

By: Ford

To: Judiciary A

HOUSE BILL NO. 246  
(As Passed the House)

1 AN ACT TO REENACT SECTIONS 41-29-501 THROUGH 41-29-536,  
2 MISSISSIPPI CODE OF 1972, AUTHORIZING THE BUREAU OF NARCOTICS TO  
3 USE MONITORING DEVICES; TO AMEND SECTION 41-29-537, MISSISSIPPI  
4 CODE OF 1972, TO EXTEND THE REPEALER; AND FOR RELATED PURPOSES.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

6 SECTION 1. Section 41-29-501, Mississippi Code of 1972, is  
7 reenacted as follows:[BD1]

8 41-29-501. As used in this article, the following terms  
9 shall have the meaning ascribed to them herein unless the context  
10 requires otherwise:

11 (a) "Aggrieved person" means a person who was a party  
12 to an intercepted wire, oral or other communication or a person  
13 against whom the interception was directed.

14 (b) "Communication common carrier" has the meaning  
15 given the term "common carrier" by 47 USCS 153(h) and shall also  
16 mean a provider of communication services.

17 (c) "Contents," when used with respect to a wire, oral  
18 or other communication, includes any information concerning the  
19 identity of the parties to the communication or the existence,  
20 substance, purport or meaning of that communication.

21 (d) "Covert entry" means any entry into or onto  
22 premises which if made without a court order allowing such an  
23 entry under this article would be a violation of criminal law.

24 (e) "Director" means the Director of the Bureau of  
25 Narcotics or, if the director is absent or unable to serve, the  
26 Assistant Director of the Bureau of Narcotics.

27 (f) "Electronic, mechanical or other device" means a

28 device or apparatus primarily designed or used for the  
29 nonconsensual interception of wire, oral or other communications.

30 (g) "Intercept" means the aural or other acquisition of  
31 the contents of a wire, oral or other communication through the  
32 use of an electronic, mechanical or other device.

33 (h) "Investigative or law enforcement officer" means an  
34 officer of this state or of a political subdivision of this state  
35 who is empowered by law to conduct investigations of, or to make  
36 arrests for, offenses enumerated in Section 41-29-505, or an  
37 attorney authorized by law to prosecute or participate in the  
38 prosecution of such offenses.

39 (i) "Judge of competent jurisdiction" means a justice  
40 of the Supreme Court or a circuit court judge.

41 (j) "Oral communication" means an oral communication  
42 uttered by a person exhibiting an expectation that the  
43 communication is not subject to interception under circumstances  
44 justifying that expectation.

45 (k) "Other communication" means any transfer of an  
46 electronic or other signal, including fax signals, computer  
47 generated signals, other similar signals, or any scrambled or  
48 encrypted signal transferred via wire, radio, electromagnetic,  
49 photoelectric or photooptical system from one party to another in  
50 which the involved parties may reasonably expect the communication  
51 to be private.

52 (l) "Prosecutor" means a district attorney with  
53 jurisdiction in the county in which the facility or place where  
54 the communication to be intercepted is located or a legal  
55 assistant to the district attorney if designated in writing by the  
56 district attorney on a case by case basis.

57 (m) "Residence" means a structure or the portion of a  
58 structure used as a person's home or fixed place of habitation to  
59 which the person indicates an intent to return after any temporary  
60 absence.

61           (n) "Wire communication" means a communication made in  
62 whole or in part through the use of facilities for the  
63 transmission of communications by the aid of wire, cable or other  
64 like connection between the point of origin and the point of  
65 reception furnished or operated by a person engaged as a common  
66 carrier in providing or operating the facilities for the  
67 transmission of communications and includes cordless telephones,  
68 voice pagers, cellular telephones, any mobile telephone, or any  
69 communication conducted through the facilities of a provider of  
70 communication services.

