

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

1 State of Arkansas
2 84th General Assembly
3 Regular Session, 2003
4

As Engrossed: H4/1/03

A Bill

HOUSE BILL 2502

5 By: Representatives Adams, Childers, Sullivan
6
7

For An Act To Be Entitled

9 AN ACT CONCERNING THE INTERCEPTION AND USE OF
10 WIRE, ORAL, OR ELECTRONIC COMMUNICATIONS; AND FOR
11 OTHER PURPOSES.
12

Subtitle

14 AN ACT CONCERNING THE INTERCEPTION AND
15 USE OF WIRE, ORAL, OR ELECTRONIC
16 COMMUNICATIONS.
17
18

19 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
20

SECTION 1. Definitions.

As used in this act:

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

26 (2) "Aural transfer" means a transfer containing the human voice at
27 any point between and including the point of origin and the point of
28 reception;

29 (3) "Communication common carrier" means a person engaged as
30 a common carrier for hire in the transmission of wire or electronic
31 communications;

32 (4) "Contents", when used with respect to a wire, oral, or electronic
33 communication, includes any information concerning the substance, purport, or
34 meaning of that communication;

35 (5) "Covert entry" means any entry into, or onto premises which, if
36 made without a court order, would be a violation of the Arkansas Criminal



1 Code;

2 (6) "Director" means the Director of the Department of Arkansas
3 State Police or, if the director is absent or unable to serve, the person
4 designated by the director to serve in the director's capacity of the
5 Department of Arkansas State Police;

6 (7)(A) "Electronic communication" means a transfer of signs, signals,
7 writing, images, sounds, data, or intelligence of any nature transmitted in
8 whole or in part by a wire, radio, electromagnetic, photoelectronic, or
9 photo-optical system.

10 (B) "Electronic communication" does not include:

11 (i) A wire or oral communication;

12 (ii) A communication made through a tone-only paging
13 device; or

14 (iii) A communication from a tracking device;

15 (8) "Electronic communications service" means a service that provides
16 to users of the service the ability to send or receive wire or electronic
17 communications;

18 (9)(A) "Electronic, mechanical, or other device" means a device
19 that may be used for the nonconsensual interception of wire, oral, or
20 electronic communications.

21 (B) "Electronic, mechanical, or other device" does not
22 include a telephone or telegraph instrument, the equipment, or a facility
23 used for the transmission of electronic communications, or a component of the
24 equipment if the instrument, equipment, facility, or component is:

25 (i) Furnished to the subscriber or user by a provider of
26 wire or electronic communications service in the ordinary course of the
27 provider's business and is used by the subscriber or user in the ordinary
28 course of its business;

29 (ii) Furnished by a subscriber or user for connection to
30 the facilities of a wire or electronic communications service for use in the
31 ordinary course of the subscriber's or user's business;

32 (iii) Used by a communications common carrier in the
33 ordinary course of its business; or

34 (iv) Used by a certified law enforcement officer in the
35 ordinary course of the officer's duties;

36 (10) "Electronic storage" means:

1 (A) A temporary, intermediate storage of a wire or electronic
2 communication that is incidental to the electronic transmission of the
3 communication; or

4 (B) Storage of a wire or electronic communication by an
5 electronic communications service for purposes of backup protection of the
6 communication;

7 (11) "Enumerated offense" means one of the following criminal offenses
8 and any solicitation, attempt, or conspiracy thereof:

9 (A) Capital Murder, § 5-10-101;

10 (B) Murder in First Degree, § 5-10-102;

11 (C) Kidnapping, § 5-11-102;

12 (D) Aggravated Robbery, § 5-12-103;

13 (E) Terroristic Act, § 5-13-310;

14 (F) Rape, § 5-14-103;

15 (G) Computer child pornography, § 5-27-603;

16 (H) Causing a catastrophe, § 5-38-202;

17 (I) Continuing criminal enterprise, § 5-64-414;

18 (J) Operating a Gambling House, § 5-66-103;

19 (K) Criminal possession of explosives, § 5-73-109;

20 (L) Engaging in continuing criminal gang organization or
21 enterprise, § 5-74-104; or

22 (M) Unlawful discharge of a firearm from a vehicle, § 5-74-107;

23 (12) "Intercept" means the aural or other acquisition of the contents
24 of a wire, oral, or electronic communication through the use of an
25 electronic, mechanical, or other device;

26 (13)(A) "Oral communication" means an oral communication uttered by a
27 person exhibiting an expectation that the communication is not subject to
28 interception under circumstances justifying that expectation.

