

1 **State of Arkansas**
2 **78th General Assembly**
3 **Regular Session, 1991**

A Bill

HOUSE BILL

4 **By: Representatives George and Lipton**

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7

For An Act To Be Entitled

8

"AN ACT TO AMEND TITLE 5 OF THE ARKANSAS CODE OF 1987

9

ANNOTATED TO ADD A NEW CHAPTER 41 TO DEFINE THE CRIMINAL

10

OFFENSE OF 'EAVESDROPPING'; TO AMEND CHAPTER 82 OF TITLE

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16 OF THE ARKANSAS CODE OF 1987, ANNOTATED TO ADD A NEW

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SUBCHAPTER 4 TO AUTHORIZE THE INTERCEPTION OF WIRE, ORAL

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AND ELECTRONIC COMMUNICATIONS IN CRIMINAL ACTIVITIES

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INVOLVING ILLEGAL DRUGS; AND FOR OTHER PURPOSES."

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16 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

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18 SECTION 1. Title 5 of the Arkansas Code of 1987 Annotated is hereby
19 amended to add a new Chapter 41 to read as follows:

20

"CHAPTER 41 - EAVESDROPPING

21

5-41-101. Definitions.

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As used in this chapter, unless the context otherwise requires:

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(1) 'Wire Communication' means any aural transfer made in whole or in

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part through the use of facilities for the transmission of communications by

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the aid of wire, cable, or other like connection between the point of origin

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and the point of reception (including the use of such connection in a

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switching station) furnished or operated by any person engaged in providing or

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operating such facilities for the transmission of interstate or foreign

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communications or communications affecting interstate or foreign commerce and

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such term includes any electronic storage of such communication, but such term

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does not include the radio portion of a cordless telephone communication that

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is transmitted between the cordless telephone handset and the base unit;

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(2) 'Oral Communication' means any oral communication uttered by a

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person exhibiting an expectation that such communication is not subject to

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interception under circumstances justifying such expectation, but such term

1 does not include any electronic communication;

2 (3) 'Intercept' means the aural or other acquisition of the contents of
3 any wire, electronic or oral communication through the use of any electronic,
4 mechanical, or other device;

5 (4) 'Electronic, Mechanical or Other Device' means any device or
6 apparatus which can be used to intercept a wire, oral or electronic
7 communication other than:

8 (A) any telephone or telegraph instrument, equipment or facility,
9 or any component thereof,

10 (i) furnished to the subscriber or user by a provider of
11 wire or electronic communication service in the ordinary course of its
12 business and being used by the subscriber or user in the ordinary course of
13 its business or furnished by such subscriber or user for connection to the
14 facilities of such service and used in the ordinary course of its business; or

15 (ii) being used by a provider of wire or electronic
16 communication service in the ordinary course of its business, or by a law
17 enforcement officer in the ordinary course of his duties;

18 (B) a hearing aid or similar device being used to correct
19 subnormal hearing to not better than normal;

20 (5) 'Law Enforcement Officer' means any officer of the United States or
21 of a State or political subdivision thereof, who is empowered by law to
22 conduct investigations of or to make arrests for offenses enumerated in this
23 chapter, and any attorney authorized by law to prosecute or participate in the
24 prosecution of such offenses;

25 (6) 'Contents' means, with respect to any wire, oral or electronic
26 communication, any information concerning the substance, purport, or meaning
27 of that communication;

28 (7) 'Communication Common Carrier' means any person engaged as a common
29 carrier for hire in the transmission of communications by wire or radio, not
30 including radio broadcasting;

31 (8) 'Electronic Communication' means any transfer of signs, signals,
32 writing, images, sounds, data, or intelligence of any nature transmitted in
33 whole or in part by a wire, radio, electromagnetic, photoelectronic or photo-
34 optical system but does not include:

35 (A) the radio portion of a cordless telephone communication that

1 is transmitted between the cordless telephone handset and the base unit;

2 (B) any wire or oral communication;

3 (C) any communication made through a tone-only paging device;

4 (9) 'User' means any person or entity who:

