

CHAPTER 10. ELECTRONIC SURVEILLANCE

PART I. GENERAL

§1301. Short title

This Chapter may be cited and referred to as the "Electronic Surveillance Act".

Acts 1985, No. 859, §1, eff. July 23, 1985; Acts 1991, No. 795, §4.

PART II. INTERCEPTION OF COMMUNICATIONS AND RELATED MATTERS

§1302. Definitions

As used in this Chapter:

- (1) "Aggrieved person" means a person who was party to any intercepted wire or oral communication or a person against whom the interception was directed.
- (2) "Attorney for a governmental entity" means an attorney on the staff or under the direct supervision of the district attorney authorized by law to prosecute such offenses as are subject of the pen register or trap and trace device.
- (3) "Aural transfer" means a transfer containing the human voice at any point between and including the point of origin and the point of reception.
- (4) "Communications common carrier" means any person engaged as a common carrier for hire in communication by wire or radio; however, a

person engaged in commercial radio broadcasting which is supervised by the Federal Communications Commission shall not, insofar as such person is so engaged, be deemed a common carrier.

(5) "Contents" when used with respect to any wire, electronic, or oral communication includes any information concerning the substance, purport, or meaning of that communication.

(6) "Court of competent jurisdiction" means state district courts of general criminal jurisdiction and those courts exercising appellate jurisdiction thereof.

(7)(a) "Electronic communication" means any transfer of signs, signals, writings, images, sounds, data, or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photoelectronic, or photo-optical system, but does not include any of the following:

(i) Any oral communication.

(ii) Any communication made through a tone-only paging device.

(iii) Any communication from a tracking device used to locate a mobile object by emission of a sound signal.

(b) "Electronic communication" specifically includes the radio portion of a cordless, portable, or cellular telephone communication that is transmitted between the cordless, portable, or cellular handset and the base or transmitting tower or unit.

(8) "Electronic communications service" means any service which provides to users thereof the ability to send or receive wire or electronic communications.

(9) "Electronic communications system" means any wire, radio, electromagnetic, photo-optical, or photoelectronic facilities used for the transmission of wire or electronic communications, and any computer facilities or related electronic equipment for the electronic storage of such communication.

(10) "Electronic, mechanical, or other device or means" denotes any device or apparatus which can be used to intercept a wire, electronic, or oral communication other than:

(a) Any telephone or telegraph instrument, equipment, or facility, or any component thereof, either:

(i) Furnished to the subscriber or user by a communications common carrier in the ordinary course of its business and being used by the subscriber or user in the ordinary course of its business, or

(ii) Being used by a communications common carrier in the ordinary course of its business, or by an investigative or law enforcement officer in the ordinary course of his duties.

(b) A hearing aid or similar device being used to correct subnormal hearing to not better than normal.

(11) "Intercept" means the aural acquisition of the contents of any wire or oral communication through the use of any electronic, mechanical, or other device.

(12) "Investigative or law enforcement officer" means any commissioned state police officer of the Department of Public Safety and Corrections who, in the normal course of his law enforcement duties, is investigating an offense

enumerated in this Chapter, and the district attorney authorized by law to prosecute or participate in the prosecution of such offense.

(13) "Judge" means the senior judge of a judicial district court of the state, any judge of the Orleans Parish Criminal District Court, or a judge designated by a majority vote of the court in writing in advance to consider applications for warrants or orders under this Chapter.

(14) "Oral communication" means any oral communication uttered by a person exhibiting an expectation that such communication is not subject to interception under circumstances justifying such expectation, but such term does not include any electronic communication.

(15) "Pen register" means a device which records and decodes electronic or other impulses which identify the numbers dialed or otherwise transmitted on the telephone line to which such device is attached, but this term does not include any device used by a provider or customer of a wire or electronic communication service for billing, or recording as an incident to billing, for communications services provided by such provider or any device used by a provider or customer of a wire communication service for cost accounting or other like purposes in the ordinary course of its business.

(16) "Person" means any employee or agent of the state or a political subdivision thereof, and any individual, partnership, association, joint stock company, trust, or corporation.

(17) "Trap and trace device" means a device or electronic means which captures the incoming electronic or other impulses which identify the originating number of an instrument or device from which a wire or electronic communication was transmitted, except that it shall not include a service, device, or electronic means tariffed by the Louisiana Public Service

Commission, used by a subscriber of telecommunicational services to receive the telephone numbers for calls placed to the subscriber.