29 (B) "Oral communication" does not include an electronic
30 communication;

31 (14)(A) "Pen register" means a device that attaches to a telephone
32 line and records or decodes electronic or other impulses to identify numbers
33 dialed or otherwise transmitted on the telephone line.

34 (B) This term does not include a device used by a provider or
35 customer of:

36 (i) A wire or electronic communication service for

1 purposes of charging a fee for the service; or

2 (ii) A wire communication service during the ordinary
3 course of the provider's or customer's business, including cost accounting
4 and security control;

5 (15) "Readily accessible to the general public" means, with respect to
6 a radio communication, a communication that is not:

7 (A) Scrambled or encrypted;

8 (B) Transmitted using modulation techniques whose essential
9 parameters have been withheld from the public with the intention of
10 preserving the privacy of the communication;

11 (C) Carried on a subcarrier or other signal subsidiary to a
12 radio transmission;

13 (D) Transmitted over a communication system provided by a common
14 carrier, unless the communication is a tone-only paging system communication;

15 (E) Transmitted on frequencies allocated under Part 25, Subpart
16 D, E, or F of Part 74, or Part 94 of the rules of the Federal Communications
17 Commission as they existed on January 1, 2003, unless, in the case of a
18 communication transmitted on a frequency allocated under Part 74 that is not
19 exclusively allocated to broadcast auxiliary services, the communication is a
20 two-way voice communication by radio; or

21 (F) An electronic communication;

22 (16) "Residence" means a structure or the portion of a structure used
23 as a person's home, or fixed place of habitation to which the person
24 indicates an intent to return after any temporary absence;

25 (17) "User" means a person who uses an electronic communications
26 service and is authorized by the provider of the service to use the service;

27 (18)(A) "Wire communication" means an aural transfer made in whole or
28 in part, through the use of facilities for the transmission of communications
29 by the aid of wire, cable, or other like connection between the point of
30 origin and the point of reception, including the use of a connection in a
31 switching station, furnished or operated by a person authorized to engage in
32 providing or operating the facilities for the transmission of communications
33 as a communications common carrier;

34 (B) "Wire communication" includes the electronic storage of a
35 wire communication;

36

1 SECTION 2. Prohibition of use as evidence of intercepted
2 communications.

3 (a) The contents of an intercepted communication and evidence derived
4 from an intercepted communication may not be received in evidence in any
5 trial, hearing, or other proceeding in or before any court, grand jury,
6 department, officer, agency, regulatory body, legislative committee, or other
7 authority of the United States or of this state, or a political subdivision
8 of this state if the disclosure of that information would be in violation of
9 this act.

10 (b) The contents of an intercepted communication and evidence derived
11 from an intercepted communication may be received in a civil trial, hearing,
12 or other proceeding only if the civil trial, hearing, or other proceeding
13 arises out of a violation of an enumerated offense.

14
15 SECTION 3. Judges authorized to consider interception applications.

16 (a) A circuit judge may act on an application for authorization to
17 intercept wire, oral, or electronic communications if one of the following is
18 located within the judicial district of the circuit judge:

19 (1) The site of:

20 (A) The proposed interception; or

21 (B) The interception device to be installed or monitored;

22 (2) The communication device to be intercepted;

23 (3) The billing, residential, or business address of the
24 subscriber to the electronic communications service to be intercepted;

25 (4) The headquarters of the law enforcement agency that makes a
26 request for or executes an order authorizing an interception; or

27 (5) The headquarters of the service provider.

28 (b)(1) If the circuit judge is absent or unable to serve or if exigent
29 circumstances exist, the application may be made to a circuit judge within an
30 adjacent judicial circuit.

31 (2)(A) Exigent circumstances does not include a denial of a
32 previous application based on the same facts and circumstances.

33 (B) To be valid, the application must fully explain the
34 circumstances justifying application under this subsection.

35
36 SECTION 4. Offenses for which interceptions may be authorized.

1 A judge may issue an order authorizing interception of wire, oral, or
2 electronic communications only if the prosecutor applying for the order shows
3 probable cause to believe that the interception will provide evidence of the
4 commission of an enumerated offense.