5 (A) uses an electronic communication service; and

6 (B) is duly authorized by the provider of such service to engage
7 in such use;

8 (10) 'Electronic Communications System' means any wire, radio,
9 electromagnetic, photo-optical or photoelectronic facilities for the
10 transmission of electronic communications, and any computer facilities or
11 related electronic equipment for the electronic storage of such
12 communications;

13 (11) 'Electronic Communication Service' means any service which
14 provides to users thereof the ability to send or receive wire or electronic
15 communications;

16 (12) 'Electronic Storage' means:

17 (A) any temporary, intermediate storage of a wire or electronic
18 communication incidental to the electronic transmission thereof; and

19 (B) any storage of such communication by an electronic
20 communication service for purposes of backup protection of such communication;
21 and

22 (13) 'Aural Transfer' means a transfer containing the human voice at
23 any point between and including the point of origin and the point of
24 reception.

25 5-41-102. Eavesdropping.

26 (a) A person commits the offense of eavesdropping when he:

27 (1) intentionally intercepts, endeavors to intercept, or procures
28 any other person to intercept or endeavor to intercept, any wire, oral or
29 electronic communication;

30 (2) intentionally uses, endeavors to use, or procures any other
31 person to use or endeavor to use any electronic, mechanical, or other device
32 to intercept any oral communication when:

33 (A) such device is affixed to, or otherwise transmits a
34 signal through, a wire, cable, or other like connection used in wire
35 communications; or

1 (B) such device transmits communications by radio, or
2 interferes with the transmission of such communications; or

3 (3) intentionally discloses, or endeavors to disclose, to any
4 other person the contents of any wire, oral or electronic communication,
5 knowing or having reason to know that the information was obtained through the
6 interception of a wire, oral or electronic communication in violation of this
7 subsection; or

8 (4) intentionally uses, or endeavors to use, the contents of any
9 wire, oral or electronic communication, knowing or having reason to know that
10 the information was obtained through the interception of a wire, oral or
11 electronic communication in violation of this subsection.

12 (b) Eavesdropping is a Class B felony.

13 5-41-103. Exceptions.

14 It is not an offense under this chapter for:

15 (1) a person to intercept a wire, oral or electronic communication,
16 where such a person is a party to the communication or where one of the
17 parties to the communications has given prior consent to the interception,
18 unless such communication is intercepted for the purpose of committing a
19 criminal act;

20 (2) any law enforcement officer or any person acting at the direction
21 or request of any law enforcement officer to intercept a wire, oral or
22 electronic communication where:

23 (A) the officer or person is a party to the communication; or

24 (B) one of the parties to the communication has given prior
25 consent to the interception; or

26 (C) the interception is made through the use of a body-
27 microphone.

28 (3) police, fire and emergency communications systems to intercept wire
29 communications coming into and going out of the communications system of a
30 police department, fire department, or emergency center, if:

31 (A) the telephone, instrument, equipment or facility is limited
32 to the exclusive use of the communication system for administrative purposes;
33 and

34 (B) at least one telephone, instrument, equipment, or facility is
35 made available for public use at each police department, fire department or

1 emergency center that is not subject to interception;

2 (4) an operator of a switchboard, or an officer, agent or employee of a
3 communication common carrier, whose facilities are used in the transmission of
4 a wire communication, to intercept, use or divulge the communication in the
5 usual course of his employment while engaged in any activity that is a
6 necessary incident to the rendition of his service or to the protection of the
7 rights or property of the carrier of the communication, but no communication
8 common carrier shall utilize service observing or random monitoring except for
9 mechanical or service quality control checks;

10 (5) any law enforcement officer, an officer, agent, or employee of, a
11 communication common carrier, or a person acting under contract with the
12 United States, the State, or a political subdivision of it, or of another
13 state, or a political subdivision of it, in the proper performance of his
14 official duties, or in the usual course of its business.

15 5-41-104. Authorized use of wire, oral or electronic communications.

