

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

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SENATE BILL 279

Short Title: Electronic Surveillance.

(Public)

Sponsors: Senator Hartsell.

Referred to: Judiciary II.

March 26, 1991

1 A BILL TO BE ENTITLED
2 AN ACT TO PERMIT THE USE OF ELECTRONIC SURVEILLANCE IN THE
3 INVESTIGATION OF DRUG TRAFFICKING OFFENSES.

4 The General Assembly of North Carolina enacts:

5 Section 1. Chapter 15A of the General Statutes is amended by adding a new
6 Article to read:

7 **“ARTICLE 16A.**

8 **“ELECTRONIC SURVEILLANCE.**

9 **“§ 15A-300.1. Definitions.**

10 As used in this Article:

- 11 (1) ‘Aggrieved person’ means a person who was a party to any intercepted
12 wire or oral communication, a person against whom the interception
13 was directed, or a person whose facilities have been subject to
14 interception.
- 15 (2) ‘Attorney General’ means the Attorney General of the State of North
16 Carolina, unless otherwise specified.
- 17 (3) ‘Chapter 119 of the United States Code’ means Chapter 119 of Part I
18 of Title 18, United States Code, being Public Law 90-351, the
19 Omnibus Crime Control and Safe Streets Act of 1968.
- 20 (4) ‘Communications common carrier’ means and shall have the meaning
21 which is given the term ‘common carrier’ by Section 153(h) of Title 47
22 of the United States Code.
- 23 (5) ‘Contents’ when used with respect to any wire or oral communication,
24 means and includes any information concerning the identity of parties

- 1 to such communications or the existence, substance, purport, or
2 meaning of the communication.
- 3 (6) 'Electronic, mechanical, or other device' means any device or
4 apparatus which can be used to intercept a wire or oral communication
5 other than:
- 6 a. Any telephone or telegraph instrument, equipment or facility, or
7 any component thereof:
- 8 1. Furnished to a subscriber or user in the ordinary
9 course of its business; or
- 10 2. Being used by a communications carrier in the
11 ordinary course of its business; or
- 12 3. Used by an investigative or law enforcement officer
13 in the ordinary course of his duties; or
- 14 b. A hearing aid or similar device being used to correct subnormal
15 hearing to not better than normal.
- 16 (7) 'Electronic surveillance' means the interception of wire or oral
17 communications as defined herein.
- 18 (8) 'Intercept' means the aural acquisition of the contents of any wire or
19 oral communication through the use of any electronic, mechanical, or
20 other device.
- 21 (9) 'Investigative or law enforcement officer' means any officer of the
22 State of North Carolina or any political subdivision thereof, who is
23 empowered by the laws of this State to conduct investigations of or to
24 make arrest for offenses enumerated in this Article, and any attorney
25 authorized by the laws of this State to prosecute or participate in the
26 prosecution of such offenses, including the Attorney General of North
27 Carolina.
- 28 (10) 'Judge' means any judge of the trial divisions of the General Court of
29 Justice.
- 30 (11) 'Judicial review panel' means a three-judge body, composed of such
31 judges as may be assigned by the Chief Justice of the Supreme Court
32 of North Carolina, which shall review applications for electronic
33 surveillance orders and may issue orders valid throughout the State
34 authorizing the surveillance as provided herein, and which shall submit
35 a report of its decision to the Chief Justice.
- 36 (12) 'Oral communication' means any oral communication uttered by a
37 person exhibiting an expectation that such communication is not
38 subject to interception under circumstances justifying such
39 expectation.
- 40 (13) 'Person' means any official, employee, or agent of the United States or
41 any political subdivision thereof, and any individual, partnership,
42 association, joint stock company, trust, or corporation.
- 43 (14) 'Wire communication' means any communication made in whole or in
44 part through the use of facilities for the transmission of

1 communications by the aid or wire, cable, or other like connection
2 between the point of origin and the point of reception furnished or
3 operated by any person engaged as a common carrier in providing or
4 operating such facilities for the transmission of intrastate, interstate, or
5 foreign communications.

6 **"§ 15A-300.2. Interception and disclosure or wire or oral communications**
7 **prohibited.**

8 (a) Except as otherwise specifically provided in this Article, a person is guilty of
9 a Class I felony if, without the consent of at least one party to the communication, he:

10 (1) Willfully uses, endeavors to use, or procures any other person to use or
11 endeavor to use any electronic, mechanical, or other device to intercept
12 any wire or oral communication; or

13 (2) Willfully discloses, or endeavors to disclose, to any other person the
14 contents of any wire or oral communication, knowing or having reason
15 to know that the information was obtained through violation of this
16 Article; or

17 (3) Willfully uses, or endeavors to use, the contents of any wire or oral
18 communication, knowing or having reason to know that the
19 information was obtained through the interception of a wire or oral
20 communication in violation of this section.

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

29 (c) 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
33 communication, or oral communication transmitted by radio, or to disclose or use the
34 information thereby obtained.

