

By: Representative Blackmon

To: Judiciary A

HOUSE BILL NO. 1148

1 AN ACT TO AMEND SECTIONS 41-29-501, 41-29-505, 41-29-507,
2 41-29-513, 41-29-515, 41-29-527 AND 41-29-536, MISSISSIPPI CODE OF
3 1972, TO AUTHORIZE THE ATTORNEY GENERAL TO APPLY FOR A COURT ORDER
4 AUTHORIZING THE INTERCEPTION OF WIRE OR ORAL COMMUNICATIONS; TO
5 REVISE DEFINITIONS; TO EXPAND THE CRIMINAL OFFENSES FOR WHICH
6 INTERCEPTION OF WIRE OR ORAL COMMUNICATIONS ORDERS MAY BE ISSUED;
7 TO REQUIRE REPORTS TO THE ADMINISTRATIVE OFFICE OF UNITED STATES
8 COURTS; TO REVISE THE FILING OF MOTIONS; TO BRING FORWARD SECTION
9 41-29-509, MISSISSIPPI CODE OF 1972, FOR PURPOSES OF AMENDMENT;
10 AND FOR RELATED PURPOSES.

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

12 **SECTION 1.** Section 41-29-501, Mississippi Code of 1972, is
13 amended as follows:

14 41-29-501. As used in this article, the following terms
15 shall have the meaning ascribed to them herein unless the context
16 requires otherwise:

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

20 (b) "Attorney General" means the Attorney General of
21 the State of Mississippi or any assistant Attorney General or
22 special assistant Attorney General designated in writing by the
23 Attorney General.

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

27 (d) "Contents," when used with respect to a wire, oral
28 or other communication, includes any information concerning the
29 identity of the parties to the communication or the existence,
30 substance, purport or meaning of that communication.



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

34 (f) "Director" means the Director of the Bureau of
35 Narcotics or, if the director is absent or unable to serve, the
36 Assistant Director of the Bureau of Narcotics.

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

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

43 (i) "Investigative or law enforcement officer" means an
44 officer of this state or of a political subdivision of this state
45 who is empowered by law to conduct investigations of, or to make
46 arrests for, offenses enumerated in Section 41-29-505, and who has
47 successfully completed a course of training on the legal and
48 technical aspects of interception and use of wire, oral and other
49 communications approved by the director or the Attorney General;
50 an attorney authorized by law to prosecute or participate in the
51 prosecution of such offenses; or a federal law enforcement officer
52 designated by the director or the Attorney General.

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

55 (k) "Oral communication" means an oral communication
56 uttered by a person exhibiting an expectation that the
57 communication is not subject to interception under circumstances
58 justifying that expectation.

59 (l) "Other communication" means any transfer of an
60 electronic or other signal, including fax signals, computer
61 generated signals, other similar signals, or any scrambled or
62 encrypted signal transferred via wire, radio, electromagnetic,
63 photoelectric or photooptical system from one party to another in



64 which the involved parties may reasonably expect the communication
65 to be private.

66 (m) "Prosecutor" means a district attorney with
67 jurisdiction in the county in which the facility or place where
68 the communication to be intercepted is located or a legal
69 assistant to the district attorney if designated in writing by the
70 district attorney on a case-by-case basis.

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

75 (o) "Wire communication" means a communication made in
76 whole or in part through the use of facilities for the
77 transmission of communications by the aid of wire, cable or other
78 like connection between the point of origin and the point of
79 reception furnished or operated by a person engaged as a common
80 carrier in providing or operating the facilities for the
81 transmission of communications and includes cordless telephones,
82 voice pagers, cellular telephones, any mobile telephone, or any
83 communication conducted through the facilities of a provider of
84 communication services.

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

87 41-29-505. A judge of competent jurisdiction in the circuit
88 court district of the location where the interception of wire,
89 oral or other communications is sought, or a circuit court
90 district contiguous to such circuit court district, may issue an
91 order authorizing interception of wire, oral or other
92 communications only if (a) the prosecutor applying for the order
93 shows probable cause to believe that the interception will provide
94 evidence of the commission of a felony under the Uniform
95 Controlled Substances Law or (b) the Attorney General applies for
96 the order and shows probable cause to believe that the



97 interception will provide evidence of murder, kidnapping,
98 gambling, robbery, bribery, extortion or other crime which is
99 dangerous to life, limb or property and punishable by imprisonment
100 for more than one (1) year , or any conspiracy to commit any of
101 the foregoing offenses.

