

REFERENCE TITLE: search warrants; procedures; notifications

State of Arizona
House of Representatives
Fifty-fifth Legislature
First Regular Session
2021

HB 2465

Introduced by
Representative Payne

AN ACT

AMENDING SECTION 13-3001, ARIZONA REVISED STATUTES; AMENDING TITLE 13, CHAPTER 30, ARIZONA REVISED STATUTES, BY ADDING SECTION 13-3007; AMENDING SECTIONS 13-3010, 13-3011, 13-3012, 13-3016, 13-3017 AND 13-3018, ARIZONA REVISED STATUTES; RELATING TO SEARCH WARRANTS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 13-3001, Arizona Revised Statutes, is amended to
3 read:

4 13-3001. Definitions

5 In this chapter, unless the context otherwise requires:

6 1. "Aural transfer" means a communication containing the human
7 voice at any point between and including the point of origin and the point
8 of reception.

9 2. "Child monitoring device" means a device that is capable of
10 transmitting an audio or audiovisual signal and that is installed or used
11 in a residence for child supervision or safety monitoring by any parent,
12 guardian or other responsible person in the person's own residence.

13 3. "Communication service provider" means any person who is engaged
14 in providing a service that allows its users to send or receive oral, wire
15 or electronic communications or computer services.

16 4. "Electronic communication" OR "DATA":

17 (a) Means ~~any transfer of signs, signals, writing, images, sounds,~~
18 ~~data or intelligence of any nature~~ INFORMATION OR DATA that is transmitted
19 in whole or in part by a wire, radio, electromagnetic, photoelectronic or
20 photooptical system. ~~but that~~

21 (b) INCLUDES SIGNS, SIGNALS, WRITING, IMAGES, SOUNDS, DATA OR
22 INTELLIGENCE OF ANY NATURE.

23 ~~(b)~~ (c) Does not include any of the following:

24 ~~(a)~~ (i) Any wire or oral communication.

25 ~~(b)~~ (ii) Any communication made through a tone-only paging device.

26 ~~(c)~~ (iii) Any communication from a tracking device.

27 5. "Electronic communication system" means any communication or
28 computer facilities or related electronic equipment for the transmission,
29 processing or electronic storage of electronic communications.

30 6. "ELECTRONIC DEVICE" MEANS A DEVICE THAT ENABLES ACCESS TO OR USE
31 OF AN ELECTRONIC COMMUNICATION SERVICE, REMOTE COMPUTING SERVICE OR
32 LOCATION INFORMATION SERVICE.

33 ~~6.~~ 7. "Electronic storage" means either of the following:

34 (a) Any temporary, intermediate storage of a wire or electronic
35 communication incidental to the electronic transmission.

36 (b) Any storage of the communication by an electronic communication
37 service provider for purposes of backup protection of the communication.

38 ~~7.~~ 8. "Intercept" means the aural or other acquisition of the
39 contents of any wire, electronic or oral communication through the use of
40 any electronic, mechanical or other device.

41 ~~8.~~ 9. "Oral communication" means a spoken communication that is
42 uttered by a person who exhibits an expectation that the communication is
43 not subject to interception under circumstances justifying the expectation
44 but does not include any electronic communication.

1 ~~9~~. 10. "Pen register" means a device or process that records or
2 decodes electronic or other impulses that identify the numbers dialed or
3 otherwise transmitted on the telephone line or communication facility to
4 which the device is attached or the dialing, routing, addressing or
5 signaling information that is transmitted by an instrument or facility
6 from which a wire or electronic communication is transmitted but does not
7 include the contents of any communication, except when used in connection
8 with a court order issued pursuant to section 13-3010 or 13-3012. A pen
9 register does not include a publicly available device or process that is
10 otherwise not unlawful.

11 ~~10~~. 11. "Person" means any individual, enterprise, public or
12 private corporation, unincorporated association, partnership, firm,
13 society, governmental authority or entity, including the subscriber to the
14 communication service involved, and any law enforcement officer.