(18) "Wire communication" or "communication by wire" means any aural transfer made in whole or in part through the use of facilities used for the transmission of communications by aid of wire, cable, or other like connection between the points of origin and reception, including the use of such connection in a switching station, furnished or operated by any person licensed to engage in providing or operating such facilities for the **transmission of communications and such term includes any electronic storage of such communication, and such term includes the radio portion of a cordless, portable, or cellular telephone communication that is transmitted between the cordless, portable, or cellular handset and the base or transmitting tower or unit.**

Acts 1985, No. 859, §1, eff. July 23, 1985; Acts 1987, No. 402, §1; Acts 1991, No. 795, §1, eff. July 22, 1991; Acts 1995, No. 1193, §1, eff. June 29, 1995.

§1303. Interception and disclosure of wire, electronic, or oral communications

A. Except as otherwise specifically provided in this Chapter, it shall be unlawful for any person to:

(1) Willfully intercept, endeavor to intercept, or procure any other person to intercept or endeavor to intercept, any wire or oral communication;

(2) Willfully use, endeavor to use, or procure any other person to use or endeavor to use, any electronic, mechanical, or other device to intercept any oral communication when:

(a) Such device is affixed to, or otherwise transmits a signal through, a wire, cable, or other like connection used in wire communication; or

(b) Such device transmits communications by radio or interferes with the transmission of such communication;

(3) Willfully disclose, or endeavor to disclose, to any other person the contents of any wire or oral communication, knowing or having reason to know that the information was obtained through the interception of a wire or oral communication in violation of this Subsection; or

(4) Willfully use, or endeavor to use, the contents of any wire or oral communication, knowing or having reason to know that the information was obtained through the interception of a wire or oral communication in violation of this Subsection.

B. Any person who violates the provisions of this Section shall be fined not more than ten thousand dollars and imprisoned for not less than two years nor more than ten years at hard labor.

C.(1) It shall not be unlawful under this Chapter for an operator of a switchboard, or any officer, employee, or agent of any communications common carrier, whose facilities are used in the transmission of a wire communication, to intercept, disclose, or use that communication in the normal course of his employment while engaged in any activity which is a necessary incident to the rendition of his service or to the protection of the rights or property of the carrier of such communication; however, such

communications common carriers shall not utilize service observing or random monitoring, except for mechanical or service quality control checks.

(2) It shall not be unlawful under this Chapter for an officer, employee, or agent of the Federal Communications Commission, in the normal course of his employment and in discharge of the monitoring responsibilities exercised by the commission in the enforcement of Chapter 5 of Title 47 of the United States Code, to intercept a wire communication, or oral communication transmitted by radio, or to disclose or use the information thereby obtained.

(3) It shall not be unlawful under this Chapter for a person acting under color of law to intercept a wire or oral communication, where such person is a party to the communication or one of the parties to the communication has given prior consent to such interception. Such a person acting under color of law is authorized to possess equipment used under such circumstances.

(4) It shall not be unlawful under this Chapter for a person not acting under color of law to intercept a wire or oral communication where such person is a party to the communication or where one of the parties to the communication has given prior consent to such interception, unless such communication is intercepted for the purpose of committing any criminal or tortious act in violation of the constitution or laws of the United States or of the state or for the purpose of committing any other injurious act.

(5) It shall not be unlawful under this Chapter:

(a) For the ultimate receiver of wire or electronic communication, or an investigative or law enforcement officer to use a pen register or trap and trace device as provided in Part III of this Chapter.

(b) For a provider of electronic communication services to record the fact that a wire or electronic communication was initiated or completed in order to protect such provider, or another provider furnishing service toward the completion of the wire or electronic communication, or a user of that service, from fraudulent, unlawful, or abusive use of such service.

(c) To use a device which captures the incoming electronic or other impulses which identify the numbers of an instrument from which a wire communication was transmitted.

(6) A person or entity providing electronic communication services to the public shall not intentionally divulge the contents of any communication while in transmission of that service to any person or entity other than an addressee or intended recipient of such communication or an agent of such addressee or intended recipient except:

(a) As otherwise authorized by federal or state law.

(b) To a person employed or authorized, or whose facilities are used, to forward such communication to its destination.

(c) Any electronic communication inadvertently obtained by the service provider and which appears to pertain to the commission of a crime, if such divulgence is made to a law enforcement agency.