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

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

114 (2) The director shall designate, in writing, the agents of
115 the Bureau of Narcotics who are responsible for the possession,
116 installation, operation and monitoring of electronic, mechanical
117 or other devices for the bureau and the Attorney General shall
118 designate, in writing, the investigators of his office who are
119 responsible for the possession, installation, operation and
120 monitoring of electronic or other devices for his office.

121 **SECTION 4.** Section 41-29-513, Mississippi Code of 1972, is
122 amended as follows:

123 41-29-513. (1) To be valid, an application for an order
124 authorizing the interception of a wire, oral or other
125 communication must be made in writing under oath to a judge of
126 competent jurisdiction in the circuit court district of the
127 location where the interception of wire, oral or other
128 communications is sought, or a circuit court district contiguous
129 to such circuit court district, and must state the applicant's



130 authority to make the application. An applicant must include the
131 following information in the application:

132 (a) The identity of the individual making the
133 application, if the application has been authorized by the
134 Attorney General, or a statement that the application has been
135 requested by the director and the identity of the prosecutor
136 making the application, if the application has been requested by
137 the director;

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

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

143 (ii) A particular description of the nature and
144 location of the facilities from which or the place where the
145 communication is to be intercepted;

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

148 (iv) The identity of the person, if known,
149 committing the offense and whose communications are to be
150 intercepted;

151 (c) A full and complete statement as to whether or not
152 other investigative procedures have been tried and failed or why
153 they reasonably appear to be unlikely to succeed if tried or to be
154 too dangerous * * *;

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



163 (e) A statement whether a covert entry will be
164 necessary to properly and safely install the wiretapping or
165 electronic surveillance or eavesdropping equipment and, if a
166 covert entry is requested, a statement as to why such an entry is
167 necessary and proper under the facts of the particular
168 investigation, including a full and complete statement as to
169 whether other investigative techniques have been tried and have
170 failed or why they reasonably appear to be unlikely to succeed or
171 to be too dangerous if tried or are not feasible under the
172 circumstances or exigencies of time;

173 (f) A full and complete statement of the facts
174 concerning all applications known to the applicant that have been
175 previously made to a judge for authorization to intercept wire,
176 oral or other communications involving any of the persons,
177 facilities or places specified in the application and of the
178 action taken by the judge on each application; and

179 (g) If the application is for the extension of an
180 order, a statement setting forth the results already obtained from
181 the interception or a reasonable explanation of the failure to
182 obtain results.

183 (2) The judge may, in an ex parte in camera hearing, require
184 additional testimony or documentary evidence in support of the
185 application, and such testimony or documentary evidence shall be
186 preserved as part of the application.

187 **SECTION 5.** Section 41-29-515, Mississippi Code of 1972, is
188 amended as follows:

189 41-29-515. (1) Upon receipt of an application, the judge
190 may enter an ex parte order, as requested or as modified,
191 authorizing interception of wire, oral or other communications if
192 the judge determines from the evidence submitted by the applicant
193 that:



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

197 (b) There is probable cause to believe that particular
198 communications concerning that offense will be obtained through
199 the interception;

200 (c) Normal investigative procedures have been tried and
201 have failed or reasonably appear to be unlikely to succeed or to
202 be too dangerous if tried;

203 (d) There is probable cause to believe that the
204 facilities from which or the place where the wire, oral or other
205 communications are to be intercepted are being used or are about
206 to be used in connection with the commission of an offense or are
207 leased to, listed in the name of, or commonly used by the person;
208 and

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

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

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

215 (b) The nature and location of the communications
216 facilities as to which or the place where authority to intercept
217 is granted;

218 (c) A particular description of the type of
219 communication sought to be intercepted and a statement of the
220 particular offense to which it relates;

221 (d) A statement setting forth the identity of the
222 prosecutor and stating that the director has requested the
223 prosecutor to apply for the order authorizing the interception or
224 the identity of the individual making the application and stating
225 that the Attorney General has authorized the application for the
226 order authorizing the interception;



227 (e) The time during which the interception is
228 authorized, including a statement of whether or not the
229 interception will automatically terminate when the described
230 communication is first obtained; and

231 (f) Whether or not a covert entry is necessary to
232 properly and safely install wiretapping, electronic surveillance
233 or eavesdropping equipment.

234 (3) The order authorizing the interception of a wire, oral
235 or other communication shall, upon request of the applicant,
236 direct that a communication common carrier, landlord, custodian or
237 other person furnish the applicant all information, facilities and
238 technical assistance necessary to accomplish the interception
239 unobtrusively and with a minimum of interference with the services
240 that the carrier, landlord, custodian or other person is providing
241 the person whose communications are to be intercepted. Any
242 communication common carrier, landlord, custodian or other person
243 furnishing facilities or technical assistance is entitled to
244 compensation by the applicant for the facilities or assistance at
245 the prevailing rates.

