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Short Title: Electronic Surveillance Act.

(Public)

Sponsors: Senators Rand, Perdue, and Gulley.

Referred to: Judiciary II/Election Laws

May 1, 1995

A BILL TO BE ENTITLED

AN ACT TO ENHANCE THE INVESTIGATIVE CAPABILITIES OF LAW ENFORCEMENT IN CASES OF DRUG TRAFFICKING AND OTHER SERIOUS CRIMES BY PERMITTING THE USE OF ELECTRONIC SURVEILLANCE IN LIMITED CIRCUMSTANCES.

The General Assembly of North Carolina enacts:

Section 1. Article 16 of Chapter 15A of the General Statutes is amended by adding the heading "Electronic Surveillance" and by adding the following new sections to read:

"§ 15A-286. Definitions.

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

- (1) 'Aggrieved person' means a person who was a party to any intercepted wire, oral, or electronic communication or a person against whom the interception was directed.
- (2) 'Attorney General' means the Attorney General of the State of North Carolina, unless otherwise specified.
- (3) 'Aural transfer' means a transfer containing the human voice at any point between and including the point of origin and the point of reception.

- 1 (4) 'Chapter 119 of the United States Code' means Chapter 119 of Part I of
2 Title 18, United States Code, being Public Law 90-351, the Omnibus
3 Crime Control and Safe Streets Act of 1968, as amended by the
4 Electronic Communications Privacy Act of 1986.
- 5 (5) 'Communications common carrier' shall have the same meaning which
6 is given the term 'common carrier' by Section 153(h) of Title 47 of the
7 United States Code.
- 8 (6) 'Contents' when used with respect to any wire, oral, or electronic
9 communication means and includes any information concerning the
10 substance, purport, or meaning of that communication.
- 11 (7) 'Electronic, mechanical, or other device' means any device or apparatus
12 which can be used to intercept a wire, oral, or electronic communication
13 other than:
- 14 a. Any telephone or telegraph instrument, equipment or facility, or
15 any component thereof:
- 16 1. Furnished to the subscriber or user by a provider of wire
17 or electronic communication service in the ordinary
18 course of its business and being used by the subscriber or
19 user in the ordinary course of its business or furnished by
20 the subscriber or user for connection to the facilities of
21 such service and used in the ordinary course of its
22 business; or
- 23 2. Being used by a provider of wire or electronic
24 communication service in the ordinary course of its
25 business or by an investigative or law enforcement officer
26 in the ordinary course of the officer's duties.
- 27 b. A hearing aid or similar device being used to correct subnormal
28 hearing to not better than normal.
- 29 (8) 'Electronic communication' means any transfer of signs, signals, writing,
30 images, sounds, data, or intelligence of any nature transmitted in whole
31 or in part by a wire, radio, electromagnetic, photoelectronic, or
32 photooptical system that affects interstate or foreign commerce but does
33 not include:
- 34 a. The radio portion of a cordless telephone communication that is
35 transmitted between the cordless telephone handset and the base
36 unit;
- 37 b. Any wire or oral communication;
- 38 c. Any communication made through a tone-only paging device; or
- 39 d. Any communication from a tracking device (as defined in
40 Section 3117 of Title 18 of the United States Code).
- 41 (9) 'Electronic communication service' means any service which provides to
42 users thereof the ability to send or receive wire or electronic
43 communications.