15 ~~11~~. 12. "Readily accessible to the general public" means a radio
16 communication that is not:

17 (a) Scrambled or encrypted.

18 (b) Transmitted using modulation techniques with essential
19 parameters that have been withheld from the public to preserve the privacy
20 of the communication.

21 (c) Carried on a subcarrier or other signal subsidiary to a radio
22 transmission.

23 (d) Transmitted over a communication system provided by a common
24 carrier, unless the communication is a tone-only paging system
25 communication.

26 (e) Transmitted on frequencies allocated under part 25, subpart D,
27 E or F or part 74 or part 94 of the rules of the federal communications
28 commission. If a communication transmitted on a frequency allocated under
29 part 74 is not exclusively allocated to broadcast auxiliary services, the
30 communication is a two-way voice communication system by radio.

31 ~~12~~. 13. "Remote computing service" means providing to the public
32 any computer storage or processing services by means of an electronic
33 communication system.

34 14. "SUBSCRIBER RECORD" MEANS A RECORD OR INFORMATION OF A PROVIDER
35 OF AN ELECTRONIC COMMUNICATION SERVICE OR REMOTE COMPUTING SERVICE THAT
36 REVEALS ALL OF THE FOLLOWING FOR THE SUBSCRIBER OR CUSTOMER:

37 (a) NAME.

38 (b) ADDRESS.

39 (c) LOCAL AND LONG-DISTANCE TELEPHONE CONNECTION RECORD OR RECORD OF
40 SESSION TIME AND DURATION.

41 (d) LENGTH OF SERVICE, INCLUDING THE START DATE.

42 (e) TYPE OF SERVICE USED.

43 (f) TELEPHONE NUMBER, INSTRUMENT NUMBER OR OTHER SUBSCRIBER OR
44 CUSTOMER NUMBER OR IDENTIFICATION, INCLUDING A TEMPORARILY ASSIGNED
45 NETWORK ADDRESS.

1 (g) MEANS AND SOURCE OF PAYMENT FOR THE SERVICE, INCLUDING A CREDIT
2 CARD OR BANK ACCOUNT NUMBER.

3 ~~13.~~ 15. "Trap and trace device" means a device or process that
4 captures the incoming electronic or other impulses that identify the
5 originating number of an instrument or device from which a wire or
6 electronic communication was transmitted or the dialing, routing,
7 addressing and signaling information that is reasonably likely to identify
8 the source of a wire or electronic communication but does not include the
9 content of any communication, except when used in connection with a court
10 order issued pursuant to section 13-3010 or 13-3012. A trap and trace
11 device does not include a publicly available device or process that is
12 otherwise not unlawful.

13 ~~14.~~ 16. "Wire communication" means any aural transfer that is made
14 in whole or in part through the use of facilities for the transmission of
15 communications by the aid of any wire, cable or other like connection
16 between the point of origin and the point of reception, including the use
17 of a connection in a switching station, and that is furnished or operated
18 by any person who is engaged in providing or operating the facilities for
19 the transmission of communications.

20 Sec. 2. Title 13, chapter 30, Arizona Revised Statutes, is amended
21 by adding section 13-3007, to read:

22 13-3007. Exclusion of records; privacy

23 ALL ELECTRONIC INFORMATION OR DATA AND RECORDS OF A PROVIDER OF AN
24 ELECTRONIC COMMUNICATION SERVICE OR REMOTE COMPUTING SERVICE PERTAINING TO
25 A SUBSCRIBER OR CUSTOMER THAT ARE OBTAINED IN VIOLATION OF THIS CHAPTER
26 ARE SUBJECT TO THE RULES OF EVIDENCE GOVERNING EXCLUSION AS IF THE RECORDS
27 WERE OBTAINED IN VIOLATION OF THE FOURTH AMENDMENT TO THE UNITED STATES
28 CONSTITUTION AND ARTICLE II, SECTION 8, CONSTITUTION OF ARIZONA.