5
6 SECTION 5. Control of intercepting devices.

7 (a)(1) Only the Department of Arkansas State Police is
8 authorized by this act to own, possess, install, operate or monitor an
9 electronic, mechanical, or other device.

10 (2) The Department of Arkansas State Police may be assisted by a
11 certified law enforcement officer in the operation and monitoring of an
12 interception of wire, oral, or electronic communications, if a certified law
13 enforcement officer of the Department of Arkansas State Police is present at
14 all times.

15 (b) The director shall designate in writing the certified law
16 enforcement officers of the Department of Arkansas State Police who are
17 responsible for the possession, installation, operation, and monitoring of
18 electronic, mechanical, or other devices for the department.

19
20 SECTION 6. Request for application for interception.

21 (a) The director may, based on written affidavits, request in writing
22 that a prosecutor apply for an order authorizing interception of wire, oral,
23 or electronic communications.

24 (b)(1) Using written affidavits, the chief of a municipal police
25 department or the sheriff of any county, or the acting chief or sheriff
26 thereof, may request in writing that a prosecutor apply for an order
27 authorizing the interception of wire, oral, or electronic communications.

28 (2) Before requesting an application under this subsection (b),
29 the chief of a municipal police department or the sheriff of any county must
30 submit the request and supporting affidavits to the director, who shall make
31 a finding, in writing, whether the request and supporting affidavits
32 establish;

33 (A) That other investigative procedures have been tried
34 and failed;

35 (B) That other methods reasonably appear unlikely to
36 succeed, or to be too dangerous if tried;

1 (C) That the order is feasible and justifiable; and

2 (D) Whether the Department of the Arkansas State Police
3 has the necessary resources available.

4 (3) The prosecutor may file the application only after a written
5 positive finding on all of the requirements by the director.

6
7 SECTION 7. Authorization for disclosure and use of intercepted
8 communications.

9 (a) A certified law enforcement officer who, by any means authorized
10 by this act, obtains knowledge of the contents of a wire, oral, or electronic
11 communication or evidence derived from the communication may:

12 (1) Disclose the contents or evidence to other certified law
13 enforcement officers to the extent that the disclosure is appropriate to the
14 proper performance of the official duties of the officer making or receiving
15 the disclosure;

16 (2) Use as appropriate to the proper performance of his or her
17 official duties.

18 (3) Disclose the contents of that communication or the
19 derivative evidence while giving testimony under oath in any proceeding held
20 under the authority of the United States, of this state, or of a political
21 subdivision of this state.

22 (b) An otherwise privileged wire, oral, or electronic communication
23 intercepted in accordance with, or in violation of, this act does not lose
24 its privileged character, and any evidence derived from the privileged
25 communication against the party to the privileged communication shall be
26 considered privileged also.

27 (c)(1) If an investigative or certified law enforcement officer, while
28 engaged in intercepting wire, oral, or electronic communications in a manner
29 authorized by this act, intercepts wire, oral, or electronic communications
30 relating to offenses other than those specified in the order of
31 authorization, the contents of, and evidence derived from the communication
32 may be disclosed or used as provided by subdivisions (a)(1) and (a)(2) of
33 this section.

34 (2) The contents and any evidence derived therefrom may be used
35 under subdivision (a)(3) of this section if authorized by a circuit judge and
36 where the judge finds, on subsequent application, that the contents were

1 otherwise intercepted in accordance with this act. The application shall be
2 made as soon as practicable.

3
4 SECTION 8. Application for interception authorization.

5 (a)(1) To be valid, an application for an order authorizing the
6 interception of a wire, oral, or electronic communication must be made in
7 writing under oath to a circuit judge and must state the applicant's
8 authority to make the application.

9 (2) An applicant must include the following information in the
10 application:

11 (A) The identity of the prosecutor making the application
12 and of the officer requesting the application;

13 (B) A complete statement of the facts and circumstances
14 relied on by the applicant to justify his or her belief that an order should
15 be issued, including:

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

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

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

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

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

28 (D) A statement of the period of time for which the
29 interception must be maintained and, if the nature of the investigation is
30 such that the authorization for interception should not automatically
31 terminate when the described type of communication is first obtained, a
32 particular description of facts establishing probable cause to believe that
33 additional communications of the same type will occur after the described
34 type of communication is obtained;

35 (E) A statement of whether a covert entry will be
36 necessary to properly and safely install the wiretapping or electronic

