

By: Representative Owen

To: Judiciary B

## HOUSE BILL NO. 1221

1 AN ACT TO AUTHORIZE THE DIVISION OF CYBER CRIME WITHIN THE  
2 OFFICE OF THE ATTORNEY GENERAL TO INTERCEPT WIRE, ORAL, OR  
3 ELECTRONIC COMMUNICATION TO INVESTIGATE CHILD EXPLOITATION CASES;  
4 TO DEFINE TERMS; TO PROVIDE FOR AN APPLICATION PROCESS AND  
5 ESTABLISH CERTAIN CONTENT REQUIREMENTS FOR AN APPLICATION; TO  
6 AUTHORIZE A JUDGE TO ENTER AN EX PARTE ORDER GRANTING THE  
7 APPLICATION AND TO REQUIRE CERTAIN FINDINGS; TO LIMIT THE DURATION  
8 OF AN ORDER GRANTING AN APPLICATION; TO AUTHORIZE EXTENSIONS TO  
9 THE ORDER GRANTING THE APPLICATION; TO PROVIDE THAT THE CONTENTS  
10 OF ANY INTERCEPT BE RECORDED; TO REQUIRE THAT THE RECORDING BE  
11 MADE AVAILABLE UNDER SEAL TO THE ISSUING JUDGE; TO PROVIDE THAT  
12 APPLICATIONS AND ORDERS UNDER THIS ACT SHALL BE CONFIDENTIAL; TO  
13 PROVIDE THAT THE CONTENTS OF AN INTERCEPT SHALL NOT BE ADMITTED AS  
14 EVIDENCE UNLESS EACH PARTY HAS RECEIVED A COPY OF THE ORDER  
15 AUTHORIZING THE INTERCEPT; TO PROVIDE FOR MOTIONS TO SUPPRESS THE  
16 INTERCEPTED COMMUNICATIONS; TO AUTHORIZE AN APPEAL OF AN ORDER  
17 GRANTING A MOTION TO SUPPRESS OR DENYING AN APPLICATION; TO GOVERN  
18 THE DISCLOSURE AND USE OF THE INTERCEPTED COMMUNICATION AS IT  
19 RELATES TO OTHER UNLAWFUL ACTIVITY; TO PROVIDE THAT THE  
20 INTERCEPTED COMMUNICATION SHALL NOT BE RECEIVED IN EVIDENCE IN  
21 VIOLATION OF THIS ACT; TO REQUIRE AN ANNUAL REPORT; TO PROVIDE  
22 THAT ANY AMBIGUITY IN THIS ACT BE RESOLVED IN FAVOR OF THE  
23 AGGRIEVED PARTY AND AGAINST THE STATE; AND FOR RELATED PURPOSES.

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

25 **SECTION 1.** (1) This act shall authorize and govern the  
26 interception of a wire, oral, or electronic communication by the  
27 Division of Cyber Crime within the Office of the Attorney General



when interception may provide evidence of child exploitation, as set forth in Sections 97-5-31 through 97-5-37.

(2) (a) No person, agency of the state or political subdivision of the state, other than the Division of Cyber Crime within the Office of the Attorney General, is authorized by this article to own, possess, install operate or monitor an electronic, mechanical or other device.

(b) The Attorney General shall designate, in writing, the members of the Division of Cyber Crime who are responsible for the possession, installation, operation and monitoring of electronic, mechanical or other devices for the division.

**SECTION 2.** As used in this act, the following words shall have the meanings ascribed herein unless the context otherwise requires:

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

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

(c) "Electronic communication" means any transfer of signs, signals, writing, images, sounds, data or intelligence of any nature transmitted in whole or in part by the aid of wire,



radio, electromagnetic, photooptical or photoelectronic facilities, but does not include:

- (i) Any wire or oral communication;
- (ii) Any communication made through a tone-only paging device; or
- (iii) Any communication from a "tracking device" as defined in 18 USC Section 3117.

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

- (i) Any telephone or telegraph instrument, equipment or facility or any component thereof:
  - 1. Furnished to the subscriber or user by a provider of wire or electronic service in the ordinary course of business and being used by the subscriber or user in the ordinary course of its business or furnished by the subscriber or user for connection to the facilities of the service and used in the ordinary course of its business;

- 2. Being used by a provider of wire or electronic communication service in the ordinary course of its business; or

- 3. Being used by an investigative or law enforcement officer in the ordinary course of that officer's duties; or



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

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

81 (f) "Investigative or law enforcement officer" means an  
82 investigator employed by the Office of the Attorney General.

83 (g) "Judge of competent jurisdiction" means any circuit  
84 court judge or any justice of the Supreme Court of Mississippi.

85 (h) "Oral communication" means any oral communication  
86 uttered by a person exhibiting an expectation that the  
87 communication is not subject to interception under circumstances  
88 justifying that expectation, but "oral communication" does not  
89 include any electronic communication.