(7) It shall not be unlawful under this Chapter for an officer or investigator of a law enforcement agency to intercept, conduct, use, or disclose electronic, wire, or oral communications obtained during a hostage situation or situation involving a barricaded individual. For the purposes of this Section, "hostage situation" means any situation which involves the unlawful abduction or restraint of one or more individuals with intent to restrict their freedom. For

the purposes of this Section, "barricaded individual" means any situation that involves the use of a residence, or other structure, belonging to another to seek refuge from law enforcement after attempting or committing a crime or threatening suicide.

D.(1) Any investigative or law enforcement officer who, by any means authorized by this Chapter, has obtained knowledge of the contents of any wire, oral, or electronic communication, or evidence derived therefrom, may disclose the contents to another investigative or law enforcement officer to the extent that the disclosure is appropriate to the proper performance of the official duties of the officer making or receiving the disclosure.

(2) Any investigative or law enforcement officer who, by any means authorized by this Chapter, has obtained knowledge of the contents of any wire, oral, or electronic communication or evidence derived therefrom may use the contents to the extent the use is appropriate to the proper performance of his official duties.

(3) Any person who has received, by any means authorized by this Chapter, any information concerning a wire, oral, or electronic communication, or evidence derived therefrom intercepted in accordance with the provisions of this Chapter may disclose the contents of that communication or such derivative evidence while giving testimony under oath or affirmation in any proceeding held under the authority of the United States or of any state or political subdivision thereof.

(4) No otherwise privileged wire, oral, or electronic communication intercepted in accordance with, or in violation of, the provisions of this Chapter shall lose its privileged character.

E. Upon receipt of the information or evidence sought by the interception, the interception shall cease.

Acts 1985, No. 859, §1, eff. July 23, 1985; Acts 1991, No. 795, §1, eff. July 22, 1991; Acts 2001, No. 403, §2, eff. June 15, 2001; Acts 2006, No. 292, §1.

§1304. Manufacture, distribution, or possession of wire or oral communication intercepting devices prohibited

A. Except as otherwise specifically provided in this Chapter, it shall be unlawful for any person willfully to manufacture, assemble, possess, or sell any electronic, mechanical, or other device, knowing or having reason to know that the design of such device renders it primarily useful for the purpose of surreptitious interception of wire or oral communications.

B. Any person who violates the provisions of this Section shall be fined not more than ten thousand dollars and imprisoned for not less than two years nor more than ten years at hard labor.

C. It shall not be unlawful under this Section for:

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

(2) An officer, agent, or employee of, or a person under contract with the United States or a commissioned state police officer of the Louisiana Department of Public Safety and Corrections specially authorized by the deputy secretary of public safety services in writing to possess or use pursuant to court authorization, in the normal course of the activities of the Department of Public Safety and Corrections,

to manufacture, assemble, possess, or sell any electronic, mechanical, or other device knowing or having reason to know that the design of such device renders it primarily useful for the purpose of surreptitious interception of wire or oral communications.

Acts 1985, No. 859, §1, eff. July 23, 1985; Acts 2001, No. 403, §2, eff. June 15, 2001.

§1305. Confiscation of wire or oral communication intercepting devices

Any electronic, mechanical, or other device used, manufactured, assembled, possessed, sold, or advertised in violation of R.S. 15:1304 may be seized.

Upon seizure, it is forfeited to the state and may be disposed of by the state. No device shall be sold at public or private sale. Any competent judge in whose jurisdiction the device was seized or the judge of the trial court may order the device destroyed or may order it transferred without cost to the Department of Public Safety and Corrections.

Acts 1985, No. 859, §1, eff. July 23, 1985.

1306. Immunity of witnesses

Whenever in the judgment of the attorney general or a district attorney, the testimony of any witness, or the production of books, papers, or other evidence by any witness, in any case or proceeding before any grand jury or court of the state involving any violation of this Chapter or any of the offenses enumerated in R.S. 15:1308, or any conspiracy to violate this Chapter or any of the offenses enumerated in R.S. 15:1308, is necessary to the public interest, the attorney general or such district attorney, with the approval of the attorney general, shall make application to the court that the witness shall be instructed to testify or produce evidence subject to the provisions of this Section, and

upon order of the court such witness shall not be excused from testifying or from producing books, papers, or other evidence on the ground that the testimony or evidence required of him may tend to incriminate him or subject him to a penalty or forfeiture. No such witness shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence, nor shall testimony so compelled be used as evidence in any criminal proceeding against him in any court, except that no witness shall be exempt under this Section from prosecution for perjury or contempt of court committed while giving testimony or producing evidence under compulsion as provided in this Section. Failure to so testify shall be punishable as contempt of court.

Acts 1985, No. 859, §1, eff. July 23, 1985.