16 (a) Any law enforcement officer who, by any means authorized by law,
17 has obtained knowledge of the contents of any wire, oral or electronic
18 communication, or evidence derived from it, may disclose or use the contents
19 or evidence in the proper performance of his official duties.

20 (b) Any person who has obtained knowledge of the contents of any wire,
21 oral or electronic communication, or evidence derived from it, may disclose
22 the contents or evidence to a law enforcement officer or while giving
23 testimony otherwise admissible under oath or affirmation in any proceeding in
24 any court of the State or of another state or of the United States or before
25 any state or Federal grand jury.

26 (c) The contents of any intercepted wire, oral or electronic
27 communication, may otherwise be disclosed or used only upon a showing of good
28 cause before any circuit court judge."

29

30 SECTION 2. Chapter 82 of Title 16 of the Arkansas Code of 1987
31 Annotated is hereby amended to add a new Subchapter 4 to read as follows:

32 "SUBCHAPTER 4 - ELECTRONIC SURVEILLANCE.

33 16-82-401. Purpose.

34 It is found and determined that organized criminals make extensive use
35 of private communications in their various illegal drug or drug related

1 activities; the interception of private communications under judicial
2 supervision to obtain evidence of the commission of such crimes or to prevent
3 their commission is an indispensable aid to the administration of justice in a
4 free society; the interception of private communications under judicial
5 supervision is most effective, and the privacy of innocent persons best
6 safeguarded, when the attorney authorized to apply for the court order is
7 highly motivated, well-trained, and experienced and maintains a close working
8 relationship with investigative officers who are highly motivated, well-
9 trained, and experienced; it is the purpose of this chapter to provide for the
10 confidentiality of private communication and to authorize under judicial
11 supervision the interception of private communication by law enforcement in
12 the administration of justice.

13 16-82-402. Authorization to intercept communications.

14 The Attorney General may authorize, in writing, an ex parte application
15 to any circuit court judge sitting in a judicial district in which all or a
16 part of the interception will occur, or a prosecuting attorney may authorize,
17 in writing, an ex parte application to any circuit court judge in his judicial
18 district in which all or part of the interception will occur for an order
19 authorizing the interception of a wire, oral or electronic communication when
20 the interception may provide evidence of, or may assist in the prevention of,
21 or in the apprehension of a person who has committed any offense involving the
22 unlawful manufacture, distribution, delivery or possession of a controlled
23 substance.

24 16-82-403. Application for Authorization.

25 (a) Each application for an order of authorization to intercept a
26 private wire, oral or electronic communication shall be made in writing upon
27 oath or affirmation and shall include:

28 (1) the authority of the applicant to make the application;

29 (2) the identity and qualifications of the law enforcement

30 officer for whom the authority to intercept a private wire, oral or electronic
31 communication is sought;

32 (3) the facts relied upon by the applicant, including:

33 (A) the identity of the particular person, if known,

34 committing the offense and whose communication is to be intercepted;

35 (B) the details as to the particular offense that has been,

1 is being, or is about to be committed;

2 (C) the particular type of communication to be intercepted;

3 (D) a showing that there is probable cause to believe that
 4 the communication will be communicated on the particular wire communication
 5 facility involved or at the particular place where the wire, oral or
 6 electronic communication is to be intercepted;

7 (E) the character and location of the particular wire
 8 communication facilities involved or the particular place where the oral, wire
 9 or electronic communication is to be intercepted;

10 (F) the objective of the investigation;

11 (G) a statement of the period of time for which the
 12 interception is required to be maintained, and, if the objective of the
 13 investigation is such that the authorization for interception should not
 14 automatically terminate when the described type of communication has been
 15 first obtained, a particular statement of facts establishing probable cause to
 16 believe that additional communications of the same type will continue to
 17 occur;

18 (H) a particular statement of facts showing that other
 19 normal investigative procedures with respect to the offense have been tried
 20 and have failed, or reasonably appear to be unlikely to succeed if tried, or
 21 are too dangerous to employ;

22 (4) where the application is for an extension of an order, a
 23 statement of facts showing the results obtained from the interception, or a
 24 reasonable explanation of the failure to obtain results;

25 (5) a statement of the facts concerning all previous
 26 applications, known to the applicant, made to any court for authorization to
 27 intercept a private wire, oral or electronic communication involving any of
 28 the same facilities or places specified in the application or involving any
 29 person whose communication is to be intercepted, and the action taken by the
 30 court on each application;

31 (6) a proposed order of authorization for consideration by the
 32 judge; and

33 (7) such additional statements of facts in support of the
 34 application as the applicant may rely on or as the judge may require.

