore or hereafter amended,  
18 and file a copy of the report with the Administrative Office of the Courts of North  
19 Carolina.

20 **"§ 15A-296. Recovery of civil damages authorized.**

21 (a) Any person whose wire, oral, or electronic communication is intercepted,  
22 disclosed, or used in violation of this Article, has a civil cause of action against any  
23 person who intercepts, discloses, or uses, or procures any other person to intercept,  
24 disclose, or use such communications, and is entitled to recover from any other person:

25 (1) Actual damages, but not less than liquidated damages, computed at the  
26 rate of one hundred dollars (\$100.00) a day for each day of violation or  
27 one thousand dollars (\$1,000), whichever is higher;

28 (2) Punitive damages; and

29 (3) A reasonable attorneys' fee and other litigation costs reasonably  
30 incurred.

31 (b) Good faith reliance on a court order or on a representation made by the  
32 Attorney General or a district attorney is a complete defense to any civil or criminal  
33 action brought under this Article.

34 **"§ 15A-297. Conformity to provisions of federal law.**

35 It is the intent of this Article to conform the requirements of all interceptions of wire,  
36 oral, or electronic communications conducted by investigative or law enforcement  
37 officers in this State to provisions of Chapter 119 of the United States Code, except  
38 where the context indicates a purpose to provide safeguards even more protective of  
39 individual privacy and constitutional rights."

40 Sec. 2. This act becomes effective December 1, 1995.