90 (i) "Pen register" means a device which records or  
91 decodes electronic or other impulses which identify the numbers  
92 dialed or otherwise transmitted on the telephone line to which the  
93 device is attached, but "pen register" does not include any device  
94 used by a provider or customer of a wire or electronic  
95 communication service for billing, or recording as an incident to  
96 billing, for communication services provided by the provider or  
97 any device used by a provider or customer of a wire communication  
98 service for cost accounting or other like purposes in the ordinary  
99 course of its business.



(j) "Prosecutor" means the Mississippi Attorney General or his or her designee, if designated, in writing, on a case-by-case basis.

(k) "Provider of wire or electronic communications service" means an entity which holds itself out to the public as engaged in the business of transmitting messages through the use of wire communication or electronic communication, as both terms are defined in this section.

(l) "Wire communication" means any aural transfer made in whole or in part through the use of facilities for the transmission of communications by the aid of wire, cable, or other like connection between the point of origin and the point of reception, including the use of such connection in a switching station, furnished or operated by any person engaged as a provider of wire or electronic communications service in providing or operating those facilities for the transmission of communications.

**SECTION 3.** (1) Each application for an order authorizing the interception of a wire, oral or electronic communication shall be made in writing upon oath or affirmation to a judge of competent jurisdiction in:

(a) The district where the interception of a wire, oral or electronic communication is to occur;

(b) Any district where jurisdiction exists to prosecute the underlying offense to support an intercept order under this act; or



(c) The county in which the principal office of the Attorney General is located.

(2) The application shall state the prosecutor's authority to make the application and shall include the following information:

(a) Identity of the prosecutor making the application;

(b) A full and complete statement of the facts and circumstances relied upon by the applicant to justify the applicant's belief that an order should be issued, including:

(i) Details as to the particular offense, under Sections 97-5-31 through 97-5-37, that has been, is being, or is about to be committed;

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

(iii) A particular description of the type of communications sought to be intercepted; and

(iv) The identity of all persons, if known, committing the offense and whose communications are to be or may be intercepted;

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



149           (d) A statement of the period of time for which the  
150 interception is required to be maintained. The period of time  
151 shall be no more than thirty (30) days from the day that the  
152 wiretap is activated. If the nature of the investigation is such  
153 that the authorization for interception should not automatically  
154 terminate when the described type of communication has been first  
155 obtained, a particular description of facts establishing probable  
156 cause to believe that additional communications of the same type  
157 will occur thereafter;

158           (e) A full and complete statement of the facts  
159 concerning all previous applications known to the individuals  
160 authorizing and making the application, made to any judge for  
161 authorization to intercept wire, oral or electronic communications  
162 involving any of the same persons, facilities, or places specified  
163 in the application, and the action taken by the judge on each  
164 application; and

165           (f) Where the application is for the extension of an  
166 order beyond thirty (30) days, a statement setting forth the  
167 results thus far obtained from the interception, or a reasonable  
168 explanation of the failure to obtain results.

169           (3) The judge may require the applicant to furnish  
170 additional testimony or documentary evidence in support of the  
171 application.

172           **SECTION 4.** (1) Upon receipt of an application, the judge  
173 may enter an ex parte order, as requested or as modified,



authorizing interception of wire, oral or electronic communications within the district in which the judge is sitting, and outside that district but within this state in the case of a mobile interception device, if the judge determines on the basis of the facts submitted by the applicant that:

(a) There is probable cause for belief that an individual is committing, has committed, or is about to commit a particular offense enumerated in Sections 97-5-31 through 97-5-37;

(b) There is probable cause for belief that particular communications concerning that offense will be obtained through the interception;

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

(d) There is probable cause for belief that the facilities from which, or the place where, the wire, oral or electronic communications are to be intercepted are being used, or about to be used, in connection with the commission of the offense, or are leased to, listed in the name of, or commonly used by the person.

(2) (a) Each order authorizing the interception of any wire, oral or electronic communication under this section shall specify:

(i) The identity of all persons, if known, whose communications are to be or may be intercepted;





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

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

(iv) The identity of the agency authorized to intercept the communications, and the identity of the person authorizing the application; and

(v) The period of time during which the interception is authorized, including a statement as to whether or not the interception shall automatically terminate when the described communication has been first obtained.

(b) An order authorizing the interception of a wire, oral or electronic communication under this section shall, upon the request of the applicant, direct that a provider of wire or electronic communication service, landlord, custodian, or other person shall furnish the applicant with all information, facilities, and technical assistance necessary to accomplish the interception unobtrusively and with a minimum of interference with the services that the service provider, landlord, custodian, or person is according the person whose communications are to be intercepted. Any provider of wire or electronic communication service, landlord, custodian, or other person furnishing facilities or technical assistance shall be compensated by the



applicant for reasonable expenses incurred in providing the facilities or assistance.