35 (b) As part of the consideration of that part of an application for

1 which there is no corroborative evidence offered, the judge may inquire in
2 camera as to the identity of any informant or any other additional information
3 concerning the basis upon which the law enforcement officer has applied for
4 the order of authorization that the judge finds relevant in order to determine
5 if there is probable cause under this section.

6 16-82-404. Ex parte orders.

7 Upon consideration of an application, the circuit court judge may enter
8 an ex parte order, as requested or as modified, authorizing the interception
9 of a private wire, oral or electronic communication, anywhere in the State, if
10 the judge determines on the basis of the application submitted by the
11 applicant, that:

12 (1) there is probable cause for belief that the person whose
13 communication is to be intercepted is committing, has or had committed or is
14 about to commit an offense classified under 6-82-402;

15 (2) there is probable cause for belief that a particular communication
16 concerning the offense may be obtained through the interception;

17 (3) there is probable cause for belief that the facilities from which,
18 or the place where, the private wire, oral or electronic communication is to
19 be intercepted, is, has been, or is about to be used in connection with the
20 commission of the offense, or is leased to, listed in the name of, or commonly
21 used by, the person;

22 (4) normal investigative procedures with respect to the offense have
23 been tried and have failed or reasonably appear to be unlikely to succeed if
24 tried or to be too dangerous to employ;

25 (5) in the case of an application, other than for an extension, for an
26 order to intercept a communication of a person or on a wire communication
27 facility that was the subject of a previous order authorizing interception,
28 the application is based upon new evidence or information different from and
29 in addition to the evidence or information offered to support the prior order,
30 regardless of whether the evidence was derived from prior interceptions or
31 from other sources; and

32 (6) the law enforcement officers to be authorized to supervise the
33 interception of the private wire, oral or electronic communication are
34 qualified by training and experience to execute the interception sought, as
35 certified under this subchapter.

1 16-82-405. Content of the order - Limitations of the order.

2 (a) Each order authorizing the interception of a private wire, oral or
3 electronic communication shall state:

4 (1) the judge is authorized to issue the order;

5 (2) the identity of, or a particular description of, the person,
6 if known, whose communications are to be intercepted;

7 (3) the character and location of the particular wire, oral or
8 electronic communication facilities as to which, or the particular place of
9 the communications as to which, authority to intercept is granted;

10 (4) a particular description of the type of the communication to
11 be intercepted and a statement of the particular offense to which it relates;

12 (5) the identity of the law enforcement officers to whom the
13 authority to intercept a private wire, oral or electronic communication is
14 given and the identity of the person who authorized the application;

15 (6) the period of time during which the interception is
16 authorized, including a statement as to whether or not the interception shall
17 automatically terminate when the described communication has been first
18 obtained; and

19 (7) the judge has determined there is probable cause for entry of
20 the order.

21 (b) No order entered under this subchapter shall authorize the
22 interception of private wire, oral or electronic communications for a period
23 of time in excess of that necessary to achieve the objective of the
24 authorization. Every order entered shall require that the interception begin
25 and terminate as soon as practicable and be conducted in such a manner as to
26 minimize the interception of communications not otherwise subject to
27 interception. No order, other than for an extension, entered may authorize
28 the interception of private wire, oral or electronic communications for any
29 period exceeding twenty (20) days. Extensions of an order may be granted for
30 periods of not more than thirty (30) days.

31 (c) Whenever an order authorizing an interception is entered, the order
32 may require reports to be made to the judge who issued the order showing what
33 progress has been made toward achievement of the authorized objective and the
34 need for continued interception. The reports shall be made at such intervals
35 as the judge may require.