1 surveillance or eavesdropping equipment and, if a covert entry is requested,
2 a statement as to why the entry is necessary and proper under the facts of
3 the particular investigation, including a complete statement as to whether
4 other investigative techniques have been tried and have failed or why they
5 reasonably appear to be unlikely to succeed or to be too dangerous if tried
6 or are not feasible under the circumstances or exigencies of time;

7 (F) A complete statement of the facts concerning all
8 applications known to the prosecutor making the applications that have been
9 previously made to a circuit judge for authorization to intercept wire, oral,
10 or electronic communications involving any of the persons, facilities, or
11 places specified in the application and of the action taken by the circuit
12 judge on each application; and

13 (G) If the application is for the extension of an order, a
14 statement of the results already obtained from the interception or a
15 reasonable explanation of the failure to obtain results.

16 (b) The circuit judge may, in an ex-parte hearing in chambers, require
17 additional testimony or documentary evidence in support of the application,
18 and the testimony or documentary evidence shall be preserved as part of the
19 application.

20
21 SECTION 9. Action on application for interception order.

22 (a) On receipt of an application, the circuit judge may enter an ex-
23 parte order, as requested or as modified, authorizing interception of wire,
24 oral, or electronic communications if the judge determines from the evidence
25 submitted by the applicant that:

26 (1) There is probable cause to believe that a person is
27 committing, has committed, or is about to commit a particular enumerated
28 offense or any attempt, conspiracy, or solicitation thereof;

29 (2) There is probable cause to believe that particular
30 communications concerning that offense will be obtained through the
31 interception;

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

35 (4) There is probable cause to believe that the facilities from
36 which, or the place where, the wire, oral, or electronic communications are

1 to be intercepted are being used, or are about to be used, in connection with
2 the commission of an offense or are leased to, listed in the name of, or
3 commonly used by the person; and

4 (5) A covert entry is or is not necessary to properly and safely
5 install the wiretapping or electronic surveillance or eavesdropping
6 equipment.

7 (b) An order authorizing the interception of a wire, oral, or
8 electronic communication must specify:

9 (1) The identity of the person, if known, whose communications
10 are to be intercepted;

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

13 (3) A particular description of the type of communication sought
14 to be intercepted and a statement of the particular offense to which it
15 relates;

16 (4) The identity of the officer making the request and the
17 identity of the prosecutor;

18 (5) The time during which the interception is authorized,
19 including a statement of whether or not the interception will automatically
20 terminate when the described communication is first obtained; and

21 (6) Whether or not a covert entry or surreptitious entry is
22 necessary to properly and safely install wiretapping, electronic
23 surveillance, or eavesdropping equipment.

24 (c)(1) In an order authorizing the interception of a wire, oral, or
25 electronic communication, the circuit judge issuing it, on request of the
26 applicant, shall direct that a provider of wire or electronic communications
27 service, a communication common carrier, landlord, custodian, or other
28 person, furnish the applicant all information, facilities, and technical
29 assistance necessary to accomplish the interception unobtrusively and with a
30 minimum of interference with the services that the provider, carrier,
31 landlord, custodian, or other person, is providing the person whose
32 communications are to be intercepted.

33 (2) Any provider of wire or electronic communications service,
34 communication common carrier, landlord, custodian, or other person furnishing
35 facilities or technical assistance is entitled to compensation by the
36 applicant for the facilities or assistance at the prevailing rates.

1 (d)(1) An order entered under this section may not authorize the
2 interception of a wire, oral, or electronic communication for longer than is
3 necessary to achieve the objective of the authorization and in no event may
4 it authorize interception for more than thirty (30) days.

5 (2) The issuing judge may grant extensions of an order, but only
6 on application for an extension made under section 8 of this act and the
7 court making the findings required by subsection (a) of this section.

8 (3) The period of extension may not be longer than the
9 authorizing judge deems necessary to achieve the purposes for which it is
10 granted and in no event may the extension be for more than thirty (30) days.

11 (4) To be valid, each order and extension of an order must
12 provide that the authorization to intercept be executed as soon as
13 practicable, be conducted in a way that minimizes the interception of
14 communications not otherwise subject to interception under this act, and
15 terminate on obtaining the authorized objective or within thirty (30) days,
16 whichever occurs sooner.

