

By: Representative Harness

To: Judiciary B

HOUSE BILL NO. 899

1 AN ACT TO AUTHORIZE SHERIFFS TO USE ELECTRONIC AND MECHANICAL  
2 DEVICES FOR THE INTERCEPTION OF WIRE, ORAL AND OTHER  
3 COMMUNICATIONS; TO DEFINE CERTAIN TERMS; TO AUTHORIZE THE DISTRICT  
4 ATTORNEY, UPON REQUEST OF A SHERIFF, TO APPLY TO THE CIRCUIT COURT  
5 IN THE SHERIFF'S COUNTY FOR AN ORDER AUTHORIZING THE INTERCEPTION  
6 OF COMMUNICATIONS THAT MAY PROVIDE EVIDENCE OF THE COMMISSION OF A  
7 FELONY; TO PRESCRIBE THE FORM AND REQUIRED CONTENTS OF AN  
8 APPLICATION TO THE CIRCUIT COURT FOR AN ORDER AUTHORIZING  
9 INTERCEPTION OF COMMUNICATIONS; TO PRESCRIBE CERTAIN FINDINGS THAT  
10 MUST BE MADE BY A CIRCUIT COURT JUDGE BEFORE ENTERING AN ORDER  
11 AUTHORIZING THE INTERCEPTION; TO REQUIRE THE CONTENTS OF  
12 INTERCEPTED COMMUNICATIONS TO BE RECORDED AND TO BE MADE AVAILABLE  
13 TO THE JUDGE AND PLACED UNDER SEAL; TO REQUIRE THE CIRCUIT COURT  
14 JUDGE TO PLACE APPLICATIONS AND ORDERS TO INTERCEPT COMMUNICATIONS  
15 UNDER SEAL; TO DECLARE THE CONTENTS OF INTERCEPTED COMMUNICATIONS  
16 THAT ARE DISCLOSED IN VIOLATION OF THIS ACT TO BE INADMISSIBLE IN  
17 COURT; TO SPECIFY THE PURPOSES FOR WHICH, AND TO WHOM, INTERCEPTED  
18 COMMUNICATIONS MAY BE DISCLOSED; TO AMEND SECTION 41-29-507,  
19 MISSISSIPPI CODE OF 1972, IN CONFORMITY TO THE PROVISIONS OF THIS  
20 ACT; AND FOR RELATED PURPOSES.

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

22 **SECTION 1.** As used in this act, the following words and  
23 phrases have the meanings ascribed in this section unless the  
24 context clearly requires otherwise:

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



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

32           (c) "Covert entry" means any entry into or onto  
33 premises which, if made without a court order allowing such an  
34 entry, would be a violation of criminal law.

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

38           (e) "Interception" means the aural or other acquisition  
39 of the contents of a wire, oral or other communication through the  
40 use of an electronic, mechanical or other device.

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

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



52 (h) "Residence" means a structure or the portion of a  
53 structure used as a person's home or fixed place of habitation to  
54 which the person indicates an intent to return after any temporary  
55 absence.

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

66 **SECTION 2.** Upon request of the district attorney, a circuit  
67 court judge in the circuit court district of the county where the  
68 interception of wire, oral or other communications is sought may  
69 issue an order authorizing the interception of wire, oral or other  
70 communications as authorized under this act if the district  
71 attorney shows probable cause to believe that the interception  
72 will provide evidence of the commission of a felony under the laws  
73 of this state.

74 **SECTION 3.** (1) The sheriff of a county may request the  
75 district attorney in that county to submit an application to the  
76 circuit court judge for an order authorizing interception of wire,



77 oral or other communications. Before submitting the request to  
78 the district attorney, the sheriff must receive from the sheriff's  
79 deputies the information required under this section. Upon  
80 receipt of the request, the district attorney may submit an  
81 application to the circuit court requesting the court to issue an  
82 order authorizing interception of wire, oral or other  
83 communications.