1 (d) An order authorizing the interception of a private wire, oral or
2 electronic communication shall, upon request of the applicant, direct that a
3 communication common carrier, landlord, owner, building operator, custodian,
4 or other person shall furnish the applicant forthwith all information,
5 facilities and technical assistance necessary to accomplish the interception
6 unobtrusively and with a minimum of interference with the services that the
7 carrier, owner, building operator, landlord, custodian, or person is affording
8 the person whose communication is to be intercepted. The obligation of a
9 communication common carrier under the order may include conducting an in-
10 progress trace during an interception. Any communication common carrier,
11 landlord, owner, building operator, custodian, or person furnishing the
12 facilities or technical assistance shall be compensated by the applicant at
13 the prevailing rates.

14 (e) A communications common carrier, landlord, owner, building
15 operator, custodian, or other person who has been provided with an order
16 issued under this section shall not disclose the existence of the order of
17 interception, or of a device used to accomplish the interception unless:

- 18 (1) he is required to do so by legal process; and
19 (2) he has given prior notification to the Attorney General or
20 prosecuting attorney, who has authorized the application for the order.

21 (f) An order authorizing the interception of a private wire, oral or
22 electronic communication shall, upon the request of the applicant, authorize
23 the entry of facilities by law enforcement officers as often as necessary for
24 the purposes of installing, maintaining or removing an intercepting device
25 where the entry is reasonably necessary to conduct or complete the
26 interception. The judge who issues the order shall be notified of the fact of
27 each entry prior to entry, if practicable, and, in any case, within forty-
28 eight (48) hours of entry.

29 (g) Notwithstanding any provision of law to the contrary, any judge to
30 which any application is made under this subchapter may take any evidence,
31 make any finding, or issue any order to conform the proceedings or the
32 issuance of any order to the Constitution and laws of the United States and
33 Arkansas.

34 16-82-406. Oral approval of order in emergency.

35 (a) Whenever, upon informal application by the Attorney General or a

1 prosecuting attorney, a judge determines that:

2 (1) there is a finding of probable cause, which shall be reduced
3 to writing within forty-eight (48) hours, upon which an order could be issued
4 under this subchapter;

5 (2) there is probable cause to believe that an emergency
6 situation exists with respect to the prevention or investigation of an offense
7 classified under 6-82-402; and

8 (3) there is probable cause to believe that a substantial danger
9 to life or limb exists justifying the authorization for immediate interception
10 of a private wire, oral or electronic communication before an application for
11 an order could with due diligence be submitted to him and acted upon; he may
12 grant oral approval for an interception, without an order, conditioned upon
13 the filing with him, within forty-eight (48) hours, of an application for an
14 order under 6-82-402 which, if granted consistent with 6-82-403 and 6-82-404
15 of this subchapter, shall also recite the oral approval under this section and
16 be retroactive to the time of the oral approval.

17 (b) Interception under oral approval under this section shall
18 immediately terminate when the communication sought is obtained or when the
19 application for an order is denied, whichever is earlier.

20 (c) In the event no application for an order is made under this
21 section, the content of any private wire, oral or electronic communication
22 intercepted under oral approval under this section shall be treated as having
23 been obtained in violation of this subchapter.

24 (d) In the event no application for an order is made under this section
25 or an application made under this section is denied, the judge shall require
26 the tape or other recording of the intercepted communication to be delivered
27 to, and sealed by, the judge. The evidence shall be retained by the court,
28 and it shall not be used or disclosed in any legal proceeding, except a civil
29 action brought by an aggrieved person under 6-82-409. In addition to other
30 remedies or penalties provided by law, failure to deliver any tape or other
31 recording to the judge shall be punishable as contempt by the judge directing
32 the delivery.

33 16-82-407. Required records and disposition of recordings.