71           SECTION 2. Section 41-29-503, Mississippi Code of 1972, is  
72 reenacted as follows:[BD2]

73           41-29-503. The contents of an intercepted wire, oral or  
74 other communication and evidence derived from an intercepted wire,  
75 oral or other communication may not be received in evidence in any  
76 trial, hearing or other proceeding in or before any court, grand  
77 jury, department, officer, agency, regulatory body, legislative  
78 committee, or other authority of the United States or of this  
79 state or a political subdivision of this state if the disclosure  
80 of that information would be in violation of this article. The  
81 contents of an intercepted wire, oral or other communication and  
82 evidence derived from an intercepted communication may be received  
83 in a civil trial, hearing or other proceeding only if the civil  
84 trial, hearing or other proceeding arises out of a violation of  
85 the criminal law of this state.

86           SECTION 3. Section 41-29-505, Mississippi Code of 1972, is  
87 reenacted as follows:[BD3]

88           41-29-505. A judge of competent jurisdiction in the circuit  
89 court district of the location where the interception of wire,  
90 oral or other communications is sought, or a circuit court  
91 district contiguous to such circuit court district, may issue an  
92 order authorizing interception of wire, oral or other  
93 communications only if the prosecutor applying for the order shows

94 probable cause to believe that the interception will provide  
95 evidence of the commission of a felony under the Uniform  
96 Controlled Substances Law.

97 SECTION 4. Section 41-29-507, Mississippi Code of 1972, is  
98 reenacted as follows:[BD4]

99 41-29-507. (1) No person, agency of the state or political  
100 subdivision of the state, other than the Bureau of Narcotics, is  
101 authorized by this article to own, possess, install, operate or  
102 monitor an electronic, mechanical or other device. The Bureau of  
103 Narcotics may be assisted by an investigative or law enforcement  
104 officer in the operation and monitoring of an interception of  
105 wire, oral or other communications, provided that an agent of the  
106 Bureau of Narcotics is present at all times.

107 (2) The director shall designate, in writing, the agents of  
108 the Bureau of Narcotics who are responsible for the possession,  
109 installation, operation and monitoring of electronic, mechanical  
110 or other devices for the bureau.

111 SECTION 5. Section 41-29-509, Mississippi Code of 1972, is  
112 reenacted as follows:[BD5]

113 41-29-509. Prior to submitting a request for an order  
114 authorizing interception of wire, oral or other communications to  
115 a prosecutor, the director shall receive a written affidavit from  
116 one or more agents of the Bureau of Narcotics setting forth the  
117 information required by Section 41-29-513(1). The director shall  
118 submit all information required by Section 41-29-513(1) to the  
119 prosecutor. Upon receipt of the request from the director, the  
120 prosecutor shall be authorized to submit an application to a court  
121 of competent jurisdiction requesting the court to issue an order  
122 authorizing interception of wire, oral or other communications as  
123 provided in Section 41-29-515.

124 SECTION 6. Section 41-29-511, Mississippi Code of 1972, is  
125 reenacted as follows:[BD6]

126 41-29-511. (1) An investigative or law enforcement officer

127 who, by any means authorized by this article, obtains knowledge of  
128 the contents of a wire, oral or other communication or evidence  
129 derived from such communication may disclose the contents or  
130 evidence to another investigative or law enforcement officer to  
131 the extent that the disclosure is appropriate to the proper  
132 performance of the official duties of the officer making or  
133 receiving the disclosure.

134 (2) An investigative or law enforcement officer who, by any  
135 means authorized by this article, obtains knowledge of the  
136 contents of a wire, oral or other communication or evidence  
137 derived from such communication may use the contents or evidence  
138 to the extent the use is appropriate to the proper performance of  
139 his official duties.

140 (3) A person who receives, by any means authorized by this  
141 article, information concerning a wire, oral or other  
142 communication or evidence derived from a wire, oral or other  
143 communication intercepted in accordance with the provisions of  
144 this article may disclose the contents of such communication or  
145 the evidence derived from such wire, oral or other communication  
146 while giving testimony under oath in any proceeding held under the  
147 authority of the United States, of this state, or of a political  
148 subdivision of this state.

149 (4) An otherwise privileged wire, oral or other  
150 communication intercepted in accordance with, or in violation of,  
151 the provisions of this article does not lose its privileged  
152 character, and any evidence derived from such privileged  
153 communication against the party to the privileged communication  
154 shall be considered privileged also.

