

By: Representative Watson

To: Judiciary A

## HOUSE BILL NO. 399

1 AN ACT TO REENACT SECTIONS 41-29-501 THROUGH 41-29-536,  
2 MISSISSIPPI CODE OF 1972, WHICH PROVIDE THE AUTHORITY FOR THE  
3 INTERCEPTION OF WIRE OR ORAL COMMUNICATIONS BY THE BUREAU OF  
4 NARCOTICS; TO AMEND SECTION 41-29-537, MISSISSIPPI CODE OF 1972,  
5 TO EXTEND THE REPEAL DATE ON THE REENACTED SECTIONS; AND FOR  
6 RELATED PURPOSES.

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

8 **SECTION 1.** Section 41-29-501, Mississippi Code of 1972, is  
9 reenacted as follows:

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

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

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

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

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

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

29           (f) "Electronic, mechanical or other device" means a  
30 device or apparatus primarily designed or used for the  
31 nonconsensual interception of wire, oral or other communications.

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

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

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

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

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

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

59           (m) "Residence" means a structure or the portion of a  
60 structure used as a person's home or fixed place of habitation to

61 which the person indicates an intent to return after any temporary  
62 absence.

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

73 **SECTION 2.** Section 41-29-503, Mississippi Code of 1972, is  
74 reenacted as follows:

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

88 **SECTION 3.** Section 41-29-505, Mississippi Code of 1972, is  
89 reenacted as follows:

90 41-29-505. A judge of competent jurisdiction in the circuit  
91 court district of the location where the interception of wire,  
92 oral or other communications is sought, or a circuit court  
93 district contiguous to such circuit court district, may issue an

94 order authorizing interception of wire, oral or other  
95 communications only if the prosecutor applying for the order shows  
96 probable cause to believe that the interception will provide  
97 evidence of the commission of a felony under the Uniform  
98 Controlled Substances Law.

99       **SECTION 4.** Section 41-29-507, Mississippi Code of 1972, is  
100 reenacted as follows:

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

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

113       **SECTION 5.** Section 41-29-509, Mississippi Code of 1972, is  
114 reenacted as follows:

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

126           **SECTION 6.** Section 41-29-511, Mississippi Code of 1972, is  
127 reenacted as follows:

128           41-29-511. (1) An investigative or law enforcement officer  
129 who, by any means authorized by this article, obtains knowledge of  
130 the contents of a wire, oral or other communication or evidence  
131 derived from such communication may disclose the contents or  
132 evidence to another investigative or law enforcement officer to  
133 the extent that the disclosure is appropriate to the proper  
134 performance of the official duties of the officer making or  
135 receiving the disclosure.

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

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

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

157           (5) When an investigative or law enforcement officer, while  
158 engaged in intercepting wire, oral or other communications in a

159 manner authorized by this article, intercepts wire, oral or other  
160 communications relating to offenses other than those specified in  
161 the order of authorization, the contents of and evidence derived  
162 from the communication may be disclosed or used as provided by  
163 subsections (1) and (2) of this section. Such contents and any  
164 evidence derived therefrom may be used under subsection (3) of  
165 this section when authorized by a judge of competent jurisdiction  
166 where the judge finds, upon subsequent application, that the  
167 contents were otherwise intercepted in accordance with the  
168 provisions of this article. The application shall be made as soon  
169 as practicable.

170       **SECTION 7.** Section 41-29-513, Mississippi Code of 1972, is  
171 reenacted as follows:

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

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

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

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

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

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

194 (iv) The identity of the person, if known,  
195 committing the offense and whose communications are to be  
196 intercepted;

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

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

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

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

224 the application and of the action taken by the judge on each  
225 application; and

226 (g) If the application is for the extension of an  
227 order, a statement setting forth the results already obtained from  
228 the interception or a reasonable explanation of the failure to  
229 obtain results.

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

234 **SECTION 8.** Section 41-29-515, Mississippi Code of 1972, is  
235 reenacted as follows:

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

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

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

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

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



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

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

260 (a) The identity of the person, if known, whose  
261 communications are to be intercepted;

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

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

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

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

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

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

288 compensation by the applicant for the facilities or assistance at  
289 the prevailing rates.

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

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

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

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

315 (i) (A) The premises into or onto which the  
316 covert entry is authorized or the person whose communications are  
317 to be obtained has been the subject of a pen register previously  
318 authorized in connection with the same investigation; (B) the  
319 premises into or onto which the covert entry is authorized or the  
320 person whose communications are to be obtained has been the

321 subject of an interception of wire communications previously  
322 authorized in connection with the same investigation; (C) that  
323 such procedures have failed; and (D) if the order is for the  
324 interception of other communications and requires covert entry, a  
325 court-ordered attempt to intercept the communications without  
326 using covert entry must have been made without success;

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

331           (b) The order, in addition to the matters required to  
332 be specified under subsection (2) of this section, specifies that  
333 the covert entry is for the purpose of intercepting oral  
334 communications of two (2) or more persons and that there is  
335 probable cause to believe they are committing, have committed, or  
336 are about to commit a particular offense enumerated in Section  
337 41-29-505.

