

By: Senator(s) McCaughn

To: Judiciary, Division B

SENATE BILL NO. 2018

1 AN ACT TO AMEND SECTION 41-29-507, MISSISSIPPI CODE OF 1972,
 2 TO AUTHORIZE SHERIFFS TO INTERCEPT WIRE OR ORAL COMMUNICATION BY
 3 ALLOWING THE OWNERSHIP, POSSESSION, INSTALLATION OR MONITORING OF
 4 ELECTRONIC OR MECHANICAL DEVICES; TO REQUIRE THE SHERIFF TO
 5 DESIGNATE THE DEPUTIES RESPONSIBLE FOR THE POSSESSION,
 6 INSTALLATION, OPERATION AND MONITORING OF THE DEVICES; TO AMEND
 7 SECTIONS 41-29-501, 41-29-509, 41-29-513, 41-29-515, 41-29-527 AND
 8 41-29-536, MISSISSIPPI CODE OF 1972, TO CONFORM; AND FOR RELATED
 9 PURPOSES.

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

11 **SECTION 1.** Section 41-29-507, Mississippi Code of 1972, is
 12 amended as follows:

13 41-29-507. (1) No person, agency of the state or political
 14 subdivision of the state, other than the Bureau of Narcotics or a
 15 sheriff, is authorized by this article to own, possess, install,
 16 operate or monitor an electronic, mechanical or other device. The
 17 Bureau of Narcotics or a sheriff may be assisted by an
 18 investigative or law enforcement officer in the operation and
 19 monitoring of an interception of wire, oral or other
 20 communications, provided that an agent of the Bureau of Narcotics
 21 or a deputy of the sheriff is present at all times.



22 (2) The director shall designate, in writing, the agents of
23 the Bureau of Narcotics who are responsible for the possession,
24 installation, operation and monitoring of electronic, mechanical
25 or other devices for the bureau.

26 (3) The sheriff shall designate, in writing, the deputies of
27 the sheriff who are responsible for the possession, installation,
28 operation and monitoring of electronic, mechanical or other
29 devices for the sheriff.

30 **SECTION 2.** Section 41-29-501, Mississippi Code of 1972, is
31 amended as follows:

32 41-29-501. As used in this article, the following terms
33 shall have the meaning ascribed to them herein unless the context
34 requires otherwise:

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

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

41 (c) "Contents," when used with respect to a wire, oral
42 or other communication, includes any information concerning the
43 identity of the parties to the communication or the existence,
44 substance, purport or meaning of that communication.



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

48 (e) "Director" means the Director of the Bureau of
49 Narcotics or, if the director is absent or unable to serve, the
50 Assistant Director of the Bureau of Narcotics.

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

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

57 (h) "Investigative or law enforcement officer" means an
58 officer of this state or of a political subdivision of this state
59 who is empowered by law to conduct investigations of, or to make
60 arrests for, offenses enumerated in Section 41-29-505, an attorney
61 authorized by law to prosecute or participate in the prosecution
62 of such offenses, or a federal law enforcement officer designated
63 by the director or the sheriff.

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

66 (j) "Oral communication" means an oral communication
67 uttered by a person exhibiting an expectation that the
68 communication is not subject to interception under circumstances
69 justifying that expectation.



70 (k) "Other communication" means any transfer of an
71 electronic or other signal, including fax signals, computer
72 generated signals, other similar signals, or any scrambled or
73 encrypted signal transferred via wire, radio, electromagnetic,
74 photoelectric or photooptical system from one party to another in
75 which the involved parties may reasonably expect the communication
76 to be private.

77 (l) "Prosecutor" means a district attorney with
78 jurisdiction in the county in which the facility or place where
79 the communication to be intercepted is located or a legal
80 assistant to the district attorney if designated in writing by the
81 district attorney on a case-by-case basis.

82 (m) "Residence" means a structure or the portion of a
83 structure used as a person's home or fixed place of habitation to
84 which the person indicates an intent to return after any temporary
85 absence.

86 (n) "Sheriff" means the official executing the office
87 of sheriff pursuant to Title 19, Chapter 29, Mississippi Code of
88 1972.

89 (* * * o) "Wire communication" means a communication
90 made in whole or in part through the use of facilities for the
91 transmission of communications by the aid of wire, cable or other
92 like connection between the point of origin and the point of
93 reception furnished or operated by a person engaged as a common
94 carrier in providing or operating the facilities for the



95 transmission of communications and includes cordless telephones,
96 voice pagers, cellular telephones, any mobile telephone, or any
97 communication conducted through the facilities of a provider of
98 communication services.

99 **SECTION 3.** Section 41-29-509, Mississippi Code of 1972, is
100 amended as follows:

101 41-29-509. (1) (a) (i) Prior to submitting a request for
102 an order authorizing interception of wire, oral or other
103 communications to a prosecutor, the director shall receive a
104 written affidavit from one or more agents of the Bureau of
105 Narcotics setting forth the information required by Section
106 41-29-513(1).