1307. Prohibition of use as evidence of intercepted wire or oral communications

A. Whenever any wire or oral communication has been intercepted, no part of the contents of such communication and no evidence derived therefrom may be received in evidence in any trial, hearing, or other proceeding in or before any court, grand jury, department, officer, agency, regulatory body, legislative committee, or other authority of the state, or a political subdivision thereof, if the disclosure of that information would be in violation of this Chapter.

B. No person may broadcast, publish, disseminate, or otherwise distribute any part of the content of an electronic communication intercepted in violation of the provisions of this Chapter unless such dissemination or

distribution is made to an investigator or law enforcement officer conducting an investigation into a violation of the provisions of this Section.

Acts 1985, No. 859, §1, eff. July 23, 1985; Acts 1995, No. 1193, §1, eff. June 29, 1995.

§1308. Authorization for interception of wire or oral communications

A. The attorney general, or the deputy or any assistant attorney general acting pursuant to the authorization of the attorney general, with the approval of the district attorney or any assistant district attorney acting pursuant to the written authorization of the district attorney in whose district the interception of wire or oral communications shall take place, and the district attorney or authorized assistant district attorney, with the approval of the attorney general or authorized deputy or assistant attorney general may authorize an application to a judge in whose district the interception of wire or oral communications shall take place, and such judge may grant in conformity with R.S. 15:1310 an order authorizing or approving the interception of wire or oral communications by an investigative or law enforcement officer having responsibility for the investigation of the offense as to which the application is made, when such interception may provide or has provided evidence of:

(1) Any violation of the Uniform Controlled Dangerous Substance Act by:

(a) Producing, manufacturing, distributing, or dispensing a controlled dangerous substance; or

(b) Possessing with intent to produce, manufacture, distribute, or dispense a controlled dangerous substance; or

- (c) Creating, distributing, or possessing a counterfeit controlled dangerous substance; or
 - (d) Conspiring to commit any of the above enumerated offenses.
- (2) The commission, attempted commission, or conspiracy to commit a crime involving any of the following offenses:
- (a) First or second degree murder.
 - (b) Aggravated kidnapping.
 - (c) Aggravated arson.
 - (d) Manufacture and possession of delayed action incendiary device or manufacture and possession of a bomb.
 - (e) Armed robbery.
 - (f) Jury tampering.
 - (g) Solicitation for murder.
 - (h) Arson with intent to defraud.
 - (i) Extortion.
 - (j) Felony violations of the Uniform Controlled Dangerous Substances Law.
 - (k) Intimidating, impeding, injuring witnesses or injuring officers.
 - (l) Any felony offense where the offense was or is to be committed against a law enforcement officer as a result of his official capacity or actions.

(m) Money laundering as defined in R.S. 14:230.

(n) Transactions involving proceeds from drug offenses as defined in R.S. 40:1049.

(o) Terrorism.

(p) Aiding others in terrorism.

B. Failure of the district attorney to obtain approval for the interception of wire or oral communications as set forth in this Section shall constitute cause for the attorney general to institute, prosecute, or intervene in a criminal action or proceeding as authorized by law.

Acts 1985, No. 859, §1, eff. July 23, 1985; Acts 1991, No. 121, §1; Acts 1995, No. 1130, §1, eff. June 29, 1995; Acts 2002, 1st Ex. Sess., No. 128, §3.

§1309. Authorization for disclosure and use of intercepted wire or oral communications

A. Any investigative or law enforcement officer who, by any means authorized by this Chapter, has obtained knowledge of the contents of any wire or oral communication, or evidence derived therefrom, may disclose such contents to another investigative or law enforcement officer to the extent that such disclosure is appropriate to the proper performance of the official duties of the officer making or receiving the disclosure, and provided that such disclosure of the contents of any wire or oral communication, or evidence derived therefrom, relates directly to the offense for which the order was granted.

B. Any investigative or law enforcement officer who, by any means authorized by this Chapter, has obtained knowledge of the contents of any

wire or oral communication or evidence derived therefrom may use such contents to the extent such use is appropriate to the proper performance of his official duties.

C. Any person who has received, by any means authorized by this Chapter, any information concerning a wire or oral communication, or evidence derived therefrom, intercepted in accordance with the provisions of this Chapter may disclose the contents of that communication or such derivative evidence while giving testimony under oath or affirmation in any criminal proceeding in any court of the United States or of the state or in any federal or state grand jury proceeding.

D. No otherwise privileged wire or oral communication intercepted in accordance with, or in violation of, the provisions of this Chapter shall lose its privileged character.