155 (5) When an investigative or law enforcement officer, while  
156 engaged in intercepting wire, oral or other communications in a  
157 manner authorized by this article, intercepts wire, oral or other  
158 communications relating to offenses other than those specified in  
159 the order of authorization, the contents of and evidence derived

160 from the communication may be disclosed or used as provided by  
161 subsections (1) and (2) of this section. Such contents and any  
162 evidence derived therefrom may be used under subsection (3) of  
163 this section when authorized by a judge of competent jurisdiction  
164 where the judge finds, upon subsequent application, that the  
165 contents were otherwise intercepted in accordance with the  
166 provisions of this article. The application shall be made as soon  
167 as practicable.

168 SECTION 7. Section 41-29-513, Mississippi Code of 1972, is  
169 reenacted as follows:[BD7]

170 41-29-513. (1) To be valid, an application for an order  
171 authorizing the interception of a wire, oral or other  
172 communication must be made in writing under oath to a judge of  
173 competent jurisdiction in the circuit court district of the  
174 location where the interception of wire, oral or other  
175 communications is sought, or a circuit court district contiguous  
176 to such circuit court district, and must state the applicant's  
177 authority to make the application. An applicant must include the  
178 following information in the application:

179 (a) A statement that the application has been requested  
180 by the director and the identity of the prosecutor making the  
181 application;

182 (b) A full and complete statement of the facts and  
183 circumstances relied on by the applicant to justify his belief  
184 that an order should be issued including:

185 (i) Details about the particular offense that has  
186 been, is being, or is about to be committed;

187 (ii) A particular description of the nature and  
188 location of the facilities from which or the place where the  
189 communication is to be intercepted;

190 (iii) A particular description of the type of  
191 communication sought to be intercepted; and

192 (iv) The identity of the person, if known,

193 committing the offense and whose communications are to be  
194 intercepted;

195 (c) A full and complete statement as to whether or not  
196 other investigative procedures have been tried and failed or why  
197 they reasonably appear to be unlikely to succeed or to be too  
198 dangerous if tried;

199 (d) A statement of the period of time for which the  
200 interception is required to be maintained and, if the nature of  
201 the investigation is such that the authorization for interception  
202 should not automatically terminate when the described type of  
203 communication is first obtained, a particular description of the  
204 facts establishing probable cause to believe that additional  
205 communications of the same type will occur after the described  
206 type of communication is obtained;

207 (e) A statement whether a covert entry will be  
208 necessary to properly and safely install the wiretapping or  
209 electronic surveillance or eavesdropping equipment and, if a  
210 covert entry is requested, a statement as to why such an entry is  
211 necessary and proper under the facts of the particular  
212 investigation, including a full and complete statement as to  
213 whether other investigative techniques have been tried and have  
214 failed or why they reasonably appear to be unlikely to succeed or  
215 to be too dangerous if tried or are not feasible under the  
216 circumstances or exigencies of time;

217 (f) A full and complete statement of the facts  
218 concerning all applications known to the prosecutor making the  
219 application that have been previously made to a judge for  
220 authorization to intercept wire, oral or other communications  
221 involving any of the persons, facilities or places specified in  
222 the application and of the action taken by the judge on each  
223 application; and

224 (g) If the application is for the extension of an  
225 order, a statement setting forth the results already obtained from

226 the interception or a reasonable explanation of the failure to  
227 obtain results.

228 (2) The judge may, in an ex parte in camera hearing, require  
229 additional testimony or documentary evidence in support of the  
230 application, and such testimony or documentary evidence shall be  
231 preserved as part of the application.

232 SECTION 8. Section 41-29-515, Mississippi Code of 1972, is  
233 reenacted as follows:[BD8]

234 41-29-515. (1) Upon receipt of an application, the judge  
235 may enter an ex parte order, as requested or as modified,  
236 authorizing interception of wire, oral or other communications if  
237 the judge determines from the evidence submitted by the applicant  
238 that:

239 (a) There is probable cause to believe that a person is  
240 committing, has committed, or is about to commit a particular  
241 offense enumerated in Section 41-29-505;

242 (b) There is probable cause to believe that particular  
243 communications concerning that offense will be obtained through  
244 the interception;

245 (c) Normal investigative procedures have been tried and  
246 have failed or reasonably appear to be unlikely to succeed or to  
247 be too dangerous if tried;

248 (d) There is probable cause to believe that the  
249 facilities from which or the place where the wire, oral or other  
250 communications are to be intercepted are being used or are about  
251 to be used in connection with the commission of an offense or are  
252 leased to, listed in the name of, or commonly used by the person;  
253 and

254 (e) A covert entry is or is not necessary to properly  
255 and safely install the electronic, mechanical or other device.

