

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005**

**SESSION LAW 2005-207
SENATE BILL 748**

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

The General Assembly of North Carolina enacts:

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

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

- (1) The identity of the office requesting the application;
- (2) A full and complete statement of the facts and circumstances relied upon by the applicant, to justify his belief that an order should be issued, including:
 - a. Details as to the particular offense that has been, or is being committed;
 - b. Except as provided in G.S. 15A-294(i), a A—particular description of the nature and location of the facilities from which or the place where the communication is to be intercepted;
 - c. A particular description of the type of communications sought to be intercepted; and
 - d. The identity of the person, if known, committing the offense and whose communications are to be intercepted;
- (3) A full and complete statement as to whether or not other investigative procedures have been tried and failed or why they reasonably appear to be unlikely to succeed if tried or to be too dangerous;
- (4) A statement of the period of time for which the interception is required to be maintained. If the nature of the investigation is such that the authorization for interception should not automatically terminate when the described type of communication has been obtained, a particular description of facts establishing probable cause to believe that additional communications of the same type will occur thereafter must be added;
- (5) A full and complete statement of the facts concerning all previous applications known to the individual authorizing and making adjudication, made to a judicial review panel for authorization to intercept, or for approval of interceptions of wire, oral, or electronic communications involving any of the same persons, facilities, or places specified in the application, and the action taken by that judicial review panel on each such application; and

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

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

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

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

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

"(c) No order entered under this Article may authorize the interception of any wire, oral, or electronic communication for any period longer than is necessary to achieve the objective of the authorization, nor in any event longer than 30 days. Such 30-day period begins on the earlier of the day on which the investigative or law enforcement officer first begins to conduct an interception under the order or 10 days after the order is entered. Extensions of an order may be granted, but only upon application for an extension made in accordance with G.S. 15A-291 and the panel making the findings required by subsection (a) of this section. The period of extension ~~may shall~~ be no longer than the panel determines to be necessary to achieve the purpose for which it was granted and in no event for longer than ~~1530~~ days. Every order and extension thereof must contain a provision that the authorization to intercept be executed as soon as practicable, be conducted in such a way as to minimize the interception of communications not otherwise subject to interception under this Article, and terminate upon attainment of the authorized objective, or in any event in 30 days, ~~days or 15 days,~~ as is appropriate. In the event the intercepted communication is in a code or foreign language, and an expert in that foreign language or code is not reasonably available during the interception period, minimization may be accomplished as soon as practicable after the interception. An interception under this Article may be conducted in whole or in part by State or federal government personnel, or by an individual operating under a contract with the State or federal government, acting under the supervision of an investigative or law enforcement officer authorized to conduct the interception."

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

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

- (1) In the case of an application with respect to the interception of an oral communication:
 - a. The application is by a State investigative or law enforcement officer and is approved by the Attorney General or his designee;
 - b. The application contains a full and complete statement as to why the specification is not practical and identifies the person

- committing the offense and whose communications are to be intercepted; and
- c. The judicial review panel finds that the specification is not practical.
- (2) In the case of an application with respect to a wire or electronic communication:
- a. The application is by a State investigative or law enforcement officer and is approved by the Attorney General or his designee;
- b. The application identifies the person believed to be committing the offense and whose communications are to be intercepted, and the applicant makes a showing that there is probable cause to believe that the person's actions could have the effect of thwarting interception from a specified facility;
- c. The judicial review panel finds that the showing has been adequately made; and
- d. The order authorizing or approving the interception is limited to interception only for such time as it is reasonable to presume that the person identified in the application is or was reasonably proximate to the instrument through which the communication will be or was transmitted.

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

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

In the General Assembly read three times and ratified this the 13th day of July, 2005.

s/ Beverly E. Perdue
President of the Senate

s/ James B. Black
Speaker of the House of Representatives

s/ Michael F. Easley
Governor

Approved 1:54 p.m. this 20th day of July, 2005