- 1 (10) 'Electronic communication system' means any wire, radio, electronic,
2 magnetic, photooptical, or photoelectronic facilities for the transmission
3 of electronic communications, and any computer facilities or related
4 electronic equipment for the storage of such communications.
- 5 (11) 'Electronic surveillance' means the interception of wire, oral, or
6 electronic communications as provided by this Article.
- 7 (12) 'Electronic storage' means:
8 a. Any temporary, intermediate storage of a wire or electronic
9 communication incidental to the electronic transmission thereof;
10 and
11 b. Any storage of such communication by an electronic
12 communication service for the purposes of backup protection of
13 the communication.
- 14 (13) 'Intercept' means the aural or other acquisition of the contents of any
15 wire, oral, or electronic communication through the use of any
16 electronic, mechanical, or other device.
- 17 (14) 'Investigative or law enforcement officer' means any officer of the State
18 of North Carolina or any political subdivision thereof, who is
19 empowered by the laws of this State to conduct investigations of or to
20 make arrests for offenses enumerated in G.S. 15A-290, and any attorney
21 authorized by the laws of this State to prosecute or participate in the
22 prosecution of those offenses, including the Attorney General of North
23 Carolina.
- 24 (15) 'Judge' means any judge of the trial divisions of the General Court of
25 Justice.
- 26 (16) 'Judicial review panel' means a three-judge body, composed of such
27 judges as may be assigned by the Chief Justice of the Supreme Court of
28 North Carolina, which shall review applications for electronic
29 surveillance orders and may issue orders valid throughout the State
30 authorizing such surveillance as provided by this Article, and which
31 shall submit a report of its decision to the Chief Justice.
- 32 (17) 'Oral communication' means any oral communication uttered by a
33 person exhibiting an expectation that such communication is not subject
34 to interception under circumstances justifying such expectation, but the
35 term does not include any electronic communication.
- 36 (18) 'Person' means any employee or agent of the United States or any state
37 or any political subdivision thereof, and any individual, partnership,
38 association, joint stock company, trust, or corporation.
- 39 (19) 'Readily accessible to the general public' means, with respect to a radio
40 communication, that the communication is not:
41 a. Scrambled or encrypted;

- 1 b. Transmitted using modulation techniques whose essential
2 parameters have been withheld from the public with the intention
3 of preserving the privacy of the communication;
4 c. Carried on a subcarrier or other signal subsidiary to a radio
5 transmission;
6 d. Transmitted over a communications system provided by a
7 common carrier, unless the communication is a tone-only paging
8 system communication; or
9 e. Transmitted on frequencies allocated under Part 25, Subpart D,
10 E, or F or Part 94 of the Rules of the Federal Communications
11 Commission as provided by 18 U.S.C. § 2510(16)(E).

12 (20) 'User' means any person or entity who:

- 13 a. Uses an electronic communications service; and
14 b. Is duly authorized by the provider of the service to engage in the
15 use.

16 (21) 'Wire communication' means any aural transfer made in whole or in part
17 through the use of facilities for the transmission of communications by
18 the aid of wire, cable, or other like connection between the point of
19 origin and the point of reception (including the use of such connection
20 in a switching station) furnished or operated by any person engaged in
21 providing or operating such facilities for the transmission of interstate or
22 foreign communications or communications affecting interstate or
23 foreign commerce and the term includes any electronic storage of such
24 communication, but the term does not include the radio portion of a
25 cordless telephone communication that is transmitted between the
26 cordless telephone handset and the base unit.

27 **§ 15A-287. Interception and disclosure of wire, oral, or electronic communications**
28 **prohibited.**

29 (a) Except as otherwise specifically provided in this Article, a person is guilty of a
30 Class H felony if, without the consent of at least one party to the communication, the
31 person:

- 32 (1) Willfully intercepts, endeavors to intercept, or procures any other person
33 to intercept or endeavor to intercept, any wire, oral, or electronic
34 communication.
35 (2) Willfully uses, endeavors to use, or procures any other person to use or
36 endeavor to use any electronic, mechanical, or other device to intercept
37 any oral communication when:
38 a. The device is affixed to, or otherwise transmits a signal through,
39 a wire, cable, or other like connection used in wire
40 communications; or
41 b. The device transmits communications by radio, or interferes with
42 the transmission of such communications.