34 (a) Any private wire, oral or electronic communication intercepted in
35 accordance with this subchapter shall, if practicable, be recorded by tape or

1 other comparable method. The recording shall, if practicable, be done in such
2 a way as will protect it from editing or other alteration. During an
3 interception, the interception shall be supervised by a law enforcement
4 officer certified under 6-82-411 of this subchapter, and, if practicable, he
5 shall keep a signed, written record, including:

- 6 (1) the date and hours of surveillance;
- 7 (2) the time and duration of each intercepted communication;
- 8 (3) the parties, if known, to each intercepted conversation; and
- 9 (4) a summary of the contents of each intercepted communication.

10 (b) Immediately upon the expiration of the order or its extensions, all
11 records, in addition to all tapes and other recordings of interceptions
12 compiled pursuant to an order obtained by the Attorney General shall be
13 transferred to the prosecuting attorney of the district in which the
14 interceptions occurred. The prosecuting attorney shall transfer the records,
15 tapes, and other recordings, in addition to any records, tapes, or other
16 recordings of interceptions compiled pursuant to an order obtained by him, to
17 the judge issuing the order and to be sealed under his direction. Custody of
18 all records, tapes, or other recordings shall be maintained however and
19 wherever the judge directs. They shall not be destroyed, except upon an order
20 of the court, and in any event shall be kept for ten (10) years. Duplicates
21 of any records, tapes, or other recordings of interceptions may not be made by
22 or maintained by the Attorney General's office. Duplicate tapes or other
23 recordings may only be made or maintained by the prosecuting attorney of the
24 district in which the interceptions occurred pursuant to an order of the court
25 issued upon a finding of good and sufficient cause shown.

26 16-82-408. Applications and orders sealed.

27 (a) Applications made and orders granted under this subchapter for the
28 interception of private wire, oral or electronic communications shall be
29 sealed by the judge issuing or denying them and held in custody as the judge
30 shall direct. The applications and orders shall be kept for a period of ten
31 years. Destruction of the applications and orders after that period of time
32 may be made only upon the order of the court. Disclosure of the applications
33 and orders may be ordered by the court on a showing of good cause.

34 (b) A law enforcement officer may retain a copy of applications and
35 orders for the interception of private wire, oral or electronic

1 communications. The applications and orders shall be kept for a period of ten
2 years. Destruction of the applications and orders after that period of time
3 may be made only upon an order of the court. Disclosure and use of the
4 applications and orders may be made by a law enforcement officer only in the
5 proper performance of his official duties.

6 (c) Any violation of this section shall be punishable as contempt of
7 court.

8 (d) Within a reasonable time but not later than ninety (90) days after
9 the filing of the application for an order of approval for interception which
10 is denied or the termination of the period of an order or extensions thereof,
11 or the oral approval for an interception granted pursuant to 6-82-406, the
12 issuing or denying judge shall cause to be served, on the persons whose
13 communications were authorized to be intercepted, and such other parties to
14 intercepted communications as the judge may determine in his discretion that
15 is in the interest of justice, an inventory which shall include notice of:

16 (1) the fact of the entry of the order or the application;

17 (2) the date of the entry and the period of authorized, approved
18 or disapproved interception, or the denial of the application; and

19 (3) the fact that during the period wire, oral or electronic
20 communications were or were not intercepted.

21 The judge, upon the filing of a motion, may in his discretion make
22 available to such person or his counsel for inspection such portions of the
23 intercepted communications, applications and orders as the judge determines to
24 be in the interest of justice. On an ex parte showing of good cause to a
25 judge of competent jurisdiction the serving of the inventory required by this
26 subsection may be postponed.

27 16-82-409. Unauthorized interception of communications.