107 (ii) Prior to submitting a request for an order
108 authorizing interception of wire, oral or other communications to
109 a prosecutor, a sheriff shall receive a written affidavit from one
110 or more deputies setting forth the information required by Section
111 41-29-513(1).

112 (b) The director or a sheriff shall submit all
113 information required by Section 41-29-513(1) to the prosecutor.

114 (2) Upon receipt of the request from the director or a
115 sheriff, the prosecutor shall be authorized to submit an
116 application to a court of competent jurisdiction requesting the
117 court to issue an order authorizing interception of wire, oral or
118 other communications as provided in Section 41-29-515.



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

121 41-29-513. (1) To be valid, an application for an order
122 authorizing the interception of a wire, oral or other
123 communication must be made in writing under oath to a judge of
124 competent jurisdiction in the circuit court district of the
125 location where the interception of wire, oral or other
126 communications is sought, or a circuit court district contiguous
127 to such circuit court district, and must state the applicant's
128 authority to make the application. An applicant must include the
129 following information in the application:

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

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

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

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

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



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

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

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

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



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

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

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

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

185 41-29-515. (1) Upon receipt of an application, the judge
186 may enter an ex parte order, as requested or as modified,
187 authorizing interception of wire, oral or other communications if
188 the judge determines from the evidence submitted by the applicant
189 that:

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



193 (b) There is probable cause to believe that particular
194 communications concerning that offense will be obtained through
195 the interception;

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

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

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

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

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

211 (b) The nature and location of the communications
212 facilities as to which or the place where authority to intercept
213 is granted;

214 (c) A particular description of the type of
215 communication sought to be intercepted and a statement of the
216 particular offense to which it relates;



217 (d) A statement setting forth the identity of the
218 prosecutor and stating that the director or the sheriff has
219 requested the prosecutor to apply for the order authorizing the
220 interception;

221 (e) The time during which the interception is
222 authorized, including a statement of whether or not the
223 interception will automatically terminate when the described
224 communication is first obtained; and

225 (f) Whether or not a covert entry is necessary to
226 properly and safely install wiretapping, electronic surveillance
227 or eavesdropping equipment.

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

240 (4) An order entered pursuant to this section may not
241 authorize the interception of a wire, oral or other communication



242 for longer than is necessary to achieve the objective of the
243 authorization, and in no event may it authorize interception for
244 more than thirty (30) days. The issuing judge may grant
245 extensions of an order, but only upon application for an extension
246 made in accordance with Section 41-29-513 and the court making the
247 findings required by subsection (1) of this section. The period
248 of extension may not be longer than the authorizing judge deems
249 necessary to achieve the purposes for which it is granted, and in
250 no event may the extension be for more than thirty (30) days. To
251 be valid, each order and extension of an order shall provide that
252 the authorization to intercept be executed as soon as practicable,
253 be conducted in a way that minimizes the interception of
254 communications not otherwise subject to interception under this
255 article, and terminate on obtaining the authorized objective or
256 within thirty (30) days, whichever occurs sooner.

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

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

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

265 (i) (A) The premises into or onto which the
266 covert entry is authorized or the person whose communications are



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

277 (ii) That the procedures enumerated in item (i)
278 reasonably appear to be unlikely to succeed or to be too dangerous
279 if tried or are not feasible under the circumstances or exigencies
280 of time; and

281 (b) The order, in addition to the matters required to
282 be specified under subsection (2) of this section, specifies that
283 the covert entry is for the purpose of intercepting oral
284 communications of two (2) or more persons and that there is
285 probable cause to believe they are committing, have committed, or
286 are about to commit a particular offense enumerated in Section
287 41-29-505.

288 (7) The judge of a court of competent jurisdiction may issue
289 an order for the interception of wire, oral or other
290 communications conducted within a vehicle, vessel, other mode of
291 transportation or any location where a reasonable expectation of



292 privacy might exist, provided the requirements of this section,
293 where applicable, are met.

294 (8) Whenever an order authorizing interception is entered
295 pursuant to this article, the order may require reports to the
296 judge who issued the order showing what progress has been made
297 toward achievement of the authorized objective and the need for
298 continued interception. Reports shall be made at any interval the
299 judge requires.

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

304 (10) An order issued pursuant to this section authorizing
305 the interception of any cellular, portable, transportable or
306 mobile telephone or communication instrument is valid throughout
307 the State of Mississippi unless otherwise specified by the issuing
308 judge.