256 (2) Each order authorizing the interception of a wire or  
257 oral communication shall specify:

258 (a) The identity of the person, if known, whose



259 communications are to be intercepted;

260           (b) The nature and location of the communications  
261 facilities as to which or the place where authority to intercept  
262 is granted;

263           (c) A particular description of the type of  
264 communication sought to be intercepted and a statement of the  
265 particular offense to which it relates;

266           (d) A statement setting forth the identity of the  
267 prosecutor and stating that the director has requested the  
268 prosecutor to apply for the order authorizing the interception;

269           (e) The time during which the interception is  
270 authorized, including a statement of whether or not the  
271 interception will automatically terminate when the described  
272 communication is first obtained; and

273           (f) Whether or not a covert entry is necessary to  
274 properly and safely install wiretapping, electronic surveillance  
275 or eavesdropping equipment.

276           (3) The order authorizing the interception of a wire, oral  
277 or other communication shall, upon request of the applicant,  
278 direct that a communication common carrier, landlord, custodian or  
279 other person furnish the applicant all information, facilities and  
280 technical assistance necessary to accomplish the interception  
281 unobtrusively and with a minimum of interference with the services  
282 that the carrier, landlord, custodian or other person is providing  
283 the person whose communications are to be intercepted. Any  
284 communication common carrier, landlord, custodian or other person  
285 furnishing facilities or technical assistance is entitled to  
286 compensation by the applicant for the facilities or assistance at  
287 the prevailing rates.

288           (4) An order entered pursuant to this section may not  
289 authorize the interception of a wire, oral or other communication  
290 for longer than is necessary to achieve the objective of the  
291 authorization, and in no event may it authorize interception for

292 more than thirty (30) days. The issuing judge may grant  
293 extensions of an order, but only upon application for an extension  
294 made in accordance with Section 41-29-513 and the court making the  
295 findings required by subsection (1) of this section. The period  
296 of extension may not be longer than the authorizing judge deems  
297 necessary to achieve the purposes for which it is granted, and in  
298 no event may the extension be for more than thirty (30) days. To  
299 be valid, each order and extension of an order shall provide that  
300 the authorization to intercept be executed as soon as practicable,  
301 be conducted in a way that minimizes the interception of  
302 communications not otherwise subject to interception under this  
303 article, and terminate on obtaining the authorized objective or  
304 within thirty (30) days, whichever occurs sooner.

305 (5) An order entered pursuant to this section may not  
306 authorize a covert entry into a residence solely for the purpose  
307 of intercepting a wire communication.

308 (6) An order entered pursuant to this section may not  
309 authorize a covert entry into or onto a premises for the purpose  
310 of intercepting an oral or other communication unless:

311 (a) The judge, in addition to making the determinations  
312 required under subsection (1) of this section, determines that:

313 (i) (A) The premises into or onto which the  
314 covert entry is authorized or the person whose communications are  
315 to be obtained has been the subject of a pen register previously  
316 authorized in connection with the same investigation; (B) the  
317 premises into or onto which the covert entry is authorized or the  
318 person whose communications are to be obtained has been the  
319 subject of an interception of wire communications previously  
320 authorized in connection with the same investigation; (C) that  
321 such procedures have failed; and (D) if the order is for the  
322 interception of other communications and requires covert entry, a  
323 court-ordered attempt to intercept the communications without  
324 using covert entry must have been made without success;

325                   (ii) That the procedures enumerated in item (i)  
326 reasonably appear to be unlikely to succeed or to be too dangerous  
327 if tried or are not feasible under the circumstances or exigencies  
328 of time; and

329                   (b) The order, in addition to the matters required to  
330 be specified under subsection (2) of this section, specifies that  
331 the covert entry is for the purpose of intercepting oral  
332 communications of two (2) or more persons and that there is  
333 probable cause to believe they are committing, have committed, or  
334 are about to commit a particular offense enumerated in Section  
335 41-29-505.

