

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

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SENATE BILL 748
Judiciary I Committee Substitute Adopted 5/3/05

Short Title: Drug Enforcement Improvement Act.

(Public)

Sponsors:

Referred to:

March 22, 2005

A BILL TO BE ENTITLED

1 AN ACT TO AMEND THE PROCEDURE FOR IMPLEMENTING AN ORDER FOR
2 ELECTRONIC SURVEILLANCE, TO PROVIDE THAT IN CERTAIN
3 CIRCUMSTANCES IT IS NOT NECESSARY TO IDENTIFY THE PLACE
4 WHERE THE COMMUNICATION WILL BE INTERCEPTED BY
5 ELECTRONIC SURVEILLANCE, AND ALSO TO PROVIDE THE TIME
6 FRAME WITHIN WHICH THE ELECTRONIC SURVEILLANCE IN AN
7 UNDISCLOSED LOCATION MAY BEGIN.

8
9 The General Assembly of North Carolina enacts:

10 **SECTION 1.** G.S. 15A-291(d) reads as rewritten:

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

- 15 (1) The identity of the office requesting the application;
16 (2) A full and complete statement of the facts and circumstances relied
17 upon by the applicant, to justify his belief that an order should be
18 issued, including:
19 a. Details as to the particular offense that has been, or is being
20 committed;
21 b. Except as provided in G.S. 15A-294(i), a ~~A~~—particular
22 description of the nature and location of the facilities from
23 which or the place where the communication is to be
24 intercepted;
25 c. A particular description of the type of communications sought
26 to be intercepted; and
27 d. The identity of the person, if known, committing the offense
28 and whose communications are to be intercepted;

- 1 (3) A full and complete statement as to whether or not other investigative
2 procedures have been tried and failed or why they reasonably appear to
3 be unlikely to succeed if tried or to be too dangerous;
- 4 (4) A statement of the period of time for which the interception is required
5 to be maintained. If the nature of the investigation is such that the
6 authorization for interception should not automatically terminate when
7 the described type of communication has been obtained, a particular
8 description of facts establishing probable cause to believe that
9 additional communications of the same type will occur thereafter must
10 be added;
- 11 (5) A full and complete statement of the facts concerning all previous
12 applications known to the individual authorizing and making
13 adjudication, made to a judicial review panel for authorization to
14 intercept, or for approval of interceptions of wire, oral, or electronic
15 communications involving any of the same persons, facilities, or
16 places specified in the application, and the action taken by that judicial
17 review panel on each such application; and
- 18 (6) Where the application is for the extension of an order, a statement
19 setting forth the results thus far obtained from the interception, or a
20 reasonable explanation of the failure to obtain such results."

21 **SECTION 2.** G.S. 15A-293(a) reads as rewritten:

22 "(a) Upon application by the Attorney General pursuant to the procedures in
23 G.S. 15A-291, a judicial review panel may enter an ex parte order, as requested or as
24 modified, authorizing the interception of wire, oral, or electronic communications, if the
25 panel determines on the basis of the facts submitted by the applicant that:

- 26 (1) There is probable cause for belief that an individual is committing, has
27 committed, or is about to commit an offense set out in G.S. 15A-290;
- 28 (2) There is probable cause for belief that particular communications
29 concerning that offense will be obtained through such interception;
- 30 (3) Normal investigative procedures have been tried and have failed or
31 reasonably appear to be unlikely to succeed if tried or to be too
32 dangerous; and
- 33 (4) Except as provided in G.S. 15A-294(i), there ~~There~~ is probable cause
34 for belief that the facilities from which, or the place where, the wire,
35 oral, or electronic communications are to be intercepted are being
36 used, or are about to be used, in connection with the commission of
37 such offense, or are leased to, listed in the name of, or commonly used
38 by the individual described in subdivision (1) of this subsection."

39 **SECTION 3.** G.S. 15A-293(c) reads as rewritten:

40 "(c) No order entered under this Article may authorize the interception of any
41 wire, oral, or electronic communication for any period longer than is necessary to
42 achieve the objective of the authorization, nor in any event longer than 30 days. Such
43 30-day period begins on the earlier of the day on which the investigative or law
44 enforcement officer first begins to conduct an interception under the order or 10 days

1 after the order is entered. Extensions of an order may be granted, but only upon
2 application for an extension made in accordance with G.S. 15A-291 and the panel
3 making the findings required by subsection (a) of this section. The period of extension
4 ~~may shall~~ be no longer than the panel determines to be necessary to achieve the purpose
5 for which it was granted and in no event for longer than ~~1530~~ days. Every order and
6 extension thereof must contain a provision that the authorization to intercept be
7 executed as soon as practicable, be conducted in such a way as to minimize the
8 interception of communications not otherwise subject to interception under this Article,
9 and terminate upon attainment of the authorized objective, or in any event in 30 days,
10 ~~days or 15 days,~~ as is appropriate. In the event the intercepted communication is in a
11 code or foreign language, and an expert in that foreign language or code is not
12 reasonably available during the interception period, minimization may be accomplished
13 as soon as practicable after the interception. An interception under this Article may be
14 conducted in whole or in part by State or federal government personnel, or by an
15 individual operating under a contract with the State or federal government, acting under
16 the supervision of an investigative or law enforcement officer authorized to conduct the
17 interception."

18 **SECTION 4.** G.S. 15A-294 is amended by adding the following new
19 subsections to read:

20 "(i) The requirements of G.S. 15A-293(b)(2) and G.S. 15A-293(a)(4) relating to
21 the specification of the facilities from which, or the place where, the communication is
22 to be intercepted do not apply if:

23 (1) In the case of an application with respect to the interception of an oral
24 communication:

- 25 a. The application is by a State investigative or law enforcement
26 officer and is approved by the Attorney General or his designee;
27 b. The application contains a full and complete statement as to
28 why the specification is not practical and identifies the person
29 committing the offense and whose communications are to be
30 intercepted; and
31 c. The judicial review panel finds that the specification is not
32 practical.

33 (2) In the case of an application with respect to a wire or electronic
34 communication:

- 35 a. The application is by a State investigative or law enforcement
36 officer and is approved by the Attorney General or his designee;
37 b. The application identifies the person believed to be committing
38 the offense and whose communications are to be intercepted,
39 and the applicant makes a showing that there is probable cause
40 to believe that the person's actions could have the effect of
41 thwarting interception from a specified facility;
42 c. The judicial review panel finds that the showing has been
43 adequately made; and

1 d. The order authorizing or approving the interception is limited to
2 interception only for such time as it is reasonable to presume
3 that the person identified in the application is or was reasonably
4 proximate to the instrument through which the communication
5 will be or was transmitted.

6 (j) An interception of a communication under an order with respect to which the
7 requirements of G.S. 15A-293(b)(2) and G.S. 15A-293(a)(4) do not apply by reason of
8 subdivision (i)(1) of this section shall not begin until the place where the
9 communication is to be intercepted is ascertained by the person implementing the
10 interception order. A provider of wire or electronic communications service that has
11 received an order as provided for in subdivision (i)(2) of this section may move the
12 court to modify or quash the order on the grounds that its assistance with respect to the
13 interception cannot be performed in a timely or reasonable fashion. The court, upon
14 notice to the government, shall decide such a motion expeditiously."

15 **SECTION 5.** This act becomes effective December 1, 2005.