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

311 41-29-527. (1) Within thirty (30) days after the date an
312 order or the last extension, if any, expires or after the denial
313 of an order, the issuing or denying judge shall report to the
314 Administrative Office of the United States Courts:

315 (a) The fact that an order or extension was applied
316 for;



317 (b) The kind of order or extension applied for;
318 (c) The fact that the order or extension was granted as
319 applied for, was modified or was denied;
320 (d) The period of interceptions authorized by the order
321 and the number and duration of any extensions of the order;
322 (e) The offense specified in the order or application
323 or extension;
324 (f) The identity of the officer making the request and
325 the prosecutor making the application; and
326 (g) The nature of the facilities from which or the
327 place where communications were to be intercepted.

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

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

334 (b) A general description of the interceptions made
335 under each order or extension, including the approximate nature
336 and frequency of incriminating communications intercepted, the
337 approximate nature and frequency of order communications
338 intercepted, the approximate number of persons whose
339 communications were intercepted, and the approximate nature,
340 amount and cost of the manpower and other resources used in the
341 interceptions;



342 (c) The number of arrests resulting from interceptions
343 made under each order or extension and the offenses for which
344 arrests were made;

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

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

348 (f) The number of convictions resulting from
349 interceptions, the offenses for which the convictions were
350 obtained, and a general assessment of the importance of the
351 interceptions; and

352 (g) The information required by paragraphs (b) through
353 (f) of this subsection with respect to orders or extensions
354 obtained.

355 (3) Any judge or prosecutor required to file a report with
356 the Administrative Office of the United States Courts shall
357 forward a copy of such report to the director or the sheriff.

358 (a) On or before January 5 of each year the director
359 shall submit to the Mississippi Administrative Office of Courts a
360 report of all intercepts, as defined in this subsection and as
361 required by federal law which relates to statistical data only,
362 conducted pursuant to this article and terminated during the
363 preceding calendar year. Such report shall include:

364 (* * *i) The report of judges and prosecuting
365 attorneys forwarded to the director as required by this section;



366 (* * *ii) The number of Bureau of Narcotics
367 personnel authorized to possess, install or operate electronic,
368 mechanical or other devices;

369 (* * *iii) The number of Bureau of Narcotics and
370 other law enforcement personnel who participated or engaged in the
371 seizure of intercepts pursuant to this article during the
372 preceding calendar year; and

373 (* * *iv) The total cost to the Bureau of
374 Narcotics of all activities and procedures relating to the seizure
375 of intercepts during the preceding calendar year, including costs
376 of equipment, manpower and expenses incurred as compensation for
377 use of facilities or technical assistance provided by the bureau.

378 (b) On or before January 5 of each year a sheriff shall
379 submit to the Mississippi Administrative Office of Courts a report
380 of all intercepts, as defined in this subsection and as required
381 by federal law which relates to statistical data only, conducted
382 pursuant to this article and terminated during the preceding
383 calendar year. Such report shall include:

384 (i) The report of judges and prosecuting attorneys
385 forwarded to the director as required by this section;

386 (ii) The number of Bureau of Narcotics personnel
387 authorized to possess, install or operate electronic, mechanical
388 or other devices;

389 (iii) The number of Bureau of Narcotics and other
390 law enforcement personnel who participated or engaged in the



391 seizure of intercepts pursuant to this article during the
392 preceding calendar year; and

393 (iv) The total cost to the Bureau of Narcotics of
394 all activities and procedures relating to the seizure of
395 intercepts during the preceding calendar year, including costs of
396 equipment, manpower and expenses incurred as compensation for use
397 of facilities or technical assistance provided by the bureau.

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

400 41-29-536. (1) Attorneys for the Bureau of Narcotics or a
401 sheriff may file a motion with a circuit court judge of the
402 circuit court district in which the subscriber, instrument or
403 other device exists, for communication records which will be
404 material to an ongoing investigation of a felony violation of the
405 Uniform Controlled Substances Law.

406 (2) The motion shall be made in writing, under oath, and
407 shall include the name of the subscriber, the number or numbers,
408 and the location of the instrument or other device, if known and
409 applicable. The motion shall be accompanied by an affidavit from
410 an agent of the Bureau of Narcotics or a deputy of the sheriff
411 which sets forth facts which the court shall consider in
412 determining that probable cause exists to believe that the
413 information sought will be material to an ongoing felony violation
414 of the Uniform Controlled Substances Law.



415 (3) Upon consideration of the motion and the determination
416 that probable cause exists, the circuit court judge may order a
417 communications common carrier as defined by 47 USCS 153(h) or a
418 provider of communication services to provide the Bureau of
419 Narcotics or the sheriff with communication billing records, call
420 records, subscriber information, or other communication record
421 information. The communications common carrier or the provider of
422 communication services shall be entitled to compensation at the
423 prevailing rates from the Bureau of Narcotics or the sheriff.

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

429 **SECTION 8.** This act shall take effect and be in force from
430 and after July 1, 2024.