(3) (a) No order entered under this section may authorize or approve the interception of any wire, oral or electronic communication for any period longer than is necessary to achieve the objective of the authorization, nor in any event longer than thirty (30) days. The thirty-day period begins on the earlier of the day on which the investigative or law enforcement officer first begins to conduct an interception under the order or ten (10) days after the order is entered.

(b) Extensions of an order may be granted, but only upon application for an extension made in accordance with Section 3 of this act and the court making the findings required by subsection (1) of this section. The period of extension shall be no longer than the authorizing judge deems necessary to achieve the purposes for which it was granted and in no event for longer than thirty (30) days. Every order and extension of an order shall contain a provision that the authorization to intercept shall be executed as soon as practicable, shall be conducted in a way as to minimize the interception of communications not otherwise subject to interception under this act, and must terminate upon attainment of the authorized objective, or in any event in thirty (30) days.

(c) In the event the intercepted communication is in a code or foreign language, and an expert in that code or foreign



language is not reasonably available during the interception period, minimization may be accomplished as soon as practicable after interception. An interpretation or decoding of an interception under this subsection (3)(c) may be conducted in whole or in part by an investigative or law enforcement officer, or by an individual operating under a contract with the state, acting under the supervision of an investigative or law enforcement officer.

**SECTION 5.** The contents of any wire, oral or electronic communication intercepted by any means authorized by this act shall, if possible, be recorded on tape or wire or other comparable device. The recording of the contents of any wire, oral or electronic communication under this section shall be done in a way as will protect the recording from editing or other alterations.

**SECTION 6.** (1) Immediately upon the expiration of the period of the order, or extensions of the order, the recordings shall be made available to the judge issuing the order and sealed under the judge's direction. All recordings of wire, oral or electronic communications shall be treated as confidential and shall not be open for inspection by members of the public. Custody of the recordings shall be wherever the judge orders. The recordings shall not be destroyed except upon an order of the issuing judge and in any event shall be kept for five (5) years; provided, that upon the agreement of the person whose



communications were intercepted, or that person's counsel, and the appropriate prosecutor, the issuing judge may order the destruction of all recordings at any time.

(2) Prior to the recordings being made available to the judge issuing the order, sealed, duplicate recordings may be made for use or disclosure, as set forth in this act for investigations or in response to a lawful motion for discovery in a criminal proceeding. All duplicate recordings or written transcripts shall be treated as confidential and shall not be open for inspection by members of the public.

(3) Upon an order of the issuing judge, the contents of any wire, oral or electronic communication may be unsealed and used while giving testimony, as set forth in this act. The presence of the seal provided for by subsection (1) of this section, or a satisfactory explanation for the absence of the seal, shall be a prerequisite for the use or disclosure of the contents of any wire, oral or electronic communication or evidence derived therefrom under this act. All wire, oral or electronic communications that are not disclosed while giving testimony retain their confidential character and shall not be open for inspection by members of the public.

(4) Immediately following use while giving testimony, the recordings shall be returned to the judge issuing the order and resealed under the judge's direction.



(5) Any violation of this section may be punished as contempt of court by the issuing or denying judge.

**SECTION 7.** (1) Applications made and orders granted under this act shall be treated as confidential and shall not be open for inspection by members of the public. Applications and orders shall be sealed by the judge and custody shall be wherever the judge directs. The applications and orders shall be disclosed only upon a showing of good cause before a judge of competent jurisdiction and shall not be destroyed except on order of the issuing or denying judge and in any event shall be kept for five (5) years. Upon the agreement of the person named in the order or application, or that person's counsel, and the appropriate prosecutor, the issuing judge may order the destruction of such applications and orders at any time.

(2) Within a reasonable time, but not later than ninety (90) days after the termination of an order of approval, the termination of an order authorizing an extension or the denial of an application, whichever is later, the issuing or denying judge shall cause an inventory to be served on the persons named in the order or application and any other parties to intercepted communications as determined by the judge exercising judicial discretion in the interest of justice. The inventory shall include notice of:

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



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

(c) The fact that during the period wire, oral or electronic communications were or were not intercepted.

(3) The judge, upon the filing of a motion, may, in the judge's discretion, make available to the person or the person's counsel for inspection any portions of the intercepted communications, applications and orders as the judge determines to be in the interest of justice. On an ex parte showing of good cause to a judge of competent jurisdiction, the serving of the inventory required by subsection (2) of this section may be postponed for ninety (90) days. At the end of this period, the judge may allow additional ninety-day extensions, but only on further showing of good cause.

(4) Any violation of this section may be punished as contempt of court by the issuing or denying judge.