E. When an investigative or law enforcement officer, while engaged in intercepting wire or oral communications, obtains knowledge of communications relating to offenses other than those specified in the order of authorization or approval, the contents thereof, and evidence derived therefrom, may be disclosed or used as provided in Subsections A, B and C of this Section.

Acts 1985, No. 859, §1, eff. July 23, 1985.

§1310. Procedure for interception of wire or oral communications (Voice)

A. Each application for an order authorizing or approving the interception of a wire or oral communication shall be made in writing upon oath or affirmation to a judge in whose district such interception of wire or oral communication shall take place and shall state the applicant's authority to

make such application. Each application shall include the following information:

- (1) The identity of the investigative or law enforcement officer making the application and the person authorizing 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, is being, or is about to be 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, or that such circumstances exist that without immediate action a human life may be endangered.
- (4) A statement of the period of time for which the interception is required to be maintained, which shall not exceed thirty days.
- (5) When 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.

(6) A full and complete statement of the facts concerning previous applications for the past five years, known to the individuals authorizing and making the application, made to any judge for authorization to intercept, or for approval of interception of, wire or oral communications involving any of the same persons, facilities, or places specified in the application, and the action taken by the judge on each such application.

B.(1) If statements of an identified or unidentified informant are relied upon in the application as a basis for establishing that there are reasonable grounds to believe that an offense has been, is being, or is about to be committed, the application shall set forth the factual basis for the affiant's belief that the informant is credible and that the information has been obtained in a reliable manner. The informant shall be presented to the judge and be sworn to afford the judge opportunity to inquire if the statements made in the application are true. The application shall so state that the informant was presented to the judge and sworn for such purpose. This provision shall not affect the privileged character of the identity of an informant. Nothing herein shall be construed to require the identification of a confidential informant.

(2) The judge may require the applicant to furnish additional testimony or documentary evidence.

C. Upon such application the judge may enter an ex parte order, as requested or as modified, authorizing or approving interception of wire or oral communications within the territorial jurisdiction of the district in which the judge is sitting, if the judge 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 a particular offense enumerated in R.S. 15:1308.

(2) There is probable cause for belief that particular communications concerning that offense will be obtained through such interception.

(3) There is probable cause for belief that the facilities from which, or the place where, the wire or oral 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 such person.

(4) There is reason to believe that investigative procedures have been tried and failed or they reasonably appear to be unlikely to succeed if tried or to be dangerous, or that such circumstances exist that without immediate action a human life may be endangered.

(5) The interception of wire or oral communications, as planned, is not reasonably expected to intercept privileged communications.

D. Each order authorizing or approving the interception of any wire or oral communication shall specify:

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

(2) The nature and location of the communications facilities as to which, or the place where, authority to intercept is granted.

(3) A particular description of the type of communication sought to be intercepted and a statement of the particular offense to which it relates.

(4) The identity of the agency authorized to intercept the communications, the person applying for the application, and the person authorizing the application.

(5) The period of time during which such interception is authorized.

E. No order entered under this Section may authorize or approve the interception of any wire or oral communication for any period longer than is necessary to achieve the objective of the investigation, and in no event longer than thirty days. Extensions of an order may be granted, but only upon application for an extension made in accordance with Subsection A of this Section and the court's making the findings required by Subsection C of this Section. The period of extension shall be no longer than the authorizing judge deems necessary to achieve the purposes for which it was granted and in no event for longer than thirty successive days or until the described type of communication has been obtained. Every order and extension thereof shall contain a provision that the authorization to intercept shall be executed as soon as practicable, shall be conducted in such a way as to minimize the interception of communications not otherwise subject to interception under this Chapter, and must terminate upon completion of the investigation or expiration of the order.

F.(1) The contents of any wire or oral communication intercepted by any means authorized by this Chapter shall be recorded on tape or wire or other comparable device. The recording of the contents of any wire or oral communication under this Subsection shall be done in such way as will protect the recording from editing or other alterations. Immediately upon the expiration of the period of the order, or extensions thereof, such recordings shall be made available to the judge issuing such order and sealed under his directions. Custody of the recording shall be wherever the judge orders.

They shall not be destroyed except upon an order of the issuing or denying judge and in any event shall be kept for ten years. Duplicate recordings may be made for use or disclosure pursuant to the provisions of R.S. 15:1309(A) and (B) for investigations. The presence of the seal provided for by this Subsection, or a satisfactory explanation for the absence thereof, shall be a prerequisite for the use or disclosure of the contents of any wire or oral communication or evidence derived there from under R.S. 15:1309(C).