- 1 (3) Willfully discloses, or endeavors to disclose, to any other person the
2 contents of any wire, oral, or electronic communication, knowing or
3 having reason to know that the information was obtained through
4 violation of this Article; or
- 5 (4) Willfully uses, or endeavors to use, the contents of any wire or oral
6 communication, knowing or having reason to know that the information
7 was obtained through the interception of a wire or oral communication
8 in violation of this Article.
- 9 (b) It is not unlawful under this Article for any person to:
- 10 (1) Intercept or access an electronic communication made through an
11 electronic communication system that is configured so that the
12 electronic communication is readily accessible to the general public;
- 13 (2) Intercept any radio communication which is transmitted:
- 14 a. For use by the general public, or that relates to ships, aircraft,
15 vehicles, or persons in distress;
- 16 b. By any governmental, law enforcement, civil defense, private
17 land mobile, or public safety communication system, including
18 police and fire, readily available to the general public;
- 19 c. By a station operating on any authorized band within the bands
20 allocated to the amateur, citizens band, or general mobile radio
21 services; or
- 22 d. By any marine or aeronautical communication system; or
- 23 (3) Intercept any communication in a manner otherwise allowed by Chapter
24 119 of the United States Code.
- 25 (c) It is not unlawful under this Article for an operator of a switchboard, or an
26 officer, employee, or agent of a provider of electronic communication service, whose
27 facilities are used in the transmission of a wire or electronic communication, to intercept,
28 disclose, or use that communication in the normal course of employment while engaged
29 in any activity that is a necessary incident to the rendition of his or her service or to the
30 protection of the rights or property of the provider of that service, provided that a
31 provider of wire or electronic communication service may not utilize service observing or
32 random monitoring except for mechanical or service quality control checks.
- 33 (d) It is not unlawful under this Article for an officer, employee, or agent of the
34 Federal Communications Commission, in the normal course of his employment and in
35 discharge of the monitoring responsibilities exercised by the Commission in the
36 enforcement of Chapter 5 of Title 47 of the United States Code, to intercept a wire or
37 electronic communication, or oral communication transmitted by radio, or to disclose or
38 use the information thereby obtained.
- 39 (e) Any person who, as a result of the person's official position or employment,
40 has obtained knowledge of the contents of any wire, oral, or electronic communication
41 lawfully intercepted pursuant to an electronic surveillance order or of the pendency or
42 existence of or implementation of an electronic surveillance order who shall knowingly
43 and willfully disclose such information for the purpose of hindering or thwarting any

1 investigation or prosecution relating to the subject matter of the electronic surveillance
2 order, except as is necessary for the proper and lawful performance of the duties of his
3 position or employment or as shall be required or allowed by law, shall be guilty of a
4 Class G felony.

5 (f) Any person who shall, knowingly or with gross negligence, divulge the
6 existence of or contents of any electronic surveillance order in a way likely to hinder or
7 thwart any investigation or prosecution relating to the subject matter of the electronic
8 surveillance order or anyone who shall, knowingly or with gross negligence, release the
9 contents of any wire, oral, or electronic communication intercepted under an electronic
10 surveillance order, except as is necessary for the proper and lawful performance of the
11 duties of his position or employment or as is required or allowed by law, shall be guilty
12 of a Class 1 misdemeanor.

13 (g) Any public officer who shall violate subsection (a) or (d) of this section or who
14 shall knowingly violate subsection (e) of this section shall be removed from any public
15 office he may hold and shall thereafter be ineligible to hold any public office, whether
16 elective or appointed.

17 **"§ 15A-288. Manufacture, distribution, possession, and advertising of wire, oral, or**
18 **electronic communication intercepting devices prohibited.**

19 (a) Except as otherwise specifically provided in this Article, a person is guilty of a
20 Class H felony if the person:

21 (1) Manufactures, assembles, possesses, purchases, or sells any electronic,
22 mechanical, or other device, knowing or having reason to know that the
23 design of the device renders it primarily useful for the purpose of the
24 surreptitious interception of wire, oral, or electronic communications; or

25 (2) Places in any newspaper, magazine, handbill, or other publication, any
26 advertisement of:

27 a. Any electronic, mechanical, or other device knowing or having
28 reason to know that the design of the device renders it primarily
29 useful for the purpose of the surreptitious interception of wire,
30 oral, or electronic communications; or

31 b. Any other electronic, mechanical, or other device where the
32 advertisement promotes the use of the device for the purpose of
33 the surreptitious interception of wire, oral, or electronic
34 communications.