246 (4) An order entered pursuant to this section may not
247 authorize the interception of a wire, oral or other communication
248 for longer than is necessary to achieve the objective of the
249 authorization, and in no event may it authorize interception for
250 more than thirty (30) days. The issuing judge may grant
251 extensions of an order, but only upon application for an extension
252 made in accordance with Section 41-29-513 and the court making the
253 findings required by subsection (1) of this section. The period
254 of extension may not be longer than the authorizing judge deems
255 necessary to achieve the purposes for which it is granted, and in
256 no event may the extension be for more than thirty (30) days. To
257 be valid, each order and extension of an order shall provide that
258 the authorization to intercept be executed as soon as practicable,
259 be conducted in a way that minimizes the interception of



260 communications not otherwise subject to interception under this
261 article, and terminate on obtaining the authorized objective or
262 within thirty (30) days, whichever occurs sooner.

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

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

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

271 (i) (A) The premises into or onto which the
272 covert entry is authorized or the person whose communications are
273 to be obtained has been the subject of a pen register previously
274 authorized in connection with the same investigation; (B) the
275 premises into or onto which the covert entry is authorized or the
276 person whose communications are to be obtained has been the
277 subject of an interception of wire communications previously
278 authorized in connection with the same investigation; (C) that
279 such procedures have failed; and (D) if the order is for the
280 interception of other communications and requires covert entry, a
281 court-ordered attempt to intercept the communications without
282 using covert entry must have been made without success;

283 (ii) That the procedures enumerated in item (i)
284 reasonably appear to be unlikely to succeed or to be too dangerous
285 if tried or are not feasible under the circumstances or exigencies
286 of time; and

287 (b) The order, in addition to the matters required to
288 be specified under subsection (2) of this section, specifies that
289 the covert entry is for the purpose of intercepting oral
290 communications of two (2) or more persons and that there is
291 probable cause to believe they are committing, have committed, or



292 are about to commit a particular offense enumerated in Section
293 41-29-505.

294 (7) The judge of a court of competent jurisdiction may issue
295 an order for the interception of wire, oral or other
296 communications conducted within a vehicle, vessel, other mode of
297 transportation or any location where a reasonable expectation of
298 privacy might exist, provided the requirements of this section,
299 where applicable, are met.

300 (8) Whenever an order authorizing interception is entered
301 pursuant to this article, the order may require reports to the
302 judge who issued the order showing what progress has been made
303 toward achievement of the authorized objective and the need for
304 continued interception. Reports shall be made at any interval the
305 judge requires.

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

310 (10) Unless otherwise specified by the issuing judge, an
311 order issued pursuant to this section authorizing the interception
312 of any cellular, portable, transportable or mobile telephone or
313 communication instrument is valid throughout the State of
314 Mississippi and the cellular, portable, transportable or mobile
315 telephone or communication instrument may continue to be monitored
316 and intercepted when it is transported and used outside the state
317 where there is sufficient probable cause to establish a nexus with
318 criminal activity that could be prosecuted in this state.

319 **SECTION 6.** Section 41-29-527, Mississippi Code of 1972, is
320 amended as follows:

321 41-29-527. (1) Within thirty (30) days after the date an
322 order or the last extension, if any, expires or after the denial
323 of an order, the issuing or denying judge shall report to the
324 Administrative Office of the United States Courts:



325 (a) The fact that an order or extension was applied
326 for;

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

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

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

332 (e) The offense specified in the order or application
333 or extension;

334 (f) The identity of the officer making the request and
335 the prosecutor making the application; and

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

338 (2) In January of each year each prosecutor and the Attorney
339 General shall report to the Administrative Office of the United
340 States Courts the following information for the preceding calendar
341 year:

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

345 (b) A general description of the interceptions made
346 under each order or extension, including the approximate nature
347 and frequency of incriminating communications intercepted, the
348 approximate nature and frequency of order communications
349 intercepted, the approximate number of persons whose
350 communications were intercepted, and the approximate nature,
351 amount and cost of the manpower and other resources used in the
352 interceptions;

353 (c) The number of arrests resulting from interceptions
354 made under each order or extension and the offenses for which
355 arrests were made;

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



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

359 (f) The number of convictions resulting from
360 interceptions, the offenses for which the convictions were
361 obtained, and a general assessment of the importance of the
362 interceptions; and

363 (g) The information required by paragraphs (b) through
364 (f) of this subsection with respect to orders or extensions
365 obtained.

