

By: Senator(s) Albritton

To: Judiciary, Division B

SENATE BILL NO. 3029

1 AN ACT TO AMEND SECTIONS 41-29-501, 41-29-505, 41-29-507,
2 41-29-509, 41-29-513 AND 41-29-536, MISSISSIPPI CODE OF 1972, TO
3 EXTEND THE AUTHORITY TO APPLY FOR AND RECEIVE A COURT ORDER
4 AUTHORIZING INSTALLATION OF A WIRE INTERCEPT TO THE MISSISSIPPI
5 BUREAU OF INVESTIGATION IF SOUGHT IN CONNECTION WITH A CAPITAL
6 OFFENSE; AND FOR 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 amended 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) "Commissioner" means the Commissioner of Public
17 Safety.

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

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

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

28 (f) "Director" means the Director of the Bureau of
29 Narcotics or, if the director is absent or unable to serve, the
30 Assistant Director of the Bureau of Narcotics.

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

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

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

44 (j) "Judge of competent jurisdiction" means a justice
45 of the Supreme Court or a circuit court judge.

46 (k) "Oral communication" means an oral communication
47 uttered by a person exhibiting an expectation that the
48 communication is not subject to interception under circumstances
49 justifying that expectation.

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

57 (m) "Prosecutor" means a district attorney with
58 jurisdiction in the county in which the facility or place where
59 the communication to be intercepted is located or a legal

60 assistant to the district attorney if designated in writing by the
61 district attorney on a case-by-case basis.

62 (n) "Residence" means a structure or the portion of a
63 structure used as a person's home or fixed place of habitation to
64 which the person indicates an intent to return after any temporary
65 absence.

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

76 **SECTION 2.** Section 41-29-505, Mississippi Code of 1972, is
77 amended as follows:

78 41-29-505. A judge of competent jurisdiction in the circuit
79 court district of the location where the interception of wire,
80 oral or other communications is sought, or a circuit court
81 district contiguous to such circuit court district, may issue an
82 order authorizing interception of wire, oral or other
83 communications only if the prosecutor applying for the order shows
84 probable cause to believe that the interception will provide
85 evidence of the commission of a felony under the Uniform
86 Controlled Substances Law or evidence of the commission of a
87 capital offense as that term is defined in Section 1-3-4.

88 **SECTION 3.** Section 41-29-507, Mississippi Code of 1972, is
89 amended as follows:

90 41-29-507. (1) No person, agency of the state or political
91 subdivision of the state, other than the Bureau of Narcotics or
92 Bureau of Investigation, is authorized by this article to own,

93 possess, install, operate or monitor an electronic, mechanical or
94 other device. The Bureau of Narcotics or Bureau of Investigation
95 may be assisted by an investigative or law enforcement officer in
96 the operation and monitoring of an interception of wire, oral or
97 other communications, provided that an agent of the Bureau of
98 Narcotics or Bureau of Investigation is present at all times.

99 (2) The director or commissioner shall designate, in
100 writing, the agents of the Bureau of Narcotics or Bureau of
101 Investigation who are responsible for the possession,
102 installation, operation and monitoring of electronic, mechanical
103 or other devices for the bureaus.

104 **SECTION 4.** Section 41-29-509, Mississippi Code of 1972, is
105 amended as follows:

106 41-29-509. Prior to submitting a request for an order
107 authorizing interception of wire, oral or other communications to
108 a prosecutor, the director or commissioner shall receive a written
109 affidavit from one or more agents of the Bureau of Narcotics or
110 Bureau of Investigation setting forth the information required by
111 Section 41-29-513(1). The director or commissioner shall submit
112 all information required by Section 41-29-513(1) to the
113 prosecutor. Upon receipt of the request from the director or
114 commissioner, the prosecutor shall be authorized to submit an
115 application to a court of competent jurisdiction requesting the
116 court to issue an order authorizing interception of wire, oral or
117 other communications as provided in Section 41-29-515.