35 (b) It is not unlawful under this section for the following persons to manufacture,
36 assemble, possess, purchase, or sell any electronic, mechanical, or other device, knowing
37 or having reason to know that the design of the device renders it primarily useful for the
38 purpose of the surreptitious interception of wire, oral, or electronic communications:

39 (1) A communications common carrier or an officer, agent, or employee of,
40 or a person under contract with, a communications common carrier,
41 acting in the normal course of the communications common carrier's
42 business, or

1 (2) An officer, agent, or employee of, or a person under contract with, the
2 State, acting in the course of the activities of the State, and with the
3 written authorization of the Attorney General.

4 (b) An officer, agent, or employee of, or a person whose normal and customary
5 business is to design, manufacture, assemble, advertise and sell electronic, mechanical
6 and other devices primarily useful for the purpose of the surreptitious interceptions of
7 wire, oral or electronic communications, exclusively for and restricted to State and
8 federal investigative or law enforcement agencies and departments.

9 "**§ 15A-289. Confiscation of wire, oral, or electronic communication interception**
10 **devices.**

11 Any electronic, mechanical, or other device used, sent, carried, manufactured,
12 assembled, possessed, sold, or advertised in violation of G.S. 15A-288 may be seized and
13 forfeited to this State.

14 "**§ 15A-290. Offenses for which orders for electronic surveillance may be granted.**

15 (a) Orders authorizing or approving the interception of wire, oral, or electronic
16 communications may be granted, subject to the provisions of this Article and Chapter 119
17 of the United States Code, when the interception:

18 (1) May provide or has provided evidence of the commission of, or any
19 conspiracy to commit:

20 a. Any of the drug-trafficking violations listed in G.S. 90-95(h); or

21 b. A continuing criminal enterprise in violation of G.S. 90-95.1.

22 (2) May expedite the apprehension of persons indicted for the commission
23 of, or any conspiracy to commit, an offense listed in subdivision (1) of
24 this subsection.

25 (b) Orders authorizing or approving the interception of wire, oral, or electronic
26 communications may be granted, subject to the provisions of this Article and Chapter 119
27 of the United States Code, when the interception may provide, or has provided, evidence
28 of any offense that involves the commission of, or any conspiracy to commit, murder,
29 kidnapping, hostage taking, robbery, extortion, bribery, rape, or any sexual offense, or
30 when the interception may expedite the apprehension of persons indicted for the
31 commission of these offenses.

32 (c) Orders authorizing or approving the interception of wire, oral, or electronic
33 communications may be granted, subject to the provisions of this Article and Chapter 119
34 of the United States Code, when the interception may provide, or has provided, evidence
35 of any of the following offenses, or any conspiracy to commit these offenses, or when the
36 interception may expedite the apprehension of persons indicted for the commission of
37 these offenses:

38 (1) Any felony offense against a minor, including any violation of G.S. 14-
39 27.7 (Intercourse and sexual offenses with certain victims; consent no
40 defense), G.S. 14-41 (Abduction of children), G.S. 14-190.16 (First
41 degree sexual exploitation of a minor), G.S. 14-190.17 (Second degree
42 sexual exploitation of a minor), G.S. 14-190.18 (Promoting prostitution

1 of a minor), G.S. 14-190.19 (Participating in prostitution of a minor), or
2 G.S. 14-202.1 (Taking indecent liberties with children).

3 (2) Any felony obstruction of a criminal investigation, including any
4 violation of G.S. 14-221.1 (Altering, destroying, or stealing evidence of
5 criminal conduct).

6 (3) Any felony offense involving interference with, or harassment or
7 intimidation of, jurors or witnesses, including any violation of G.S. 14-
8 225.2 or G.S. 14-226.

9 (4) Any felony offense involving assault or threats against any executive or
10 legislative officer in violation of Article 5A of Chapter 14 of the
11 General Statutes or assault with a firearm or other deadly weapon upon
12 governmental officers or employees in violation of G.S. 14-34.2.

13 (5) Any offense involving the manufacture, assembly, possession, storage,
14 transportation, sale, purchase, delivery, or acquisition of weapons of
15 mass death or destruction in violation of G.S. 14-288.8 or the
16 adulteration or misbranding of food, drugs, cosmetics, etc., with the
17 intent to cause serious injury in violation of G.S. 14-34.4.