17 (e) An order entered under this section may not authorize a covert
18 entry into a residence solely for the purpose of intercepting a wire or
19 electronic communication.

20 (f) An order entered under this section may not authorize a covert
21 entry into or onto a premises for the purpose of intercepting an oral
22 communication unless:

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

25 (A)(i) The premises into or onto which the covert entry is
26 authorized, or the person whose communications are to be obtained, has been
27 the subject of a pen register previously authorized in connection with the
28 same investigation;

29 (ii) The premises into or onto which the covert
30 entry is authorized or the person whose communications are to be obtained has
31 been the subject of an interception of wire or electronic communications
32 previously authorized in connection with the same investigation; and

33 (iii) That the procedures have failed; or

34 (B) That the procedures enumerated in subdivision
35 (f)(1)(A) of this subsection reasonably appear to be unlikely to succeed or
36 to be too dangerous if tried or, are not feasible under the circumstances or

1 exigencies of time; and

2 (2) The order, in addition to the matters required to be
3 specified under subsection (b) of this section, specifies that the covert
4 entry is for the purpose of intercepting oral communications of two or more
5 persons and that there is probable cause to believe they are committing, have
6 committed, or are about to commit a particular enumerated offense, or any
7 attempt, conspiracy, or solicitation thereof.

8 (g) Whenever an order authorizing interception is entered under this
9 act, the order may require reports to the circuit judge who issued the order
10 showing what progress has been made toward achievement of the authorized
11 objective and the need for continued interception. Reports shall be made at
12 any interval the circuit judge requires.

13 (h) A circuit judge who issues an order authorizing the interception
14 of a wire, oral, or electronic communication may not hear a criminal
15 prosecution in which evidence derived from the interception may be used or in
16 which the order may be an issue.

17
18 SECTION 10. Procedure for preserving intercepted communications.

19 (a)(1) The contents of a wire, oral, or electronic communication
20 intercepted by means authorized by this act shall be recorded on tape, wire,
21 or other comparable device.

22 (2) The recording of the contents of a wire, oral, or electronic
23 communication under this subsection shall be done in a way that protects the
24 recording from editing or other alterations.

25 (b)(1) Immediately on the expiration of the period of the order and
26 all extensions, if any, the recordings shall be made available to the circuit
27 judge issuing the order, and sealed under his or her directions.

28 (2) Custody of the recordings shall be wherever the circuit
29 judge orders.

30 (3) The recordings may not be destroyed until at least ten (10)
31 years after the date of expiration of the order and the last extension, if
32 any.

33 (4) A recording may be destroyed only by order of the circuit
34 judge for the judicial circuit in which the interception was authorized.

35 (c) Duplicate recordings may be made for use or disclosure under
36 subsections (a) and (b) of section 7 of this act for investigations.

1 (d) The presence of the seal required by subsection (b) of this
2 section or a satisfactory explanation of its absence is a prerequisite for
3 the use or disclosure of the contents of a wire, oral, or electronic
4 communication or evidence derived from the communication under subsection (c)
5 of section 7, of this act.

6
7 SECTION 11. Sealing of orders and applications.

8 (a) The circuit judge shall seal each application made, and order
9 granted under this act.

10 (b) Custody of the applications and orders shall be wherever the
11 circuit judge directs.

12 (c) An application or order may be disclosed only on a showing of good
13 cause before a circuit judge and may not be destroyed until at least ten (10)
14 years after the date it is sealed.

15 (d) An application or order may be destroyed only by order of the
16 circuit judge of the judicial district in which it was made or granted.

17
18 Section 12. Contempt.

19 A violation of section 10 or 11 of this act may be punished as contempt
20 of court.

21
22 SECTION 13. Notice and disclosure of interception to a party.

23 (a) Within a reasonable time but not later than ninety (90) days after
24 the date an application for an order is denied or after the date an order or
25 the last extension, if any, expires, the circuit judge who granted or denied
26 the application shall cause to be served on the persons named in the order,
27 or the application, and any other parties to intercepted communications, if
28 any, an inventory, which must include notice:

29 (1) Of the entry of the order or the application;

30 (2) Of the date of the entry and the period of authorized
31 interception or the date of denial of the application; and

32 (3) That during the authorized period wire, oral, or electronic
33 communications were or were not intercepted.