84 (2) To be valid, an application by a district attorney for  
85 an order authorizing the interception of wire, oral or other  
86 communications must be made in writing under oath to a circuit  
87 court judge in the circuit court district of the county where the  
88 interception of wire, oral or other communications is sought. The  
89 district attorney must include the following information in the  
90 application:

91 (a) A statement that the application has been requested  
92 by the sheriff;

93 (b) A full and complete statement of the facts and  
94 circumstances relied on by the district attorney to justify the  
95 belief that an order should be issued, including:

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

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



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

103 (iv) The identity of the person, if known,  
104 committing the offense and whose communications are to be  
105 intercepted;

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

110 (d) A statement of the period of time for which the  
111 interception is required to be maintained and, if the nature of  
112 the investigation is such that the authorization for interception  
113 should not terminate automatically when the described type of  
114 communication is first obtained, a particular description of the  
115 facts establishing probable cause to believe that additional  
116 communications of the same type will occur after the described  
117 type of communication is obtained;

118 (e) A statement on whether a covert entry will be  
119 necessary to properly and safely install the wiretapping or  
120 electronic surveillance or eavesdropping equipment and, if a  
121 covert entry is requested, a statement as to why such an entry is  
122 necessary and proper under the facts of the particular  
123 investigation, including a full and complete statement as to  
124 whether other investigative techniques have been tried and have  
125 failed or why they reasonably appear to be unlikely to succeed or



126 to be too dangerous if tried or are not feasible under the  
127 circumstances or exigencies of time;

128 (f) A full and complete statement of the facts  
129 concerning all applications known to the district attorney which  
130 have been made previously to a judge for authorization to  
131 intercept wire, oral or other communications involving any of the  
132 persons, facilities or places specified in the application and of  
133 the action taken by the judge on each application; and

134 (g) If the application is for the extension of an  
135 order, a statement setting forth the results already obtained from  
136 the interception or a reasonable explanation of the failure to  
137 obtain results.

138 (3) The judge may require, in an ex parte in camera hearing,  
139 additional testimony or documentary evidence in support of the  
140 application, and such testimony or documentary evidence must be  
141 preserved as part of the application.

142 **SECTION 4.** (1) Upon receipt of an application, the circuit  
143 court judge may enter an ex parte order, as requested or as  
144 modified, authorizing interception of wire, oral or other  
145 communications if the judge determines from the evidence submitted  
146 by the district attorney that:

147 (a) There is probable cause to believe that a person is  
148 committing, has committed, or is about to commit a felony offense  
149 under the laws of this state;



150           (b) There is probable cause to believe that particular  
151 communications concerning that offense will be obtained through  
152 the interception;

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

156           (d) There is probable cause to believe that the  
157 facilities from which or the place where the wire, oral or other  
158 communications are to be intercepted are being used or are about  
159 to be used in connection with the commission of the offense or are  
160 leased to, listed in the name of, or commonly used by the person;  
161 and

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

164           (2) Each order authorizing the interception of a wire or  
165 oral communication must specify:

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

168           (b) The nature and location of the communications  
169 facilities as to which or the place where authority to intercept  
170 is granted;

171           (c) A particular description of the type of  
172 communication sought to be intercepted and a statement of the  
173 particular offense to which it relates;



174 (d) A statement setting forth that the sheriff has  
175 requested the district attorney to apply for the order authorizing  
176 the interception;

177 (e) The time during which the interception is  
178 authorized, including a statement of whether or not the  
179 interception will terminate automatically when the described  
180 communication is first obtained; and

181 (f) Whether or not a covert entry is necessary to  
182 properly and safely install wiretapping, electronic surveillance  
183 or eavesdropping equipment.

184 (3) Upon request of the district attorney, the order  
185 authorizing the interception of a wire, oral or other  
186 communication may direct that a communication common carrier,  
187 landlord, custodian or other person furnish the district attorney  
188 all information, facilities and technical assistance necessary to  
189 accomplish the interception unobtrusively and with a minimum of  
190 interference with the services that the carrier, landlord,  
191 custodian or other person is providing to the person whose  
192 communications are to be intercepted.