(2) Applications made and orders granted under this Chapter shall be sealed by the judge. Custody of the applications and orders shall be wherever the judge directs. Such applications and orders shall be disclosed only upon a showing of good cause before a judge in whose district the interception of wire or oral communication took place and shall not be destroyed, except on order of the issuing or denying judge, and in any event shall be kept for ten years.

(3) Any violation of the provisions of this Subsection may be punished as contempt of the issuing or denying judge.

(4) Within a reasonable time, but not later than ninety days after the filing of an application for an order of approval, the issuing judge shall cause to be served, on the persons named in the order of the application, and such other parties to intercepted communications as the judge may determine in his discretion to be in the interest of justice, an inventory which shall include notice of:

(a) The fact of the entry of the order or the application;

(b) The date of the entry and the period of authorized, approved, or disapproved interception, or the denial of the application; and

(c) The fact that during the period wire or oral communications were or were not intercepted. The judge, upon the filing of a motion, may in his discretion make available to such person or his counsel for inspection such portions of the intercepted communications, applications, and orders as the judge determines to be in the interest of justice. On an ex parte showing of good cause to a judge in whose district the interception of wire or oral communications took place, the serving of the inventory required by this Subsection may be postponed until such time as may be appropriate in the circumstances.

(5) Whenever an order authorizing the interceptions is entered pursuant to this Chapter, the order shall require reports to be made to the judge who issued the order showing what progress has been made toward achievement of the authorized objective and the need for continued interception. Such reports shall be made at such intervals as the judge may require.

G. The contents of any intercepted wire or oral communication or evidence derived therefrom shall not be received in evidence or otherwise disclosed in any trial, hearing, or other proceeding in any court unless each party, not less than thirty days before the trial, hearing, or proceeding, has been furnished with a copy of the court order, and accompanying application, under which the interception was authorized or approved. This thirty-day period may be waived by the judge if he finds that it was not possible to furnish the party with the above information thirty days before the trial, hearing, or proceeding and that the party will not be prejudiced by the delay in receiving such information.

H.(1) Any aggrieved person in any trial, hearing, or proceeding in or before any court, department, officer, agency, regulatory body, or other authority of the state, or a political subdivision thereof, may move to suppress the contents

of any intercepted wire or oral communication, or evidence derived therefrom, on the grounds that:

- (a) The communication was unlawfully intercepted;
- (b) The order of authorization or approval under which it was intercepted is insufficient on its face; or
- (c) The interception was not made in conformity with the order of authorization or approval.

(2) Such motion shall be made before the trial, hearing, or proceeding, unless there was not opportunity to make such motion or the person was not aware of the grounds of the motion. If the motion is granted, the contents of the intercepted wire or oral communication, or evidence derived therefrom, shall be treated as having been obtained in violation of this Chapter. The judge, upon the filing of such motion by the aggrieved person, may in his discretion make available to the aggrieved person or his counsel for inspection such portion of the intercepted communication or evidence derived therefrom as the judge determines to be in the interests of justice.

(3) In addition to any other right to appeal, the state shall have the right to appeal from an order granting a motion to suppress made under this Subsection, or the denial of any application for an order of approval, if the attorney general or district attorney shall certify to the judge or other official granting such motion or denying such application that the appeal is not taken for purposes of delay. Such appeal shall be taken within thirty days after the date the order was entered and shall be diligently prosecuted.

Acts 1985, No. 859, §1, eff. July 23, 1985.

§1311. Reports concerning intercepted wire or oral communications

A. Within twenty days after the expiration of an order, or such extension thereof, entered under R.S. 15:1310 or the denial of an order approving an interception, the issuing or denying judge shall report to the judicial administrator of the supreme court:

- (1) The fact that an order or extension was applied for.
- (2) The kind of order or extension applied for.
- (3) The fact that the order or extension was granted as applied for, was modified, or was denied.
- (4) The period of interceptions authorized by the order, and the number and duration of any extensions of the order.
- (5) The offense specified in the order or application, or extension of an order.
- (6) The identity of the applying investigative or law enforcement officer and agency making the application and the person authorizing the application.
- (7) The nature of the facilities from which or the place where communications were to be intercepted.

B. In January of each year the district attorneys shall report to the attorney general and in March of each year the attorney general shall report to the judicial administrator of the supreme court the following information:

- (1) The information required by Paragraphs (1) through (7) of Subsection A of this Section with respect to each application of an order or extension made during the preceding calendar year.