35 (d) Any person who, as a result of his official position or his employment has
36 obtained knowledge of the contents of any wire or oral communication lawfully
37 intercepted pursuant to an electronic surveillance order or of the pendency or existence
38 of, or implementation of an electronic surveillance order who shall knowingly and
39 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 performances 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 B felony.

1 (e) 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 electronics
4 surveillance order or anyone who shall, knowingly or with gross negligence, release the
5 contents or any wire or oral communication intercepted under an electronic surveillance
6 order, except as is necessary for the proper and lawful performance of the duties of his
7 position or employment or as is required or allowed by law shall be guilty of a
8 misdemeanor.

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

13 **§ 15A-300.3 Manufacture, distribution, possession, and advertising or wire or**
14 **oral communication intercepting devices prohibited.**

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

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

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

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

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

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

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

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

41 **§ 15A-300.4. Confiscation of wire or oral communication interception devices.**

42 Any electronic, mechanical, or other device used, sent, carried, manufactured,
43 assembled, possessed, sold, or advertised in violation of G.S. 15A-300.3. may be seized
44 and forfeited to this State.

1 **"§ 15A-300.5. Offenses for which orders for electronic surveillance may be**
2 **granted.**

3 (a) Order authorizing or approving the interception of wire or oral
4 communications may be granted, subject to provisions of this Article and Chapter 119
5 of the United States Code, when such interception:

6 (1) May provide or has provided evidence of the commission of, or any
7 conspiracy to commit, any violation of G.S. 90-95(h) or G.S. 90-95.1;
8 or

9 (2) May expedite the apprehension of persons indicted for the commission
10 of, or any conspiracy to commit, any violation of G.S. 90-95(h) or G.S.
11 90-95.1.

12 (b) When an investigative or law enforcement officer, while engaged in
13 intercepting wire or oral communications in the manner authorized, intercepts wire or
14 oral communications relating to offenses other than those specified in the order of
15 authorization or approval, the contents thereof, and evidence derived therefrom, may be
16 disclosed or used as provided in G.S. 15A-300.9(a) and (b). Such contents and any
17 evidence derived therefrom may be used in accordance with G.S. 15A-300.9(c) when
18 authorized or approved by a judicial review panel where the panel finds, on subsequent
19 application made as soon as practicable, that the contents were otherwise intercepted in
20 accordance with this Article or Chapter 119 of the United States Code.

21 (c) No otherwise privileged wire or oral communication intercepted in
22 accordance with, or in violation of, the provisions of this Article or Chapter 119 of the
23 United States Code, shall lose its privileged character.

24 **"§ 15A-300.6. Application for electronic surveillance order.**

25 (a) The Attorney General may, pursuant to the provisions of Section 2516(2) of
26 Chapter 119 of the United States Code, apply to a judicial review panel for an order
27 authorizing or approving the interception of wire or oral communications by
28 investigative or law enforcement officers having responsibility for the investigation of
29 the offenses as to which the application is made, and for such offenses and causes as are
30 enumerated in G.S. 15A-300.5. A judicial review panel may be appointed by the Chief
31 Justice pursuant to the Attorney General's written notification of his intent to apply for
32 an electronic surveillance order.

33 (b) A judicial review panel is hereby authorized to grant orders valid throughout
34 the interception of wire or oral communications. Applications for such order may be
35 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 except the requirements in Section 2518(4). In applying Section 2518 the
39 word 'judge' in that section shall be construed to refer to the judicial review panel,
40 unless the context otherwise indicates. The judicial review panel may stipulate any
41 special conditions it feels necessary to assure compliance with the terms of this Article.

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

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

4 (1) The identity of the officer requesting the application;

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

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

10 b. A particular description of the nature and location of the
11 facilities from which or the place where the communication is
12 to be intercepted;

13 c. A particular description of the type of communications sought
14 to be intercepted; and

15 d. The identity of the person, if known, committing the offense
16 and whose communications are to be intercepted.

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

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

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

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

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

43 **"§ 15A-300.7. Request for application for electronic surveillance order.**

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

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

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

33 **"§ 15A-300.8. Issuance of order for electronic surveillance; procedures for**
34 **implementation.**

35 (a) Upon application by the Attorney General, a judicial review panel may enter
36 an **ex parte** order, as requested or as modified, authorizing the interception or wire or
37 oral communications, if the panel determines on the basis of the facts submitted by the
38 applicant that:

- 39 (1) There is probable cause for belief that an individual is committing, has
40 committed, or about to commit an offense set out in G.S. 15A-300.5;
41 (2) There is probable cause for belief that particular communications
42 concerning that offense will be obtained through such interception;

1 (3) Normal investigative procedures have been tried and have failed or
2 reasonably appear to be unlikely to succeed if tried or to be too
3 dangerous; and

4 (4) There is probable cause for belief that the facilities from which, or the
5 place where, the wire or oral communications are to be intercepted are
6 being used, or are about to be used, in connection with the commission
7 of such offense, or are leased to, listed in the name of, or commonly
8 used by the individual described in subdivision (1).