193 (4) An order entered pursuant to this section may not  
194 authorize the interception of a wire, oral or other communication  
195 for longer than is necessary to achieve the objective of the  
196 authorization, and in no event may the order authorize  
197 interception for more than thirty (30) days. The issuing judge  
198 may grant extensions of an order, but only upon application for an





199 extension and the court making the findings required by subsection  
200 (1) of this section. The period of extension may not be longer  
201 than the authorizing judge deems necessary to achieve the purposes  
202 for which the extension is granted, and in no event may the  
203 extension be for more than thirty (30) days. To be valid, each  
204 order and extension of an order must require that the  
205 authorization to intercept: be executed as soon as practicable;  
206 be conducted in a way that minimizes the interception of  
207 communications not otherwise subject to interception under this  
208 act; and terminate on obtaining the authorized objective or within  
209 thirty (30) days, whichever occurs sooner.

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

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

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

218 (i) 1. The premises into or onto which the covert  
219 entry is authorized or the person whose communications are to be  
220 obtained has been the subject of a pen register previously  
221 authorized in connection with the same investigation;

222 2. The premises into or onto which the covert  
223 entry is authorized or the person whose communications are to be



224 obtained has been the subject of an interception of wire  
225 communications previously authorized in connection with the same  
226 investigation;

227                   3. Procedures described under this  
228 subparagraph (i) have failed; and

229                   4. If the order is for the interception of  
230 other communications and requires covert entry, a court-ordered  
231 attempt to intercept the communications without using covert entry  
232 must have been made without success; and

233                   (ii) The procedures enumerated in subparagraph (i)  
234 reasonably appear to be unlikely to succeed or to be too dangerous  
235 if tried or are not feasible under the circumstances or exigencies  
236 of time; and

237                   (b) The order, in addition to the matters required to  
238 be specified under subsection (2) of this section, specifies that  
239 the covert entry is for the purpose of intercepting oral  
240 communications of two (2) or more persons and that there is  
241 probable cause to believe they are committing, have committed, or  
242 are about to commit a felony offense.

243                   (7) An order entered pursuant to this section may authorize  
244 the interception of wire, oral or other communications to be  
245 conducted within a vehicle, vessel, other mode of transportation  
246 or any location where a reasonable expectation of privacy might  
247 exist if the requirements of this section are met.



248 (8) Whenever an order authorizing interception is entered  
249 pursuant to this section, the order may require reports to the  
250 judge who issued the order showing what progress has been made  
251 toward achievement of the authorized objective and the need for  
252 continued interception. Reports must be made at any interval the  
253 judge requires.

254 (9) A circuit court judge who issues an order authorizing  
255 the interception of a wire, oral or other communication may not  
256 hear a criminal prosecution in which evidence derived from the  
257 interception may be used or in which the order may be an issue.

258 **SECTION 5.** (1) The contents of a wire, oral or other  
259 communication intercepted by means authorized by this act must be  
260 recorded on tape, wire or other comparable device. The recording  
261 must be done in a way that protects the recording from editing or  
262 other alterations.

263 (2) Immediately on the expiration of the period of the order  
264 and all extensions, if any, the recordings must be made available  
265 to the judge issuing the order and sealed under his directions.  
266 Custody of the recordings must be wherever the judge orders. The  
267 recordings may not be destroyed until at least ten (10) years  
268 after the date of expiration of the order and the last extension,  
269 if any. A recording may be destroyed only by order of the circuit  
270 court judge who authorized the interception or his successor.

271 (3) Duplicate recordings may be made for use or disclosure  
272 for purposes of investigations. However, the presence of the seal



273 required by subsection (2) of this section, or a satisfactory  
274 explanation of its absence, is a prerequisite for the use or  
275 disclosure of the contents of a wire, oral or other communication  
276 or evidence derived from the communication.