34 (b) The circuit judge, on motion, may in his or her discretion make
35 available to a person or his or her counsel for inspection, any portion of an
36 intercepted communication, application, or order that the judge determines,

1 in the interest of justice, to disclose to that person.

2 (c) On an ex-parte showing of good cause to the circuit judge, the
3 servicing of the inventory required by this section may be postponed, but in no
4 event may any evidence derived from an order under this act be disclosed in
5 any trial, until after the inventory has been served.

6
7 SECTION 14. Preconditions to use as evidence.

8 (a)(1) The contents of an intercepted wire, oral, or electronic
9 communication, or evidence derived from the communication may not be received
10 in evidence or otherwise disclosed in a trial, hearing, or other proceeding
11 in a federal or state court unless each party, not later than the 10th day
12 before the date of the trial, hearing, or other proceeding, has been
13 furnished with a copy of the court order and application under which the
14 interception was authorized or approved.

15 (2) This ten-day period may be waived by the circuit judge if he
16 or she finds that it is not possible to furnish the party with the
17 information ten (10) days before the trial, hearing, or proceeding and that
18 the party will not be prejudiced by the delay in receiving the
19 information.

20 (b) An aggrieved person charged with an offense in a trial, hearing,
21 or proceeding, in or before a court, department, officer, agency, regulatory
22 body, or other authority of the United States, or of this state or a
23 political subdivision of this state, may move to suppress the contents of an
24 intercepted wire, oral, or electronic communication or evidence derived from
25 the communication on the grounds that:

26 (1) The communication was unlawfully intercepted;

27 (2) The order authorizing the interception is insufficient on
28 its face; or

29 (3) The interception was not made in conformity with the order.

30 (c) A person identified by a party to an intercepted wire, oral, or
31 electronic communication during the course of that communication may move to
32 suppress the contents of the communication on the grounds provided in
33 subsection (b) of this section, or on the ground that the harm to the person
34 resulting from his or her identification in court exceeds the value to the
35 prosecution of the disclosure of the contents.

36 (d)(1) The motion to suppress must be made before the trial, hearing,

1 or proceeding unless there was no opportunity to make the motion or the
2 person was not aware of the grounds of the motion.

3 (2)(A) The hearing on the motion shall be held in camera upon
4 the written request of the aggrieved person.

5 (B) If the motion is granted, the contents of the
6 intercepted wire, oral, or electronic communication and the evidence derived
7 from the communication shall be treated as having been obtained in violation
8 of this act.

9 (C) The circuit judge, on the filing of the motion by the
10 aggrieved person, shall make available to the aggrieved person, or his or her
11 counsel, for inspection any portion of the intercepted communication or
12 evidence derived from the communication that the judge determines, in the
13 interest of justice, to make available.

14 (e) Any circuit judge of this state, upon hearing a pretrial motion
15 regarding conversations intercepted by wire under this act, or who otherwise
16 becomes informed that there exists on the intercepted wire, oral, or
17 electronic communication, identification of a specific individual who is not
18 a party or suspect to the subject of interception:

19 (1) Shall give notice and an opportunity to be heard on the
20 matter of suppression of references to that person if identification is
21 sufficient so as to give notice; or

22 (2) Shall suppress references to that person if identification
23 is sufficient to potentially cause embarrassment or harm which outweighs the
24 probative value, if any, of the mention of the person, but insufficient to
25 require the notice provided for in subdivision (1) of this subsection.

26
27 SECTION 15. Reports concerning intercepted wire, oral, or electronic
28 communications.

29 (a) Within thirty (30) days after the date an order or the last
30 extension, if any, expires, or after the denial of an order, the issuing or
31 denying judge shall report to the Administrative Office of the Courts:

32 (1) The fact that an order or extension was applied for;

33 (2) The kind of order or extension applied for;

34 (3) The fact that the order or extension was granted as applied
35 for, was modified, or was denied;

36 (4) The period of interceptions authorized by the order and the

1 number and duration of any extensions of the order;

2 (5) The offense specified in the order or application or
3 extension;

4 (6) The identity of the officer making the request and the
5 prosecutor; and

6 (7) The nature of the facilities from which, or the place where,
7 communications were to be intercepted.