9 (b) Each order authorizing the interception of any wire or oral communications
10 must specify:

11 (1) The identity of the person, if known, whose communications are to be
12 intercepted;

13 (2) The nature and location of the communications facilities as to which,
14 or the place where, authority to intercept is granted, and the means by
15 which such interceptions may be made;

16 (3) A particular description of the type of communication sought to be
17 intercepted, and a statement of the particular offense to which it
18 relates;

19 (4) The identity of the agency authorized to intercept the communications,
20 and of the person requesting the application; and

21 (5) The period of time during which such interception is authorized,
22 including a statement as to whether or not the interception
23 automatically terminates when the described communication has been
24 first obtained.

25 (c) No order entered under this Article may authorize the interception of any wire
26 or oral communication for any period longer than is necessary to achieve the objective
27 of the authorization, nor in any event longer than 30 days. Extensions of an order may
28 be granted, but only upon application for an extension made in accordance with G.S.
29 15A-300.6 and the panel making the finds required by subsection (a) of this section.
30 The period of extension may be longer than the panel determines to be necessary to
31 achieve the purpose for which it was granted and in no event for longer than 15 days.
32 Every order and extension thereof must contain a provision that the authorization to
33 intercept the communication be executed as soon as practicable, be conducted in such a
34 way as to minimize the interception of communications not otherwise subject to
35 interception under this Article, and terminate upon attainment of the authorized
36 objective, or in any event in 30 or 15 days, as is appropriate.

37 (d) Whenever an order authorizing interception is entered pursuant to this Article
38 the order may require reports to be made to the issuing judicial review panel showing
39 that progress has been made toward achievement of the authorized objective and the
40 need for continued interception. Such reports must be made at such intervals as the
41 panel may require.

42 (e) (1) The contents of any wire or oral communication intercepted
43 by any means authorized by this Article must be recorded on tape or
44 wire or oral communication under this subsection and must be done

1 in such way as will protect the recording from the order, or extension
2 thereof. Such recordings must be made available to the judicial
3 review panel and sealed under its direction. Custody of the
4 recordings is wherever the panel orders. They may not be destroyed
5 except upon an order of the issuing panel and in any event must be
6 kept for 10 years. Duplicate recordings may be made for use or
7 disclosure pursuant to the provisions of G.S. 15A-300.9(c) unless
8 they have been kept sealed.

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

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

16 (f) The State Bureau of Investigation shall own or control, and shall operate any
17 equipment used to implement electronic surveillance orders issued by a judicial review
18 panel. No electronic surveillance equipment in which a local government or any of its
19 agencies has any property interest may be used in implementing any electronic
20 surveillance order.

21 (g) The Attorney General shall establish procedures for the use of electronic
22 surveillance equipment in assisting local law enforcement agencies implementing
23 electronic surveillance orders. The Attorney General shall supervise such assistance
24 given to local law enforcement agencies and is authorized to conduct statewide training
25 sessions for investigative and law enforcement officers regarding this Article.

26 **"§ 15A-300.9. Authorization for disclosure and use of intercepted wire or oral**
27 **communications.**

28 (a) Any investigative or law enforcement officer who, by any means authorized
29 by this Article or Chapter 119 of the United States Code, has obtained knowledge of the
30 contents of any wire or oral communication, or evidence derived therefrom may
31 disclose such contents to another investigative or law enforcement officer to the extent
32 that such disclosure is appropriate to the proper performance of the official duties of the
33 officer making or receiving the disclosure.

34 (b) Any investigative or law enforcement officer, who by any means authorized
35 by this Article or Chapter 119 of the United States Code has obtained knowledge of the
36 contents of any wire or oral communication or evidence derived therefrom may use
37 such contents to the extent such use is appropriate to the proper performance of his
38 official duties.

39 (c) Any person who has received by any means authorized by this Article or
40 Chapter 119 of the United States Code any information concerning a wire or oral
41 communication, or evidence derived therefrom intercepted in accordance with the
42 provisions of this Article may disclose the contents of that communication or such
43 derivative evidence while giving testimony under oath or affirmation in any proceeding

1 in any court or before any grand jury in this State, or in any court of the United States or
2 any state, or in any federal or State grand jury proceeding.

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

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

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

10 (3) The fact that, during the period, wire or oral communications were or
11 were not intercepted.

12 (e) The issuing judicial review panel upon the filing of a motion, may in its
13 discretion, make available to such person or his counsel, for inspection, such portions of
14 the intercepted communications, applications, and order as the panel determines to be
15 required by law or in the interest of justice.

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

22 **"§ 15A-300.11. Recovery of civil damages authorized.**

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

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

30 (2) Punitive damages; and

31 (3) A reasonable attorney's fee and other litigation costs reasonably
32 incurred.

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

36 **"§ 15A-300.12. Conformity to provisions of federal law.**

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

42 Sec. 2. This act becomes effective October 1, 1991.