277       **SECTION 6.** The circuit court judge shall seal each  
278 application made and order granted under this act. Custody of the  
279 applications and orders must be wherever the judge directs. An  
280 application or order may be disclosed only upon a showing of good  
281 cause before the circuit court judge, and may not be destroyed  
282 until at least ten (10) years after the date it is sealed. An  
283 application or order may be destroyed only by order of the circuit  
284 court judge or a successor judge in the court district in which it  
285 was made or granted.

286       **SECTION 7.** The contents of an intercepted wire, oral or  
287 other communication and evidence derived from an intercepted wire,  
288 oral or other communication may not be received in evidence in any  
289 trial, hearing or other proceeding in or before any court, grand  
290 jury, or other authority of the United States or of this state or  
291 a political subdivision of this state if the disclosure of that  
292 information would be in violation of this act. The contents of an  
293 intercepted wire, oral or other communication and evidence derived  
294 from an intercepted communication may be received in a civil  
295 trial, hearing or other proceeding only if the civil trial,  
296 hearing or other proceeding arises out of a violation of the  
297 criminal law of this state.



298           SECTION 8. (1) A sheriff's deputy who, by any means  
299 authorized by this act, obtains knowledge of the contents of a  
300 wire, oral or other communication or evidence derived from the  
301 communication may disclose the contents or evidence to another  
302 deputy only to the extent that the disclosure is appropriate to  
303 the proper performance of the official duties of the deputy making  
304 or receiving the disclosure.

305           (2) A sheriff's deputy who, by any means authorized by this  
306 act, obtains knowledge of the contents of a wire, oral or other  
307 communication or evidence derived from the communication may use  
308 the contents or evidence to the extent the use is appropriate to  
309 the proper performance of the deputy's official duties.

310           (3) A person who receives, by any means authorized by this  
311 act, information concerning a wire, oral or other communication or  
312 evidence derived from a wire, oral or other communication  
313 intercepted in accordance with this act may disclose the contents  
314 of the communication or the evidence derived from the wire, oral  
315 or other communication while giving testimony under oath in any  
316 proceeding held under the authority of the United States, of this  
317 state, or of a political subdivision of this state.

318           (4) An otherwise privileged wire, oral or other  
319 communication intercepted in accordance with, or in violation of,  
320 this act does not lose its privileged character, and any evidence  
321 derived from an otherwise privileged communication against the



322 party to the privileged communication also is considered  
323 privileged.

324 (5) When a sheriff's deputy, while engaged in intercepting  
325 wire, oral or other communications in a manner authorized by this  
326 act, intercepts wire, oral or other communications relating to  
327 offenses other than those specified in the order of authorization,  
328 the contents of and evidence derived from the communication may be  
329 disclosed or used as provided under subsections (1) and (2) of  
330 this section. The contents and evidence may be used under  
331 subsection (3) of this section when authorized by a circuit court  
332 judge where the judge finds, upon subsequent application, that the  
333 contents otherwise were intercepted in accordance with this act.  
334 The application must be made as soon as practicable.

335 **SECTION 9.** Section 41-29-507, Mississippi Code of 1972, is  
336 amended as follows:

337 41-29-507. (1) No person, agency of the state or political  
338 subdivision of the state, other than the Bureau of Narcotics or as  
339 permitted under Sections 1 through 8 of House Bill No. \_\_\_\_\_, 2024  
340 Regular Session, is authorized by this article to own, possess,  
341 install, operate or monitor an electronic, mechanical or other  
342 device. The Bureau of Narcotics may be assisted by an  
343 investigative or law enforcement officer in the operation and  
344 monitoring of an interception of wire, oral or other  
345 communications, provided that an agent of the Bureau of Narcotics  
346 is present at all times.



347           (2) The director shall designate, in writing, the agents of  
348 the Bureau of Narcotics who are responsible for the possession,  
349 installation, operation and monitoring of electronic, mechanical  
350 or other devices for the bureau.

351           **SECTION 10.** This act shall take effect and be in force from  
352 and after July 1, 2024.