**SECTION 8.** The contents of any intercepted wire, oral or electronic communication or evidence derived therefrom shall not be received in evidence or otherwise disclosed in any trial in a state court unless each party, not less than ten (10) days before the trial, hearing, or proceeding, has been furnished with a copy of the court order, and accompanying application, under which the interception was authorized. This ten-day period may be waived by the judge if the judge finds that it was not possible to furnish the party with the information ten (10) days before the trial,



hearing, or proceeding and that the party will not be prejudiced by the delay in receiving the information.

**SECTION 9.** (1) (a) Any aggrieved person in any trial, hearing, or proceeding in or before any court may move to suppress the contents of any intercepted wire, oral or electronic communication, or evidence derived therefrom, on the grounds that:

(i) The communication was unlawfully intercepted;  
(ii) The order of authorization under which it was intercepted is insufficient on its face; or  
(iii) The interception was not made in conformity with the order of authorization.

(b) The motion shall be made before the trial, hearing or proceeding, unless there was no opportunity to make the motion or the person was not aware of the grounds of the motion. If the motion is granted, the contents of the intercepted wire, oral or electronic communication, or evidence derived therefrom, shall be treated as having been obtained in violation of this section. The judge, upon the filing of a motion by the aggrieved person, may, in the judge's discretion, make available portions of the intercepted communication, or evidence derived therefrom, as the judge determines to be in the interest of justice.

(2) In addition to any other right to appeal, the state has the right to appeal from an order granting a motion to suppress made under subsection (1) of this section, or the denial of an application for an order of approval or extension of an order



under Section 4 of this act, if the prosecutor certifies to the judge or other official granting the motion or denying the application that the appeal is not taken for purposes of delay. The appeal shall be taken within thirty (30) days after the date the order was entered and shall be diligently prosecuted.

**SECTION 10.** (1) Any investigative or law enforcement officer who, by any means authorized by this act, has obtained knowledge of the contents of any wire, oral or electronic communication, or evidence of child exploitation, as set forth in Sections 97-5-31 through 97-5-37, derived therefrom, may disclose such contents to another investigative or law enforcement officer to the extent that disclosure is appropriate to the proper performance of the official duties of the officer making or receiving the disclosure.

(2) Any investigative or law enforcement officer who, by any means authorized by this act, has obtained knowledge of the contents of any wire, oral or electronic communication or evidence of child exploitation, as set forth in Sections 97-5-31 through 97-5-37, derived therefrom may use the contents to the extent the use is appropriate to the proper performance of the officer's official duties.

(3) Any person who has received, by any means authorized by this act, any information concerning a wire, oral or electronic communication, or evidence of child exploitation, as set forth in Sections 97-5-31 through 97-5-37, derived therefrom, intercepted





in accordance with this act may disclose the contents of that communication or derivative evidence while giving testimony under oath or affirmation in any proceeding held under the authority of the State of Mississippi, or of the United States, or a political subdivision of the United States.

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

(5) When an investigative or law enforcement officer, while engaged in intercepting wire, oral or electronic communications in the manner authorized in this act, intercepts wire, oral or electronic communications relating to a crime of violence listed in Section 97-3-2, other than those specified in the order of authorization, the contents thereof and evidence derived therefrom, may be disclosed or used as provided in subsections (2) and (3) of this section when authorized by a judge of competent jurisdiction where the judge finds on subsequent application that the contents were otherwise intercepted in accordance with this act. The application shall be made as soon as practicable after the interception.

**SECTION 11.** A wire, oral or electronic communication that has been intercepted and any evidence derived therefrom shall not



be received in evidence in a trial, hearing, or other proceeding in any court or before any grand jury if the disclosure of that information would be in violation of this act.

**SECTION 12.** (1) In January of each year, the Mississippi Attorney General shall report to the President of the Senate and the Speaker of the House of Representatives:

(a) A general description of the interceptions made under the order or extension during the preceding year, including:

(i) The approximate number of persons whose communications were intercepted; and

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

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

(c) The number of trials resulting from the interceptions;

(d) The number of motions to suppress made with respect to the interceptions, and the number granted or denied; and

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

(2) Whenever an order authorizing interception is entered pursuant to this act, the order may, at the discretion of the



447 judge who issued the order, require that reports be made to the  
448 judge who issued the order showing what progress has been made  
449 toward achievement of the authorized objective and the need for  
450 continued interception at intervals of no less than ten (10) days.

451 **SECTION 13.** Any ambiguity in this act shall be resolved in  
452 favor of the aggrieved party and against the state.

453 **SECTION 14.** Any judge of competent jurisdiction may issue a  
454 pen register or trap and trace order pursuant to the provisions  
455 and requirements of 18 USC Section 3123 et seq.

456 **SECTION 15.** Sections 1 through 14 of this act shall be  
457 codified in Title 7, Chapter 5, Mississippi Code of 1972.

458 **SECTION 16.** This act shall take effect and be in force from  
459 and after July 1, 2021.