8 (b) In January of each year each prosecutor shall report to the
9 Administrative Office of the Courts the following information for the
10 preceding calendar year:

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

13 (2) A general description of the interceptions made under each
14 order or extension, including the approximate nature and frequency of
15 incriminating communications intercepted, the approximate nature and
16 frequency of other communications intercepted, the approximate number of
17 persons whose communications were intercepted, and the approximate nature,
18 amount, and cost of the manpower and other resources used in the
19 interceptions;

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

22 (4) The number of trials resulting from interceptions;

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

25 (6) The number of convictions resulting from interceptions, the
26 offenses for which the convictions were obtained, and a general assessment of
27 the importance of the interceptions; and

28 (7) The information required by subdivisions (b)(2) through
29 (b)(6) of this section with respect to orders or extensions obtained.

30 (c)(1) Any circuit judge or prosecutor required to file a report with
31 the Administrative Office of the Courts shall forward a copy of the report to
32 the Director of the Department of Arkansas State Police.

33 (2) By March 1 of each year, the director shall submit to the
34 Governor, Lieutenant Governor, Speaker of the House of Representatives,
35 Chairperson of the Senate Judiciary Committee, and Chairperson of the House
36 Judiciary Committee, a report of all intercepts conducted under this act and

1 terminated during the preceding calendar year. The report shall include:

2 (A) The reports of circuit judges and prosecuting
3 attorneys forwarded to the director as required in this section;

4 (B) The number of Department of Arkansas State Police
5 personnel authorized to possess, install, or operate electronic, mechanical,
6 or other devices;

7 (C) The number of Department of Arkansas State Police and
8 other law enforcement personnel who participated or engaged in the seizure of
9 intercepts under this act during the preceding calendar year; and

10 (D) The total cost to the Department of Arkansas State
11 Police of all activities and procedures relating to the seizure of intercepts
12 during the preceding calendar year, including costs of equipment, manpower,
13 and expenses incurred as compensation for use of facilities or technical
14 assistance provided to the department.

15
16 SECTION 16. Recovery of civil damages authorized.

17 (a) A person whose wire, oral, or electronic communication is
18 intercepted, disclosed, or used in violation of this act has a civil cause of
19 action against any person who intercepts, discloses, or uses or solicits
20 another person to intercept, disclose, or use the communication, and is
21 entitled to recover from the person:

22 (1) Actual damages but not less than liquidated damages computed
23 at a rate of one hundred dollars (\$100) a day for each day of violation or
24 one thousand dollars (\$1,000), whichever is greater;

25 (2) Punitive damages; and

26 (3) A reasonable attorney's fee and other litigation costs
27 reasonably incurred.

28 (b) A good faith reliance on a court order or legislative
29 authorization constitutes a complete defense to an action brought under this
30 section.

31
32 SECTION 17. This act expires September 1, 2007, and shall not be in
33 force on and after that date.

34
35 SECTION 18. Nothing in this act shall restrict or prohibit
36 interception and recording of communications not otherwise prohibited by

1 Arkansas Code § 5-60-120.

2
3 SECTION 19. Emergency interception and use of wire, oral, or
4 electronic communications.

5 (a) An authorized law enforcement officer, designated by the
6 prosecuting attorney of the county where the installation will be used, may
7 install and use live intercepts if the law enforcement officer reasonably
8 believes that:

9 (1) An emergency requiring the installation of a live intercept
10 before an order authorizing the installation and use can, with due diligence,
11 be obtained, exist involving immediate danger of death or serious injury to
12 any person; and

13 (2) There are grounds under this act on which an order could be
14 entered to authorize the installation and use of a live intercept.

15 (b) If an authorized law enforcement officer installs a live intercept
16 under subsection (a) of this section, the officer must obtain an order
17 approving installation and use within forty-eight (48) hours after the
18 installation begins. If authorization is not obtained within forty-eight
19 (48) hours, the officer shall terminate use of the live intercept on the
20 expiration of the forty-eight (48) hours or at the time the order is denied,
21 whichever is earlier.

22 (c) The state may not use as evidence in a criminal proceeding any
23 information gained through the use of a live intercept installed under this
24 section if authorization for the live intercept is denied.

25
26 SECTION 20. (a) It shall be unlawful for any person who knows or
27 learns of the existence of a pen register, tracking device, trap and trace
28 device, or any other kind of electronic intercept, to disclose that fact to
29 the person who is the target of the investigation, or to any other person.

30 (b) Any person violating the provisions of this section shall be
31 guilty of a Class A misdemeanor.

32
33 /s/ Adams, et al
34
35
36