28 (a) If a law enforcement officer, while intercepting a private wire,
29 oral or electronic communication, in accordance with the provision of this
30 subchapter, intercepts a private wire, oral or electronic communication that
31 relates to an offense other than an offense specified in the order of
32 authorization, the Attorney General or a prosecuting attorney, may, in order
33 to permit the disclosure or use of its contents, or evidence derived from it,
34 during testimony in an official proceeding, make a motion for an order
35 approving the interception. A circuit court judge shall enter an order

1 approving the interception if he finds that the communication was otherwise
2 intercepted in accordance with the provisions of this subchapter

3 (b) An intercepted private wire, oral or electronic communication, or
4 evidence derived from it, may not be received in evidence or otherwise
5 disclosed in an official proceeding unless each aggrieved person who is a
6 party in the official proceeding, including any legislative, judicial,
7 administrative, or other governmental agency or official authorized to hear
8 evidence under oath or other person taking testimony or depositions in any
9 such proceeding, other than a grand jury, has, not less than ten days before
10 the official proceeding, been furnished with a copy of the court order, and
11 the accompanying application, under which the interception was authorized or
12 approved. The ten day period may be waived by the presiding official if he
13 finds that it was not practicable to furnish the person with the information
14 ten days before the proceeding, and that the person will not be prejudiced by
15 delay in receiving the information.

16 (c) An aggrieved person in an official proceeding may make a motion
17 under this section to suppress the contents of an intercepted private wire,
18 oral or electronic communication, or evidence derived from it, on the ground
19 that:

20 (1) the communication was unlawfully intercepted;

21 (2) the order of authorization or approval under which it was
22 intercepted is insufficient on its face; or

23 (3) the interception was not made in conformity with the order of
24 authorization or approval.

25 (d) If a motion under this section duly alleges that the evidence
26 sought to be suppressed in an official proceeding, including a grand jury, has
27 been derived from an unlawfully intercepted private wire, oral or electronic
28 communication, the opponent of the allegation shall, after conducting a
29 thorough search of its files, affirm or deny the occurrence of the alleged
30 unlawful interception, but no motion shall be considered if the alleged
31 unlawful interception took place more than five years before the event to
32 which the evidence relates.

33 (e) Where a motion is duly made under this section prior to the
34 appearance of a witness before a grand jury, the opponent of the motion may
35 make such applications and orders as it has available to the judge and if he

1 determines that there is no defect in them sufficient on its face to render
 2 them invalid, the judge shall inform the witness: 'You have not been the
 3 subject of an unlawful interception.' If the judge determines that there is a
 4 defect in them sufficient on its face to render them invalid, he shall enter
 5 an order prohibiting any question being put to the witness based on the
 6 unlawful interception.

7 (f) Motions under this section shall be made prior to the official
 8 proceeding unless there was no opportunity to make the motion or unless the
 9 aggrieved person was not aware of the grounds for the motion. Motions by co-
 10 indictees shall, on motion of the state, be heard in a single consolidated
 11 hearing.

12 (g) A judge, upon the filing of a motion by an aggrieved person under
 13 this section, except before a grand jury, may make available for inspection by
 14 the aggrieved person or his attorney such portions of the intercepted
 15 communications, applications and orders or the evidence derived from them as
 16 the judge determines to be in the interest of justice.

17 (h) If a motion under this section is granted, the intercepted private
 18 wire, oral or electronic communication, and evidence derived from it, may not
 19 be received in evidence in an official proceeding, including a grand jury.

20 (i) In addition to any other right of appeal, the State shall have the
 21 right to appeal from an order granting a motion to suppress if the official to
 22 whom the order authorizing the intercept was granted certifies to the court
 23 that the appeal is not taken for purposes of delay. The appeal shall
 24 otherwise be taken in accordance with the law.

25 16-82-410. Civil remedies for violations.

26 (a) Any person whose private wire, oral or electronic communication is
 27 intercepted, disclosed or used in violation of this subchapter may bring a
 28 civil action in the circuit court against:

29 (1) Any person who intercepts, discloses or uses or procures
 30 another to intercept, disclose or use, the communication; or

31 (2) Any landlord, owner, building operator, custodian or other
 32 person who aids, abets, or knowingly permits the interception;

33 (b) He shall be entitled to:

34 (1) An injunction prohibiting further interception, disclosure,
 35 or use of the private wire, oral or electronic communication;

1 (2) Treble damages, but not less than liquidated damages computed
2 at the rate of two hundred dollars (\$200) a day for each day of violation,
3 whichever is higher;

4 (3) Punitive damages;

5 (4) A reasonable attorney's fee and other litigation costs
6 reasonably incurred; and

7 (5) Any other appropriate relief.