336                   (7) The judge of a court of competent jurisdiction may issue  
337 an order for the interception of wire, oral or other  
338 communications conducted within a vehicle, vessel, other mode of  
339 transportation or any location where a reasonable expectation of  
340 privacy might exist, provided the requirements of this section,  
341 where applicable, are met.

342                   (8) Whenever an order authorizing interception is entered  
343 pursuant to this article, the order may require reports to the  
344 judge who issued the order showing what progress has been made  
345 toward achievement of the authorized objective and the need for  
346 continued interception. Reports shall be made at any interval the  
347 judge requires.

348                   (9) A judge who issues an order authorizing the interception  
349 of a wire, oral or other communication may not hear a criminal  
350 prosecution in which evidence derived from the interception may be  
351 used or in which the order may be an issue.

352                   (10) An order issued pursuant to this section authorizing  
353 the interception of any cellular, portable, transportable or  
354 mobile telephone or communication instrument is valid throughout  
355 the State of Mississippi unless otherwise specified by the issuing  
356 judge.

357                   SECTION 9. Section 41-29-517, Mississippi Code of 1972, is

358 reenacted as follows:[BD9]

359           41-29-517. (1) The contents of a wire, oral or other  
360 communication intercepted by means authorized by this article  
361 shall be recorded on tape, wire or other comparable device. The  
362 recording of the contents of a wire, oral or other communication  
363 under this subsection shall be done in a way that protects the  
364 recording from editing or other alterations.

365           (2) Immediately on the expiration of the period of the order  
366 and all extensions, if any, the recordings shall be made available  
367 to the judge issuing the order and sealed under his directions.  
368 Custody of the recordings shall be wherever the judge orders. The  
369 recordings may not be destroyed until at least ten (10) years  
370 after the date of expiration of the order and the last extension,  
371 if any. A recording may be destroyed only by order of the judge  
372 of competent jurisdiction who authorized the interception, or his  
373 successor.

374           (3) Duplicate recordings may be made for use or disclosure  
375 pursuant to subsections (1) and (2) of Section 41-29-511 for  
376 investigations.

377           (4) The presence of the seal required by subsection (2) of  
378 this section, or a satisfactory explanation of its absence, shall  
379 be a prerequisite for the use or disclosure of the contents of a  
380 wire, oral or other communication or evidence derived from the  
381 communication under subsection (3) of Section 49-29-511.

382           SECTION 10. Section 41-29-519, Mississippi Code of 1972, is  
383 reenacted as follows:[BD10]

384           41-29-519. The judge shall seal each application made and  
385 order granted under this article. Custody of the applications and  
386 orders shall be wherever the judge directs. An application or  
387 order may be disclosed only upon a showing of good cause before a  
388 judge of competent jurisdiction, and may not be destroyed until at  
389 least ten (10) years after the date it is sealed. An application  
390 or order may be destroyed only by order of the judge of competent

391 jurisdiction for the administrative judicial district in which it  
392 was made or granted.

393 SECTION 11. Section 41-29-521, Mississippi Code of 1972, is  
394 reenacted as follows:[BD11]

395 41-29-521. A violation of Section 41-29-517 or 41-29-519  
396 shall be punished as contempt of court.

397 SECTION 12. Section 41-29-523, Mississippi Code of 1972, is  
398 reenacted as follows:[BD12]

399 41-29-523. (1) Within a reasonable time but not later than  
400 ninety (90) days after the date an application for an order is  
401 denied or after the date an order or the last extension, if any,  
402 expires, the judge who granted or denied the application shall  
403 cause to be served upon the persons named in the order or the  
404 application and any other parties to intercepted communications  
405 deemed appropriate by the issuing judge, if any, an inventory,  
406 which shall include notice:

407 (a) Of the entry of the order or the application;

408 (b) Of the date of the entry and the period of  
409 authorized interception or the date of denial of the application;  
410 and

411 (c) That during the authorized period wire, oral or  
412 other communications were or were not intercepted.