29 Sec. 3. Section 13-3010, Arizona Revised Statutes, is amended to
30 read:

31 13-3010. Ex parte order for interception; definition

32 A. On application of a county attorney, the attorney general or a
33 prosecuting attorney whom a county attorney or the attorney general
34 designates in writing, any justice of the supreme court, ~~OR~~ judge of the
35 court of appeals ~~or superior court judge~~ may issue an ex parte order for
36 the interception of wire, electronic or oral communications if there is
37 probable cause to believe both:

- 38 1. A crime has been, is being or is about to be committed.
- 39 2. Evidence of that crime or the location of a fugitive from
40 justice from that crime may be obtained by the interception.

41 B. An application under subsection A shall be made in writing and
42 ~~upon~~ ON the oath or affirmation of the applicant. ~~it~~ THE APPLICATION
43 shall include:

- 44 1. The name and title of the applicant.

1 2. A full and complete statement of the facts and circumstances
2 relied upon ON by the applicant, including the supporting oath or
3 affirmation of the investigating peace officer of this state or any
4 political subdivision of this state to justify the officer's belief that
5 an order should be issued. The statement shall include:

6 (a) Details as to the particular crime that has been, is being or
7 is about to be committed.

8 (b) The identity of the person, if known, committing the offense
9 and whose communications are to be intercepted.

10 (c) A particular description of the type of communications sought
11 to be intercepted.

12 (d) A particular description of the nature, identification and
13 location of the communication facility from which or the place where the
14 communication is to be intercepted. If the identification or specific
15 description of the communication facility from which or the place where
16 the communication is to be intercepted is not practical, the affidavit in
17 support of the application must state why:

18 (i) Specification is impractical.

19 (ii) Interception from any facility or at any place where the
20 communication may occur is necessary.

21 3. A full and complete statement as to whether or not other
22 investigative procedures, INCLUDING THE ISSUANCE OF A SEARCH WARRANT, have
23 been tried and failed or why they reasonably appear to be unlikely to
24 succeed if tried or to be too dangerous.

25 4. A statement of the period of time for which the interception is
26 required to be maintained. If the nature of the investigation is such
27 that authorization to intercept should not automatically terminate when
28 the described type of communication has been first obtained, the statement
29 shall include a particular description of facts establishing probable
30 cause to believe that additional communications of the same type will
31 occur after the communication has been first obtained.

32 5. A full and complete statement of the facts concerning all
33 previous applications known to the individual authorizing and making the
34 application, made to any judge for authorization to intercept, or for
35 approval of interceptions of communications involving any of the same
36 persons, facilities or places specified in the application, and the action
37 taken by the judge on each application.

38 6. If the application is for the extension of an order, a statement
39 setting forth the results thus far obtained from the interception, or a
40 reasonable explanation of the failure to obtain such results.

41 C. Upon ON proper application, a judge may enter an ex parte order
42 authorizing interception, as requested or with any appropriate
43 modifications, if the judge determines on the basis of the facts submitted
44 by the applicant that:

- 1 1. There is probable cause to believe that a person is committing,
2 has committed or is about to commit a particular crime.
- 3 2. There is probable cause to believe that particular
4 communications concerning that offense will be obtained through the
5 interception.
- 6 3. Normal investigative procedures, INCLUDING THE ISSUANCE OF A
7 SEARCH WARRANT, have been tried and have failed or reasonably appear to be
8 unlikely to succeed if tried or to be too dangerous.
- 9 4. There is probable cause to believe any of the following:
- 10 (a) Wire or electronic communications concerning the offense are
11 being made or are about to be made by the person over the communication
12 facilities for which interception authority is granted.
- 13 (b) Oral communications concerning the offense are being made or
14 are about to be made by the person in the location for which interception
15 authority is granted.
- 16 (c) Communications concerning the offense are being made or are
17 about to be made by the person in different and changing locations, or
18 from different and changing facilities.
- 19 D. Each order authorizing the interception of any wire, electronic
20 or oral communication shall specify all of the following:
- 21 1. The identity of the person, if known, whose communications are
22 to be intercepted.
- 23 2. The nature and location of the communication facilities as to
24 which or the place where authority to intercept is granted. If authority
25 is granted to intercept communications of a person wherever that person is
26 located or from whatever communication facility is used, the order shall
27 so state and shall include any limitations imposed by the authorizing
28 judge as to location, time or manner of the interception. The order shall
29 state that the interception shall not begin until the facilities from
30 which or the place where the communication is to be intercepted is
31 ascertained by the person implementing the interception order.
- 32 3. A particular description of the type of communication sought to
33 be intercepted and a statement of the particular offense to which it
34 relates.
- 35 4. The identity of the agency authorized to intercept the
36 communications and of the person authorizing the application.
- 37 5. The period of time during which the interception is authorized,
38 including a statement as to whether or not the interception shall
39 automatically terminate when the described communication has been first
40 obtained.
- 41 6. That the authorization for interception be executed as soon as
42 practicable, that it be conducted in such a way as to minimize the
43 interception of communications not otherwise subject to interception under
44 this section and that it terminate ~~upon~~ ON attainment of the authorized
45 objective or on the date specified, whichever comes first.

1 7. That entry may be made to service, install or remove
 2 interception devices or equipment if entry is necessary to effect the
 3 interception.

4 E. An order that is entered under this section may not authorize
 5 the interception of any wire or oral communication for any period that is
 6 longer than is necessary to achieve the objective of the authorization and
 7 that exceeds ~~thirty~~ TWENTY days. This ~~thirty-day~~ TWENTY-DAY period begins
 8 on the earlier of the day on which the interception actually begins under
 9 the order or ten days after the order is signed. The court may grant
 10 extensions of any order if an application for an extension is made
 11 pursuant to subsection A OF THIS SECTION and the court makes the findings
 12 required by subsection C OF THIS SECTION. The period of extension shall
 13 NOT be ~~no~~ longer than the authorizing judge deems necessary to achieve the
 14 purposes for which it was granted and shall not exceed ~~thirty~~ TWENTY days.

15 F. Any ex parte order for interception, together with the papers on
 16 which the application was based, shall be delivered to and retained by the
 17 applicant during the duration of ~~the interception as authority for the~~
 18 ~~interception authorized in the order~~ ANY RELATED INVESTIGATION AND DURING
 19 SUBSEQUENT LITIGATION OR A TRIAL THAT IS RELATED TO THE ORDER'S PURPOSE.
 20 The justice or judge issuing the order shall retain a true copy of the
 21 order at all times.

22 G. Within ten days after the termination of ~~the authorized~~
 23 ~~interception,~~ ANY RELATED INVESTIGATION AND SUBSEQUENT LITIGATION OR
 24 TRIAL, ALL applications made and orders granted under this section shall
 25 be returned to and sealed by the judge. Custody of the applications and
 26 orders shall be wherever the judge directs. The applications and orders
 27 shall be disclosed only on a showing of good cause before a judge of
 28 competent jurisdiction or as otherwise provided.

29 H. If possible, the contents of any communication THAT INVOLVES A
 30 PERSON WHO IS BEING INVESTIGATED AND that is intercepted by any means
 31 authorized by this section shall be recorded on any tape, electronic, wire
 32 or other comparable device. A COMMUNICATION THAT DOES NOT INVOLVE THE
 33 PERSON BEING INVESTIGATED OR THE PARTICULAR CRIME LISTED IN THE ORDER
 34 SHALL NOT BE RECORDED ON ANY TAPE, ELECTRONIC, WIRE OR OTHER COMPARABLE
 35 DEVICE. The recording of the contents of any wire, electronic or oral
 36 communication under this subsection shall be done in such a way as will
 37 protect the recording from editing or alterations. Within ten days after
 38 the termination of the authorized interception, the recordings shall be
 39 made available to the judge who issued the order and shall be sealed under
 40 the judge's directions. Custody of the recordings shall be maintained
 41 pursuant to court order. The recordings shall be kept for ten years and
 42 shall not be destroyed except on an order of the issuing judge or another
 43 judge of competent jurisdiction.