8 (c)(1) Except as provided in this section, to the extent that the
9 State, or a political subdivision of it, or any corporation organized under
10 its laws or any of its officers, agents or employees would be shielded from
11 liability under this section by any doctrine of immunity, the immunity is
12 waived or set aside.

13 (2) A good faith reliance on a court order or other provision of
14 law authorizing the interception, disclosure or use of a private wire, oral or
15 electronic communication shall constitute a complete defense to any civil or
16 criminal action or to administrative proceedings brought against any person,
17 including a law enforcement officer.

18 16-82-411. Training and certification of law enforcement officers.

19 (a) The Attorney General shall:

20 (1) Establish a course of training in the legal, practical, and
21 technical aspects of the interception of private wire, oral or electronic
22 communications and related investigation and prosecution techniques;

23 (2) Issue regulations as he finds necessary for the training
24 program; and

25 (3) Set minimum standards of certification and periodic
26 recertification of law enforcement officers as eligible to apply for orders
27 authorizing the interception of private wire, oral or electronic
28 communications, to conduct the interceptions, and to use the communications or
29 evidence derived from them in official proceedings.

30 (b) The Attorney General may charge a reasonable enrollment fee to
31 offset the costs of the training and certification.

32 16-82-412. Annual reports.

33 (a) All judges who have issued orders under this subchapter shall make
34 annual reports on the operation of this subchapter to the Administrative
35 Office of the Arkansas Supreme Court. The reports by the judges shall contain

1 the following information:

- 2 (1) The number of applications made;
- 3 (2) The number of orders issued;
- 4 (3) The effective periods of the orders;
- 5 (4) The number and duration of any renewals;
- 6 (5) The offenses in connection with which the orders were sought;
- 7 (6) The names and official identity of the applicants; and
- 8 (7) Such other and further particulars as the Administrative
- 9 Office of the Courts may require.

10 (b) The Attorney General shall make annual reports on the operation of
11 this subchapter to the Administrative Office of the Arkansas Supreme Court.

12 The reports by the Attorney General shall contain the following information:

- 13 (1) The number of applications made;
- 14 (2) The number of orders issued;
- 15 (3) The effective periods of such orders;
- 16 (4) The number and duration of any renewals;
- 17 (5) The offenses in connection with which the conversations were
- 18 sought;
- 19 (6) The names and official identity of the applicants;
- 20 (7) The number of indictments or other charges resulting from
- 21 each application;
- 22 (8) The offenses which each indictment or other charge relates
- 23 to; and
- 24 (9) The disposition of each indictment or other charge.

25 (c) Each prosecuting attorney shall annually provide to the Attorney
26 General all of the information enumerated in subsection (b) of this section
27 with respect to all applications authorized by that prosecuting attorney on
28 forms prescribed by the Attorney General.

29 (d) The Chief Justice of the Supreme Court and the Attorney General
30 shall annually report to the Governor and the General Assembly on such aspects
31 of the operation of this subchapter as they deem appropriate and make any
32 recommendations they feel desirable as to legislative changes or improvements
33 to effectuate the purposes of Chapter 41 of Title 5 of the Arkansas Code of
34 1987 Annotated."

35

1 SECTION 3. Nothing in this act shall be construed to grant immunity to
2 any person who made a material misrepresentation to a court in order to cause
3 the court to issue an order authorizing an interception.

4

5 SECTION 4. Nothing in this act shall be construed to limit the scope of
6 discovery available to a defendant in a criminal prosecution.

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8 SECTION 5. All provisions of this act of general and permanent nature
9 are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code
10 Revision Commission shall incorporate the same in the Code.

11

12 SECTION 6. If any provision of this act or the application thereof to
13 any person or circumstance is held invalid, such invalidity shall not affect
14 other provisions or applications of the act which can be given effect without
15 the invalid provision or application, and to this end the provisions of this
16 act are declared to be severable.

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18 SECTION 7. All laws and parts of laws in conflict with this act are
19 hereby repealed.

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