413 (2) The judge, upon motion, may, in his discretion, make  
414 available for inspection to any person or persons whose oral  
415 communications have been intercepted, or their counsel, any  
416 portion of an intercepted communication, application or order that  
417 the judge determines is in the interest of justice to disclose to  
418 that person.

419 (3) Upon an ex parte showing of good cause to the judge, the  
420 serving of the inventory required by this section may be  
421 postponed, but in no event may any evidence derived from an order  
422 under this article be disclosed in any trial until after such  
423 inventory has been served.

424 SECTION 13. Section 41-29-525, Mississippi Code of 1972, is  
425 reenacted as follows:[BD13]

426 41-29-525. (1) The contents of an intercepted wire, oral or  
427 other communication or evidence derived from the communication may  
428 not be received in evidence or otherwise disclosed in a trial,  
429 hearing or other proceeding in a federal or state court unless  
430 each party has been furnished with a copy of the court order and  
431 application under which the interception was authorized or  
432 approved not less than ten (10) days before the date of the trial,  
433 hearing or other proceeding. The ten-day period may be waived by  
434 the judge if he finds that it is not possible to furnish the party  
435 with the information ten (10) days before the trial, hearing or  
436 proceeding and that the party will not be prejudiced by the delay  
437 in receiving the information.

438 (2) An aggrieved person charged with an offense in a trial,  
439 hearing or proceeding in or before a court, department, officer,  
440 agency, regulatory body, or other authority of the United States  
441 or of this state or a political subdivision of this state, may  
442 move to suppress the contents of an intercepted wire, oral or  
443 other communication or evidence derived from the communication on  
444 the ground that:

445 (a) The communication was unlawfully intercepted;

446 (b) The order authorizing the interception is  
447 insufficient on its face; or

448 (c) The interception was not made in conformity with  
449 the order.

450 (3) The motion to suppress shall be made before the trial,  
451 hearing or proceeding unless there was no opportunity to make the  
452 motion before the trial, hearing or proceeding, or the person was  
453 not aware of the grounds of the motion before the trial, hearing  
454 or proceeding. The hearing on the motion shall be held in camera  
455 upon the written request of the aggrieved person. If the motion  
456 is granted, the contents of the intercepted wire, oral or other

457 communication and evidence derived from the communication shall be  
458 treated as inadmissible evidence. The judge, on the filing of the  
459 motion by the aggrieved person, shall make available to the  
460 aggrieved person or his counsel for inspection any portion of the  
461 intercepted communication or evidence derived from the  
462 communication that the judge determines is in the interest of  
463 justice to make available.

464 (4) Any circuit judge of this state, upon hearing a pretrial  
465 motion regarding conversations intercepted by wire pursuant to  
466 this article, or who otherwise becomes informed that there exists  
467 on such intercepted wire, oral or other communication  
468 identification of a specific individual who is not a party or  
469 suspect to the subject of interception:

470 (a) Shall give notice and an opportunity to be heard on  
471 the matter of suppression of references to that person if  
472 identification is sufficient so as to give notice; or

473 (b) Shall suppress references to that person if  
474 identification is sufficient to potentially cause embarrassment or  
475 harm which outweighs the probative value, if any, of the mention  
476 of such person, but insufficient to require the notice provided  
477 for in paragraph (a) of this subsection.

478 SECTION 14. Section 41-29-527, Mississippi Code of 1972, is  
479 reenacted as follows:[BD14]

480 41-29-527. (1) Within thirty (30) days after the date an  
481 order or the last extension, if any, expires or after the denial  
482 of an order, the issuing or denying judge shall report to the  
483 Administrative Office of the United States Courts:

484 (a) The fact that an order or extension was applied  
485 for;

486 (b) The kind of order or extension applied for;

487 (c) The fact that the order or extension was granted as  
488 applied for, was modified or was denied;

489 (d) The period of interceptions authorized by the order

490 and the number and duration of any extensions of the order;

491 (e) The offense specified in the order or application  
492 or extension;

493 (f) The identity of the officer making the request and  
494 the prosecutor making the application; and

495 (g) The nature of the facilities from which or the  
496 place where communications were to be intercepted.