18 (d) When an investigative or law enforcement officer, while engaged in
19 intercepting wire, oral, or electronic communications in the manner authorized, intercepts
20 wire, electronic, or oral communications relating to offenses other than those specified in
21 the order of authorization or approval, the contents thereof, and evidence derived
22 therefrom, may be disclosed or used as provided in G.S. 15A-294(a) and (b). Such
23 contents and any evidence derived therefrom may be used in accordance with G.S. 15A-
24 294(c) when authorized or approved by a judicial review panel where the panel finds, on
25 subsequent application made as soon as practicable, that the contents were otherwise
26 intercepted in accordance with this Article or Chapter 119 of the United States Code.

27 (e) No otherwise privileged wire, oral, or electronic communication intercepted in
28 accordance with, or in violation of, the provisions of this Article or Chapter 119 of the
29 United States Code, shall lose its privileged character.

30 **"§ 15A-291. Application for electronic surveillance order; judicial review panel.**

31 (a) The Attorney General may, pursuant to the provisions of Section 2516(2) of
32 Chapter 119 of the United States Code, apply to a judicial review panel for an order
33 authorizing or approving the interception of wire, oral, or electronic communications by
34 investigative or law enforcement officers having responsibility for the investigation of the
35 offenses as to which the application is made, and for such offenses and causes as are
36 enumerated in G.S. 15A-290. A judicial review panel shall be composed of such judges
37 as may be assigned by the Chief Justice of the Supreme Court of North Carolina, which
38 shall review applications for electronic surveillance orders and may issue orders valid
39 throughout the State authorizing such surveillance as provided by this Article, and which
40 shall submit a report of its decision to the Chief Justice. A judicial review panel may be
41 appointed by the Chief Justice pursuant to the Attorney General's written notification of
42 his intent to apply for an electronic surveillance order.

1 (b) A judicial review panel is hereby authorized to grant orders valid throughout
2 the interception of wire, oral, or electronic communications. Applications for such orders
3 may be made by the Attorney General and by no other person. The Attorney General, in
4 applying for such orders, and a judicial review panel in granting such orders, shall
5 comply with all procedural requirements of Section 2518 of Chapter 119 of the United
6 States Code. The Attorney General may make emergency applications as provided by
7 Section 2518 of Chapter 119 of the United States Code. In applying Section 2518 the
8 word 'judge' in that section shall be construed to refer to the judicial review panel, unless
9 the context otherwise indicates. The judicial review panel may stipulate any special
10 conditions it feels necessary to assure compliance with the terms of this act.

11 (c) No judge who sits as a member of a judicial review panel shall preside at any
12 trial or proceeding resulting from or in any manner related to information gained pursuant
13 to a lawful electronic surveillance order issued by that panel.

14 (d) Each application for an order authorizing or approving the interception of a
15 wire, oral, or electronic communication must be made in writing upon oath or affirmation
16 to the judicial review panel. Each application must include the following information:

17 (1) The identity of the office requesting the application;

18 (2) A full and complete statement of the facts and circumstances relied
19 upon by the applicant, to justify his belief that an order should be
20 issued, including:

21 a. Details as to the particular offense that has been, or is being
22 committed;

23 b. A particular description of the nature and location of the facilities
24 from which or the place where the communication is to be
25 intercepted;

26 c. A particular description of the type of communications sought to
27 be intercepted; and

28 d. The identity of the person, if known, committing the offense and
29 whose communications are to be intercepted;

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

33 (4) A statement of the period of time for which the interception is required
34 to be maintained. If the nature of the investigation is such that the
35 authorization for interception should not automatically terminate when
36 the described type of communication has been obtained, a particular
37 description of facts establishing probable cause to believe that additional
38 communications of the same type will occur thereafter must be added;

39 (5) A full and complete statement of the facts concerning all previous
40 applications known to the individual authorizing and making
41 adjudication, made to a judicial review panel for authorization to
42 intercept, or for approval of interceptions of wire, oral, or electronic
43 communications involving any of the same persons, facilities, or places

1 specified in the application, and the action taken by that judicial review
2 panel on each such application; and

3 (6) Where the application is for the extension of an order, a statement
4 setting forth the results thus far obtained from the interception, or a
5 reasonable explanation of the failure to obtain such results.