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

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

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

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

359           **SECTION 9.** Section 41-29-517, Mississippi Code of 1972, is  
360 reenacted as follows:

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

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

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

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

384           **SECTION 10.** Section 41-29-519, Mississippi Code of 1972, is  
385 reenacted as follows:

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

395           **SECTION 11.** Section 41-29-521, Mississippi Code of 1972, is  
396 reenacted as follows:

397           41-29-521. A violation of Section 41-29-517 or 41-29-519  
398 shall be punished as contempt of court.

399           **SECTION 12.** Section 41-29-523, Mississippi Code of 1972, is  
400 reenacted as follows:

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

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

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

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

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

419 the judge determines is in the interest of justice to disclose to  
420 that person.

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

426 **SECTION 13.** Section 41-29-525, Mississippi Code of 1972, is  
427 reenacted as follows:

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

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

447 (a) The communication was unlawfully intercepted;

448 (b) The order authorizing the interception is  
449 insufficient on its face; or

450 (c) The interception was not made in conformity with  
451 the order.

452           (3) The motion to suppress shall be made before the trial,  
453 hearing or proceeding unless there was no opportunity to make the  
454 motion before the trial, hearing or proceeding, or the person was  
455 not aware of the grounds of the motion before the trial, hearing  
456 or proceeding. The hearing on the motion shall be held in camera  
457 upon the written request of the aggrieved person. If the motion  
458 is granted, the contents of the intercepted wire, oral or other  
459 communication and evidence derived from the communication shall be  
460 treated as inadmissible evidence. The judge, on the filing of the  
461 motion by the aggrieved person, shall make available to the  
462 aggrieved person or his counsel for inspection any portion of the  
463 intercepted communication or evidence derived from the  
464 communication that the judge determines is in the interest of  
465 justice to make available.

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

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

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

480           **SECTION 14.** Section 41-29-527, Mississippi Code of 1972, is  
481 reenacted as follows:

482           41-29-527. (1) Within thirty (30) days after the date an  
483 order or the last extension, if any, expires or after the denial

484 of an order, the issuing or denying judge shall report to the  
485 Administrative Office of the United States Courts:

486 (a) The fact that an order or extension was applied  
487 for;

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

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

491 (d) The period of interceptions authorized by the order  
492 and the number and duration of any extensions of the order;

493 (e) The offense specified in the order or application  
494 or extension;

495 (f) The identity of the officer making the request and  
496 the prosecutor making the application; and

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

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

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

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

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

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



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

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

523 (g) The information required by paragraphs (b) through  
524 (f) of this subsection with respect to orders or extensions  
525 obtained.

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

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

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

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

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

549           **SECTION 15.** Section 41-29-529, Mississippi Code of 1972, is  
550 reenacted as follows:

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

557           (a) Actual damages but not less than liquidated damages  
558 computed at a rate of One Hundred Dollars (\$100.00) a day for each  
559 day of violation or One Thousand Dollars (\$1,000.00), whichever is  
560 higher;

561           (b) Punitive damages; and

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

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

567           **SECTION 16.** Section 41-29-531, Mississippi Code of 1972, is  
568 reenacted as follows:

569           41-29-531. This article shall not apply to:

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

578           (b) An officer, employee or agent of a communication  
579 common carrier who employs or uses any equipment or device which  
580 may be attached to any telephonic equipment of any subscriber  
581 which permits the interception and recording of any telephonic

582 communications solely for the purposes of business service  
583 improvements;

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

589 (d) A person acting under color of law who intercepts a  
590 wire, oral or other communication if the person is a party to the  
591 communication, or if one (1) of the parties to the communication  
592 has given prior consent to the interception; or

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

601 **SECTION 17.** Section 41-29-533, Mississippi Code of 1972, is  
602 reenacted as follows:

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

609 (2) Any person who violates the provisions of Section  
610 41-29-511 shall be guilty of a felony and, upon conviction  
611 thereof, shall be sentenced to not more than five (5) years in the  
612 State Penitentiary and fined not more than Ten Thousand Dollars  
613 (\$10,000.00).

614           **SECTION 18.** Section 41-29-535, Mississippi Code of 1972, is  
615 reenacted as follows:

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

622           **SECTION 19.** Section 41-29-536, Mississippi Code of 1972, is  
623 reenacted as follows:

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

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

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

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

652           **SECTION 20.** Section 41-29-537, Mississippi Code of 1972, is  
653 amended as follows:

654           41-29-537. Sections 41-29-501 through 41-29-536, Mississippi  
655 Code of 1972, shall stand repealed on July 1, 2006.

656           **SECTION 21.** This act shall take effect and be in force from  
657 and after July 1, 2004.