118 **SECTION 5.** Section 41-29-513, Mississippi Code of 1972, is
119 amended as follows:

120 41-29-513. (1) To be valid, an application for an order
121 authorizing the interception of a wire, oral or other
122 communication must be made in writing under oath to a judge of
123 competent jurisdiction in the circuit court district of the
124 location where the interception of wire, oral or other
125 communications is sought, or a circuit court district contiguous

126 to such circuit court district, and must state the applicant's
127 authority to make the application. An applicant must include the
128 following information in the application:

129 (a) A statement that the application has been requested
130 by the director or the commissioner and the identity of the
131 prosecutor making the application;

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

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

137 (ii) A particular description of the nature and
138 location of the facilities from which or the place where the
139 communication is to be intercepted;

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

142 (iv) The identity of the person, if known,
143 committing the offense and whose communications are to be
144 intercepted;

145 (c) A full and complete statement as to whether or not
146 other investigative procedures have been tried and failed or why
147 they reasonably appear to be unlikely to succeed or to be too
148 dangerous if tried;

149 (d) A statement of the period of time for which the
150 interception is required to be maintained and, if the nature of
151 the investigation is such that the authorization for interception
152 should not automatically terminate when the described type of
153 communication is first obtained, a particular description of the
154 facts establishing probable cause to believe that additional
155 communications of the same type will occur after the described
156 type of communication is obtained;

157 (e) A statement whether a covert entry will be
158 necessary to properly and safely install the wiretapping or

159 electronic surveillance or eavesdropping equipment and, if a
160 covert entry is requested, a statement as to why such an entry is
161 necessary and proper under the facts of the particular
162 investigation, including a full and complete statement as to
163 whether other investigative techniques have been tried and have
164 failed or why they reasonably appear to be unlikely to succeed or
165 to be too dangerous if tried or are not feasible under the
166 circumstances or exigencies of time;

167 (f) A full and complete statement of the facts
168 concerning all applications known to the prosecutor making the
169 application that have been previously made to a judge for
170 authorization to intercept wire, oral or other communications
171 involving any of the persons, facilities or places specified in
172 the application and of the action taken by the judge on each
173 application; and

174 (g) If the application is for the extension of an
175 order, a statement setting forth the results already obtained from
176 the interception or a reasonable explanation of the failure to
177 obtain results.

178 (2) The judge may, in an ex parte in camera hearing, require
179 additional testimony or documentary evidence in support of the
180 application, and such testimony or documentary evidence shall be
181 preserved as part of the application.

182 **SECTION 6.** Section 41-29-536, Mississippi Code of 1972, is
183 amended as follows:

184 41-29-536. (1) Attorneys for the Bureau of Narcotics or
185 Bureau of Investigation may file a motion with a circuit court
186 judge of the circuit court district in which the subscriber,
187 instrument or other device exists, for communication records which
188 will be material to an ongoing investigation of an offense
189 enumerated in Section 41-29-505.

190 (2) The motion shall be made in writing, under oath, and
191 shall include the name of the subscriber, the number or numbers,

192 and the location of the instrument or other device, if known and
193 applicable. The motion shall be accompanied by an affidavit from
194 an agent of the Bureau of Narcotics or Bureau of Investigation
195 which sets forth facts which the court shall consider in
196 determining that probable cause exists to believe that the
197 information sought will be material to an offense enumerated in
198 Section 41-29-505.

199 (3) Upon consideration of the motion and the determination
200 that probable cause exists, the circuit court judge may order a
201 communications common carrier as defined by 47 USCS 153(h) or a
202 provider of communication services to provide the Bureau of
203 Narcotics or Bureau of Investigation with communication billing
204 records, call records, subscriber information, or other
205 communication record information. The communications common
206 carrier or the provider of communication services shall be
207 entitled to compensation at the prevailing rates from the Bureau
208 of Narcotics or Bureau of Investigation.

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

214 **SECTION 7.** This act shall take effect and be in force from
215 and after July 1, 2007.