6 (e) Before acting on the application, the judicial review panel may examine on
7 oath the person requesting the application or any other person who may possess pertinent
8 information, but information other than that contained in the affidavit may not be
9 considered by the panel in determining whether probable cause exists for the issuance of
10 the order unless the information is either recorded or contemporaneously summarized in
11 the record or on the face of the order by the panel.

12 **"§ 15A-292. Request for application for electronic surveillance order.**

13 (a) The head of any municipal, county, or State law enforcement agency or any
14 district attorney may submit a written request to the Attorney General that the Attorney
15 General apply to a judicial review panel for an electronic surveillance order to be
16 executed within the requesting agency's jurisdiction. The written requests shall be on a
17 form approved by the Attorney General and shall provide sufficient information to form
18 the basis for an application for an electronic surveillance order. The head of a law
19 enforcement agency shall also submit a copy of the request to the district attorney, who
20 shall review the request and forward it to the Attorney General along with any comments
21 he may wish to include. The Attorney General is authorized to review the request and
22 decide whether it is appropriate to submit an application to a judicial review panel for an
23 electronic surveillance order. If a request for an application is deemed inappropriate, the
24 Attorney General shall send a signed, written statement to the person submitting the
25 request, and to the district attorney, summarizing the reasons for failing to make an
26 application. If the Attorney General decides to submit an application to a judicial review
27 panel, he shall so notify the requesting agency head, the district attorney, and the head of
28 the local law enforcement agency which has the primary responsibility for enforcing the
29 criminal laws in the location in which it is anticipated the majority of the surveillance
30 will take place, if not the same as the requesting agency head, unless the Attorney
31 General has probable cause to believe that the latter notifications should substantially
32 jeopardize the success of the surveillance or the investigation in general. If a judicial
33 review panel grants an electronic surveillance order, a copy of such order shall be sent to
34 the requesting agency head and the district attorney, and a summary of the order shall be
35 sent to the head of the local law enforcement agency with primary responsibility for
36 enforcing the criminal laws in the jurisdiction where the majority of the surveillance will
37 take place, if not the same as the requesting agency head, unless the judicial review panel
38 finds probable cause to believe that the latter notifications would substantially jeopardize
39 the success of the surveillance or the investigation.

40 (b) This Article does not limit the authority of the Attorney General to apply for
41 electronic surveillance orders independent of, or contrary to, the requests of law
42 enforcement agency heads, nor does it limit the discretion of the Attorney General in
43 determining whether an application is appropriate under any given circumstances.

1 (c) The Chief Justice of the North Carolina Supreme Court shall receive a report
2 concerning each decision of a judicial review panel.

3 **"§ 15A-293. Issuance of order for electronic surveillance; procedures for**
4 **implementation.**

5 (a) Upon application by the Attorney General, a judicial review panel may enter
6 an ex parte order, as requested or as modified, authorizing the interception of wire, oral,
7 or electronic communications, if the panel determines on the basis of the facts submitted
8 by the applicant that:

9 (1) There is probable cause for belief that an individual is committing, has
10 committed, or is about to commit an offense set out in G.S. 15A-290;

11 (2) There is probable cause for belief that particular communications
12 concerning that offense will be obtained through such interception;

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

16 (4) There is probable cause for belief that the facilities from which, or the
17 place where, the wire, oral, or electronic communications are to be
18 intercepted are being used, or are about to be used, in connection with
19 the commission of such offense, or are leased to, listed in the name of,
20 or commonly used by the individual described in subdivision (1) of this
21 subsection.

22 (b) Each order authorizing the interception of any wire, oral, or electronic
23 communications must specify:

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

26 (2) The nature and location of the communications facilities as to which, or
27 the place where, authority to intercept is granted, and the means by
28 which such interceptions may be made;

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

31 (4) The identity of the agency authorized to intercept the communications
32 and of the person requesting the application; and

33 (5) The period of time during which such interception is authorized,
34 including a statement as to whether or not the interception automatically
35 terminates when the described communication has been first obtained.