366 (3) Any judge or prosecutor required to file a report with
367 the Administrative Office of the United States Courts shall
368 forward a copy of such report to the director if the application
369 has been requested by the director. On or before January 5 of
370 each year the director shall submit to the Mississippi
371 Administrative Office of Courts a report of all intercepts, as
372 defined in this subsection and as required by federal law which
373 relates to statistical data only, conducted pursuant to this
374 article and terminated during the preceding calendar year. Such
375 report shall include:

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

378 (b) The number of Bureau of Narcotics personnel
379 authorized to possess, install or operate electronic, mechanical
380 or other devices;

381 (c) The number of Bureau of Narcotics and other law
382 enforcement personnel who participated or engaged in the seizure
383 of intercepts pursuant to this article during the preceding
384 calendar year; and

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



390 (4) Any judge required to file a report with the
391 Administrative Office of United States Courts shall forward a copy
392 of such report to the Attorney General if the application had been
393 authorized by the Attorney General. On or before January 5 of
394 each year the Attorney General shall submit to the Mississippi
395 Administrative Office of Courts a report of all intercepts, as
396 described in this subsection and as required by federal law which
397 relates to statistical data only, conducted pursuant to this
398 article and terminated during the preceding calendar year. Such
399 report shall include:

400 (a) The report of judges forwarded to the Attorney
401 General as required by this section;

402 (b) The number of personnel in the Office of Attorney
403 General authorized to possess, install or operate electronic,
404 mechanical or other devices;

405 (c) The number of personnel in the Office of Attorney
406 General and other law enforcement personnel who participated or
407 engaged in the seizure of intercepts pursuant to this article
408 during the preceding calendar year; and

409 (d) The total cost to the Office of Attorney General
410 for all activities and procedures relating to the seizure of
411 intercepts during the preceding calendar year, including costs of
412 equipment, manpower and expenses incurred as compensation for use
413 of facilities or technical assistance provided by the office.

414 **SECTION 7.** Section 41-29-536, Mississippi Code of 1972, is
415 amended as follows:

416 41-29-536. (1) (a) Attorneys for the Bureau of Narcotics
417 may file an ex parte application with a circuit court judge of the
418 circuit court district in which the subscriber, instrument or
419 other device exists, for communication records which will be
420 material to an ongoing investigation of an offense enumerated in
421 Section 41-29-505(a).



422 (b) The Attorney General may file an ex parte
423 application with a circuit court judge of the circuit court
424 district in which the subscriber, instrument or other device
425 exists, for communication records which will be material to an
426 ongoing investigation of an offense enumerated in Section
427 41-29-505(b).

428 (2) The application shall be made in writing, under oath,
429 and shall include the name of the subscriber, the number or
430 numbers, and the location of the instrument or other device, if
431 known and applicable. The application authorized by subsection
432 (1)(a) shall be accompanied by an affidavit from an agent of the
433 Bureau of Narcotics stating the facts which the court shall
434 consider in determining that probable cause exists to believe that
435 the information sought will be material to an offense enumerated
436 in Section 41-29-505(a). The application authorized by subsection
437 (1)(b) shall be accompanied by an affidavit from an investigator
438 of the Office of the Attorney General stating facts which the
439 court shall consider in determining that probable cause exists to
440 believe that the information sought will be material to an offense
441 enumerated in Section 41-29-505(b).

442 (3) Upon consideration of an application and the
443 determination that probable cause exists, the circuit court judge
444 may order a communications common carrier as defined by 47 USCS
445 153(h) or a provider of communication services to provide the
446 applicant with communication billing records, call records,
447 subscriber information, or other communication record information.
448 The communications common carrier or the provider of communication
449 services shall be entitled to compensation by the applicant at the
450 prevailing rates * * *.

451 (4) The circuit court judge shall seal each order issued
452 pursuant to this section. The contents of an application,
453 affidavit and order may not be disclosed except in the course of a
454 judicial proceeding. Any unauthorized disclosure of a sealed



455 order, motion or affidavit shall be punishable as contempt of
456 court.

457 **SECTION 8.** Section 41-29-509, Mississippi Code of 1972, is
458 brought forward as follows:

459 41-29-509. Prior to submitting a request for an order
460 authorizing interception of wire, oral or other communications to
461 a prosecutor, the director shall receive a written affidavit from
462 one or more agents of the Bureau of Narcotics setting forth the
463 information required by Section 41-29-513(1). The director shall
464 submit all information required by Section 41-29-513(1) to the
465 prosecutor. Upon receipt of the request from the director, the
466 prosecutor shall be authorized to submit an application to a court
467 of competent jurisdiction requesting the court to issue an order
468 authorizing interception of wire, oral or other communications as
469 provided in Section 41-29-515.

470 **SECTION 9.** This act shall take effect and be in force from
471 and after July 1, 2008.