497 (2) In January of each year each prosecutor shall report to  
498 the Administrative Office of the United States Courts the  
499 following information for the preceding calendar year:

500 (a) The information required by subsection (1) of this  
501 section with respect to each application for an order or extension  
502 made;

503 (b) A general description of the interceptions made  
504 under each order or extension, including the approximate nature  
505 and frequency of incriminating communications intercepted, the  
506 approximate nature and frequency of order communications  
507 intercepted, the approximate number of persons whose  
508 communications were intercepted, and the approximate nature,  
509 amount and cost of the manpower and other resources used in the  
510 interceptions;

511 (c) The number of arrests resulting from interceptions  
512 made under each order or extension and the offenses for which  
513 arrests were made;

514 (d) The number of trials resulting from interceptions;

515 (e) The number of motions to suppress made with respect  
516 to interceptions and the number granted or denied;

517 (f) The number of convictions resulting from  
518 interceptions, the offenses for which the convictions were  
519 obtained, and a general assessment of the importance of the  
520 interceptions; and

521 (g) The information required by paragraphs (b) through  
522 (f) of this subsection with respect to orders or extensions



523 obtained.

524 (3) Any judge or prosecutor required to file a report with  
525 the Administrative Office of the United States Courts shall  
526 forward a copy of such report to the director. On or before  
527 January 5 of each year the director shall submit to the  
528 Mississippi Administrative Office of Courts a report of all  
529 intercepts, as defined in this subsection and as required by  
530 federal law which relates to statistical data only, conducted  
531 pursuant to this article and terminated during the preceding  
532 calendar year. Such report shall include:

533 (a) The report of judges and prosecuting attorneys  
534 forwarded to the director as required by this section;

535 (b) The number of Bureau of Narcotics personnel  
536 authorized to possess, install or operate electronic, mechanical  
537 or other devices;

538 (c) The number of Bureau of Narcotics and other law  
539 enforcement personnel who participated or engaged in the seizure  
540 of intercepts pursuant to this article during the preceding  
541 calendar year; and

542 (d) The total cost to the Bureau of Narcotics of all  
543 activities and procedures relating to the seizure of intercepts  
544 during the preceding calendar year, including costs of equipment,  
545 manpower and expenses incurred as compensation for use of  
546 facilities or technical assistance provided by the bureau.

547 SECTION 15. Section 41-29-529, Mississippi Code of 1972, is  
548 reenacted as follows:[BD15]

549 41-29-529. (1) A person whose wire, oral or other  
550 communication is intercepted, disclosed or used in violation of  
551 this article shall have a civil cause of action against any person  
552 who intercepts, discloses or uses or procures another person to  
553 intercept, disclose or use the communication, and is entitled to  
554 recover from the person:

555 (a) Actual damages but not less than liquidated damages

556 computed at a rate of One Hundred Dollars (\$100.00) a day for each  
557 day of violation or One Thousand Dollars (\$1,000.00), whichever is  
558 higher;

559 (b) Punitive damages; and

560 (c) A reasonable attorney's fee and other litigation  
561 costs reasonably incurred.

562 (2) A good faith reliance on a court order is a complete  
563 defense to any civil or criminal action brought under this  
564 article.

565 SECTION 16. Section 41-29-531, Mississippi Code of 1972, is  
566 reenacted as follows:[BD16]

567 41-29-531. This article shall not apply to:

568 (a) An operator of a switchboard, or an officer,  
569 employee or agent of a communication common carrier whose  
570 facilities are used in the transmission of a wire communication,  
571 intercepts a communication, or who discloses or uses an  
572 intercepted communication in the normal course of employment while  
573 engaged in an activity that is a necessary incident to the  
574 rendition of service or to the protection of the rights or  
575 property of the carrier of the communication;

576 (b) An officer, employee or agent of a communication  
577 common carrier who employs or uses any equipment or device which  
578 may be attached to any telephonic equipment of any subscriber  
579 which permits the interception and recording of any telephonic  
580 communications solely for the purposes of business service  
581 improvements;