36 (c) No order entered under this Article may authorize the interception of any wire,
37 oral, or electronic communication for any period longer than is necessary to achieve the
38 objective of the authorization, nor in any event longer than 30 days. Extensions of an
39 order may be granted, but only upon application for an extension made in accordance
40 with G.S. 15A-291 and the panel making the findings required by subsection (a) of this
41 section. The period of extension may be no longer than the panel determines to be
42 necessary to achieve the purpose for which it was granted and in no event for longer than
43 15 days. Every order and extension thereof must contain a provision that the

1 authorization to intercept be executed as soon as practicable, be conducted in such a way
2 as to minimize the interception of communications not otherwise subject to interception
3 under this Article, and terminate upon attainment of the authorized objective, or in any
4 event in 30 days or 15 days, as is appropriate.

5 (d) Whenever an order authorizing interception is entered pursuant to this Article,
6 the order may require reports to be made to the issuing judicial review panel showing that
7 progress has been made toward achievement of the authorized objective and the need for
8 continued interception. Such reports must be made at such intervals as the panel may
9 require.

10 (1) The contents of any wire, oral, or electronic communication intercepted
11 by any means authorized by this Article must be recorded on tape, wire,
12 or electronic or other comparable device. The recording of the contents
13 of any wire, electronic, or oral communication under this subsection
14 must be done in such way as will protect the recording from editing or
15 other alterations. Immediately upon the expiration of the period of the
16 order, or extensions thereof, the recordings must be made available to
17 the judicial review panel and sealed under its direction. Custody of the
18 recordings is wherever the panel orders. They may not be destroyed
19 except upon an order of the issuing panel and in any event must be kept
20 for 10 years. Duplicate recordings may be made for use or disclosure
21 pursuant to the provisions of G.S. 15A-294(a) and (b) for investigations.
22 The contents of any wire, oral, or electronic communication or evidence
23 derived therefrom may not be disclosed or used under G.S. 15A-294(c)
24 unless they have been kept sealed.

25 (2) Applications made and orders granted under this Article must be sealed
26 by the panel. Custody of the applications and orders may be disclosed
27 only upon a showing of good cause before the issuing panel and may
28 not be destroyed except on its order and in any event must be kept for
29 10 years.

30 (3) Any violation of the provisions of this subsection may be punished as
31 for contempt.

32 (e) The State Bureau of Investigation may own or control, and may operate any
33 equipment used to implement electronic surveillance orders issued by a judicial review
34 panel, and may operate or use in implementing any electronic surveillance order
35 electronic surveillance equipment in which a local government or any of its agencies has
36 a property interest.

37 (f) The Attorney General shall establish procedures for the use of electronic
38 surveillance equipment in assisting local law enforcement agencies implementing
39 electronic surveillance orders. The Attorney General shall supervise such assistance
40 given to local law enforcement agencies and is authorized to conduct statewide training
41 sessions for investigative and law enforcement officers regarding this Article.

42 **"§ 15A-294. Authorization for disclosure and use of intercepted wire, oral or**
43 **electronic communications.**

1 (a) Any investigative or law enforcement officer who, by any means authorized by
2 this Article or Chapter 119 of the United States Code, has obtained knowledge of the
3 contents of any wire, oral, or electronic communication, or evidence derived therefrom,
4 may disclose such contents to another investigative or law enforcement officer to the
5 extent that such disclosure is appropriate to the proper performance of the official duties
6 of the officer making or receiving the disclosure.

7 (b) Any investigative or law enforcement officer, who by any means authorized by
8 this Article or Chapter 119 of the United States Code, has obtained knowledge of the
9 contents of any wire, oral, or electronic communication, or evidence derived therefrom,
10 may use such contents to the extent such use is appropriate to the proper performance of
11 the officers' official duties.

12 (c) Any person who has received, by any means authorized by this Article or
13 Chapter 119 of the United States Code, any information concerning a wire, oral, or
14 electronic communication, or evidence derived therefrom, intercepted in accordance with
15 the provisions of this Article, may disclose the contents of that communication or such
16 derivative evidence while giving testimony under oath or affirmation in any proceeding
17 in any court or before any grand jury in this State, or in any court of the United States or
18 of any state, or in any federal or state grand jury proceeding.