(2) A general description of the interceptions made under such order or extension, including:

(a) The approximate nature and frequency of incriminating communications intercepted,

(b) The approximate nature and frequency of other communications intercepted,

(c) The approximate number of persons whose communications were intercepted, and

(d) The approximate nature, amount, and cost of the manpower and other resources used in the interceptions.

(3) The number of arrests resulting from interceptions made under such order or extension, and the offenses for which arrests were made.

(4) The number of trials resulting from such interceptions.

(5) The number of motions to suppress made with respect to such interceptions, and the number granted or denied.

(6) The number of convictions resulting from such interceptions and the offenses for which the convictions were obtained and a general assessment of the importance of the interceptions.

(7) The information required by Paragraphs (2) through (6) of this Subsection with respect to orders or extensions obtained in the preceding calendar year.

C. In April of each year the judicial administrator of the supreme court shall transmit to the legislature a full and complete report concerning the number of applications for orders authorizing or approving the interception of wire or

oral communications and the number of orders and extensions granted or denied during the preceding calendar year. Such report shall include a summary and analysis of the data required to be filed with the judicial administrator. The judicial administrator may issue binding regulations dealing with the content and form of the reports required to be filed by Subsections A and B of this Section.

Acts 1985, No. 859, §1, eff. July 23, 1985.

§1312. Recovery of civil damages authorized

A. Any person whose wire or oral communication is intercepted, disclosed, or used in violation of this Chapter shall have a civil cause of action against any person who intercepts, discloses, or uses, or procures any other person to intercept, disclose, or use such communications, and be entitled to recover from any such person:

(1) Actual damages, but not less than liquidated damages computed at the rate of one hundred dollars a day for each day of violation or one thousand dollars, whichever is greater.

(2) A reasonable attorney's fee and other litigation costs reasonably incurred.

(3) Punitive damages.

B. A good faith reliance on a court order shall constitute a complete defense to any civil or criminal action brought under this Chapter.

PART III. PEN REGISTERS AND TRAP AND TRACE DEVICES

§1313. Pen registers and trap and trace devices, use prohibited

A. Except as provided in this Section, no person may install or use a pen register or a trap and trace device without first obtaining a court order under R.S. 15:1315 of this Part.

B. The prohibition of this Section does not apply with respect to the use of a pen register or a trap and trace device by a provider of a wire or electronic communication service:

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

(2) To record the fact that a wire or electronic communication was initiated or completed in order to protect such provider, another provider furnishing service toward the completion of the wire communication, or a user of that service, from fraudulent, unlawful, or abusive use of service, or with the consent of the user of that service.

C. Whoever intentionally violates Subsection A of this Section shall be fined not more than five thousand dollars, or imprisoned not more than one year, or both.

Acts 1991, No. 795, §2, eff. July 22, 1991.

§1314. Application for an order for a pen register or a trap and trace device

A. An investigative or law enforcement officer may make application for an order or an extension of an order under R.S. 15:1315 to a court of competent jurisdiction authorizing or approving the installation and use of a pen register or a trap and trace device under this Part, in writing under oath or equivalent

affirmation, to a court of competent jurisdiction of this state. For the purposes of R.S. 15:1313 through 1316 only, "investigative or law enforcement officer" means:

- (1) Any commissioned officer of the office of state police.
- (2) Any full-time commissioned city police officer of a municipality of this state.
- (3) Any sheriff or a deputy sheriff of a parish of this state which has been specifically designated by the sheriff of that parish as responsible for preparation of applications for installation and use of pen register or trap and trace devices.

B. An application made pursuant to this Section shall include:

- (1) The identity of the investigative or law enforcement officer making the application and the identity of the law enforcement agency conducting the investigation.
- (2) A certification by the applicant attesting that the information sought is relevant to an ongoing felony criminal investigation being conducted by that agency, and includes in that certification a recital of facts or information constituting the reasonable suspicion upon which the application is based.
- (3) A certification by the appropriate agency head that he has reviewed the application and approves the use of the pen register or trap and trace device for that investigation.

Acts 1991, No. 795, §2, eff. July 22, 1991.

§1315. Issuance of an order for a pen register or a trap and trace device

A. Upon an application made under R.S. 15:1314, the court may enter an ex parte order authorizing the installation and use of a pen register or a trap and trace device within the jurisdiction of the court if the court finds that the investigative or law enforcement officer has certified to the court that the information likely to be obtained by such installation and use is relevant to an ongoing felony criminal investigation, and that the certification does include reasonable suspicion as required by R.S. 15:1314.