582 (c) An officer, employee or agent of a communication  
583 common carrier who provides information, facilities or technical  
584 assistance to an investigative or law enforcement officer who is  
585 authorized as provided by this article to intercept a wire, oral  
586 or other communication;

587 (d) A person acting under color of law who intercepts a  
588 wire, oral or other communication if the person is a party to the

589 communication, or if one (1) of the parties to the communication  
590 has given prior consent to the interception; or

591 (e) A person not acting under color of law who  
592 intercepts a wire, oral or other communication if the person is a  
593 party to the communication, or if one (1) of the parties to the  
594 communication has given prior consent to the interception unless  
595 the communication is intercepted for the purpose of committing any  
596 criminal or tortious act in violation of the Constitution or laws  
597 of the United States or of this state, or for the purpose of  
598 committing any other injurious act.

599 SECTION 17. Section 41-29-533, Mississippi Code of 1972, is  
600 reenacted as follows:[BD17]

601 41-29-533. (1) Any person who knowingly and intentionally  
602 possesses, installs, operates or monitors an electronic,  
603 mechanical or other device in violation of this article shall be  
604 guilty of a misdemeanor and, upon conviction thereof, shall be  
605 sentenced to not more than one (1) year in the county jail or  
606 fined not more than Ten Thousand Dollars (\$10,000.00), or both.

607 (2) Any person who violates the provisions of Section  
608 41-29-511 shall be guilty of a felony and, upon conviction  
609 thereof, shall be sentenced to not more than five (5) years in the  
610 State Penitentiary and fined not more than Ten Thousand Dollars  
611 (\$10,000.00).

612 SECTION 18. Section 41-29-535, Mississippi Code of 1972, is  
613 reenacted as follows:[BD18]

614 41-29-535. This article shall not apply to a person who is a  
615 subscriber to a telephone operated by a communication common  
616 carrier and who intercepts a communication on a telephone to which  
617 he subscribes. This article shall not apply to persons who are  
618 members of the household of the subscriber who intercept  
619 communications on a telephone in the home of the subscriber.

620 SECTION 19. Section 41-29-536, Mississippi Code of 1972, is  
621 reenacted as follows:[BD19]

622           41-29-536. (1) Attorneys for the Bureau of Narcotics may  
623 file a motion with a circuit court judge of the circuit court  
624 district in which the subscriber, instrument or other device  
625 exists, for communication records which will be material to an  
626 ongoing investigation of a felony violation of the Uniform  
627 Controlled Substances Law.

628           (2) The motion shall be made in writing, under oath, and  
629 shall include the name of the subscriber, the number or numbers,  
630 and the location of the instrument or other device, if known and  
631 applicable. The motion shall be accompanied by an affidavit from  
632 an agent of the Bureau of Narcotics which sets forth facts which  
633 the court shall consider in determining that probable cause exists  
634 to believe that the information sought will be material to an  
635 ongoing felony violation of the Uniform Controlled Substances Law.

636           (3) Upon consideration of the motion and the determination  
637 that probable cause exists, the circuit court judge may order a  
638 communications common carrier as defined by 47 USCS 153(h) or a  
639 provider of communication services to provide the Bureau of  
640 Narcotics with communication billing records, call records,  
641 subscriber information, or other communication record information.  
642 The communications common carrier or the provider of communication  
643 services shall be entitled to compensation at the prevailing rates  
644 from the Bureau of Narcotics.

645           (4) The circuit court judge shall seal each order issued  
646 pursuant to this section. The contents of a motion, affidavit and  
647 order may not be disclosed except in the course of a judicial  
648 proceeding. Any unauthorized disclosure of a sealed order, motion  
649 or affidavit shall be punishable as contempt of court.

650           SECTION 20. Section 41-29-537, Mississippi Code of 1972, is  
651 reenacted and amended as follows:[BD20]

652           41-29-537. Sections 41-29-501 through 41-29-536, Mississippi  
653 Code of 1972, shall stand repealed on July 1, 2004.

654           SECTION 21. This act shall take effect and be in force from

655 and after July 1, 2000.