19 (d) Within a reasonable time, but no later than 90 days after the filing of an
20 application for an order or the termination of the period of an order or the extensions
21 thereof, the issuing judicial review panel must cause to be served on the persons named in
22 the order or the application and such other parties as the panel in its discretion may
23 determine, an inventory that includes notice of:

24 (1) The fact of the entry of the order or the application;

25 (2) The date of the entry and the period of the authorized interception; and

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

28 (e) The issuing judicial review panel, upon the filing of a motion, may in its
29 discretion, make available to such person or his counsel for inspection, such portions of
30 the intercepted communications, applications, and orders as the panel determines to be
31 required by law or in the interest of justice.

32 (f) The contents of any intercepted wire, oral, or electronic communication, or
33 evidence derived therefrom, may not be received in evidence or otherwise disclosed in
34 any trial, hearing, or other proceeding in any court of this State unless each party, not less
35 than 20 working days before the trial, hearing, or other proceeding, has been furnished
36 with a copy of the order and accompanying application, under which the interception was
37 authorized.

38 (g) Any aggrieved person in any trial, hearing, or proceeding in or before any
39 court, department, officer, agency, regulatory body, or other authority of this State, or a
40 political subdivision thereof, may move to suppress the contents of any intercepted wire,
41 oral, or electronic communication, or evidence derived therefrom, on the grounds that:

42 (1) The communication was unlawfully intercepted;

1 (2) The order of authorization under which it was intercepted is insufficient
2 on its face; or

3 (3) The interception was not made in conformity with the order of
4 authorization.

5 Such motion must be made before the trial, hearing, or proceeding unless there was no
6 opportunity to make such motion or the person was not aware of the grounds of this
7 motion. If the motion is granted, the contents of the intercepted wire, oral, or electronic
8 communication, or evidence derived therefrom, must be treated as having been obtained
9 in violation of this Article.

10 (h) In addition to any other right to appeal, the State may appeal:

11 (1) From an order granting a motion to suppress made under subdivision (1)
12 of this subsection, if the district attorney certifies to the judge granting
13 the motion that the appeal is not taken for purposes of delay. The
14 appeal must be taken within 30 days after the date the order of
15 suppression was entered and must be prosecuted as are other
16 interlocutory appeals; or

17 (2) From an order denying an application for an order of authorization, and
18 the appeal may be made ex parte and must be considered in camera and
19 in preference to all other pending appeals.

20 **"§ 15A-295. Reports concerning intercepted wire, oral, or electronic**
21 **communications.**

22 In January of each year, the Attorney General of this State must report to the
23 Administrative Office of the United States Court the information required to be filed by
24 Section 2519 of Title 18 of the United States Code, as heretofore or hereafter amended,
25 and file a copy of the report with the Administrative Office of the Courts of North
26 Carolina.

27 **"§ 15A-296. Recovery of civil damages authorized.**

28 (a) Any person whose wire, oral, or electronic communication is intercepted,
29 disclosed, or used in violation of this Article, has a civil cause of action against any
30 person who intercepts, discloses, or uses, or procures any other person to intercept,
31 disclose, or use such communications, and is entitled to recover from any other person:

32 (1) Actual damages, but not less than liquidated damages, computed at the
33 rate of one hundred dollars (\$100.00) a day for each day of violation or
34 one thousand dollars (\$1,000), whichever is higher;

35 (2) Punitive damages; and

36 (3) A reasonable attorneys' fee and other litigation costs reasonably
37 incurred.

38 (b) Good faith reliance on a court order or on a representation made by the
39 Attorney General or a district attorney is a complete defense to any civil or criminal
40 action brought under this Article.

41 **"§ 15A-297. Conformity to provisions of federal law.**

42 It is the intent of this Article to conform the requirements of all interceptions of wire,
43 oral, or electronic communications conducted by investigative or law enforcement

1 officers in this State to provisions of Chapter 119 of the United States Code, except
2 where the context indicates a purpose to provide safeguards even more protective of
3 individual privacy and constitutional rights."

4 Sec. 2. This act becomes effective December 1, 1995.