B.(1) An order issued under this Section shall specify:

(a) The identity, if known, of the person to whom is leased or in whose name is listed the telephone line to which the pen register or trap and trace device is to be attached.

(b) The identity, if known, of the person who is the subject of the criminal investigation.

(c) The number and, if known, physical location of the telephone line to which the pen register or trap and trace device is to be attached and, in the case of trap and trace, the geographic limits of the trap and trace order.

(d) A statement of the offense to which the information likely to be obtained by the pen register or trap and trace device relates.

(2) An order issued under this Section shall direct, upon request of the applicant, the furnishing of information, facilities, and technical assistance necessary to accomplish the installation of the pen register or trap and trace device under R.S. 15:1316.

C.(1) An order issued under this Section shall authorize the installation and use of a pen register or a trap and trace device for a period not to exceed ten days.

(2) Extensions of such an order may be granted, but only upon an application for an order under R.S. 15:1314 and upon the judicial finding required by Subsection A of this Section. The period of extension shall be for a period not to exceed ten days.

D. An order authorizing or approving the installation and use of a pen register or a trap and trace device shall direct that:

(1) The order be sealed until otherwise ordered by the court, or until one hundred eighty days after the installation's authorized operation concludes, whichever is earlier.

(2) The person owning or leasing the line to which the pen register or trap and trace device is attached, or who has been ordered by the court to provide assistance to the applicant, not disclose the existence of the pen register or trap and trace device or the existence of the investigation to the listed subscriber, or to any other person, unless or until otherwise ordered by the court.

E. The head of each law enforcement agency possessing or making application for the installation and use of a pen register or trap and trace device shall establish and implement procedures which shall provide for and ensure the following:

(1) Preparation and maintenance of such logs and records which record, after unsealing of the applications and orders, the approval of applications for

installation and use of pen register or trap and trace devices and the duration thereof.

(2) That only the law enforcement agency chief officer or specifically authorized representative of the agency chief shall have the authority to authorize the installation and use of pen register or trap and trace devices and only pursuant to court order.

(3) That no pen register or trap and trace device in the possession of the law enforcement agency shall be subject to unauthorized installation or use.

(4) That a designated sworn and commissioned officer of that law enforcement agency executes and transmits no later than March first of each calendar year to the deputy secretary of public safety services of the Department of Public Safety and Corrections, a sworn affidavit stating that, to the best of the affiant's knowledge, information and belief, all installations and uses of the pen register or trap and trace devices in the custody of that law enforcement agency have been in accordance with the provisions of this Part and further that no pen register or trap and trace device in the custody of that agency has been the subject of an unauthorized or illegal installation or use.

Acts 1991, No. 795, §2, eff. July 22, 1991.

§1316. Assistance in installation and use of a pen register or a trap and trace device

A. Upon the request of an investigative or law enforcement agency authorized to install and use a pen register under this Part, a provider of a wire or electronic communication service, landlord, custodian, or other person shall furnish such investigative or law enforcement officer forthwith all information, facilities, and technical assistance necessary to accomplish the installation of

the pen register unobtrusively and with a minimum of interference with the services that the person so ordered by the court accords the party with respect to whom the installation and use is to take place, if such assistance is directed by a court order as provided in R.S. 15:1315(B)(2).

B. Upon the request of an officer of a law enforcement agency authorized to receive the results of a trap and trace device under this Part, a provider of a wire or electronic communication service, landlord, custodian, or other person shall, if technically possible, install such device forthwith on the appropriate line and shall furnish such investigative or law enforcement officer all additional information, facilities, and technical assistance including installation and operation of the device unobtrusively and with a minimum of interference with the services that the person so ordered by the court accords the party with respect to whom the installation and use is to take place, if such installation and assistance is directed by a court order as provided in R.S. 15:1315(B)(2). Unless otherwise ordered by the court, the results of the trap and trace device shall be furnished to the investigative or law enforcement officer designated in the court order, at reasonable intervals during the regular business hours for the duration of the order.

C. A provider of a wire or electronic communication service, landlord, custodian, or other person who furnishes facilities or technical assistance pursuant to this Section shall be compensated for such reasonable expenses incurred in providing such facilities and assistance.

D. No cause of action shall lie in any Louisiana court against any provider of a wire or electronic communication service, its officers, employees, agents, or other specified persons for providing information, facilities, or assistance in accordance with the terms of a court order under this Part.

Acts 1991, No. 795, §2, eff. July 22, 1991.