44 I. Within ~~ninety~~ FOURTEEN days after an application under
 45 subsection A OF THIS SECTION is denied, or the period of an order or any

1 extension expires, the issuing or denying judge shall serve the persons
2 named in the order or application and any other parties to the intercepted
3 communications as the judge may determine the interests of justice require
4 with an inventory, including notice of all of the following:

5 1. The fact of the entry of the order or the application.

6 2. The date of the entry and the period of authorized interception,
7 or the denial of the application.

8 3. The fact that during the period of authorized interception wire,
9 electronic or oral communications were or were not intercepted. ~~On~~
10 ~~motion, the judge may make available to the person or the person's~~
11 ~~attorney for inspection such the portions of the intercepted~~
12 ~~communications, applications and order as the judge determines to be in~~
13 ~~the interest of justice. On an ex parte showing of good cause to the~~
14 ~~judge, the serving of the notice required by this subsection may be~~
15 ~~postponed.~~

16 4. THE PARTICULAR CRIME SPECIFIED IN THE APPLICATION FOR THE ORDER.

17 5. THE IDENTITY OF THE APPLICANT WHO FILED THE APPLICATION.

18 6. THE IDENTITY OF THE JUDGE WHO ISSUED THE ORDER.

19 7. ON MOTION OF A PARTY, THE PORTIONS OF THE INTERCEPTED
20 COMMUNICATIONS, APPLICATIONS AND ORDER AS THE JUDGE DETERMINES TO BE IN
21 THE INTEREST OF JUSTICE. THE JUDGE MAY MAKE THIS INFORMATION AVAILABLE TO
22 THE PERSON OR THE PERSON'S ATTORNEY FOR INSPECTION.

23 J. On request of the applicant, any order authorizing interception
24 shall direct that the communication service provider, landlords,
25 custodians or other persons furnish the applicant with all information,
26 facilities and technical assistance necessary to accomplish the
27 interception unobtrusively and with a minimum of interference with the
28 services that these persons are according the person whose communications
29 are to be intercepted.

30 K. The order may require written reports to be made to the issuing
31 judge at specified intervals showing the progress made toward achieving
32 the authorized objective and the need for continued interception.

33 L. Any order authorizing the interception of wire communications
34 pursuant to this chapter is also deemed to authorize the interception of
35 any electronic communication that may be made over the same equipment or
36 by the same facility.

37 M. If the intercepted communication is in a code or foreign
38 language and an expert in that code or foreign language is not reasonably
39 available during the interception period, minimization may be accomplished
40 as soon as practicable after the interception.

41 N. An interception under this chapter may be conducted in whole or
42 in part by government personnel or by an individual operating under a
43 contract with the government or acting under the supervision of a law
44 enforcement officer who is authorized to conduct the interception.

1 0. The applicant is responsible for providing to the administrative
2 office of the United States courts all reports on applications for or
3 interceptions of wire, electronic or oral communications that are required
4 by federal statutes.

5 P. THE NOTIFICATION REQUIRED BY SUBSECTION I OF THIS SECTION IS NOT
6 REQUIRED UNTIL THE IDENTITY OF THE PERSON SPECIFIED IN THE ORDER, OR A
7 PARTY TO THE INTERCEPTED COMMUNICATION, IS KNOWN OR COULD BE REASONABLY
8 IDENTIFIED BY A LAW ENFORCEMENT AGENCY. A LAW ENFORCEMENT AGENCY THAT
9 RECEIVES AN ORDER UNDER THIS SECTION MUST MAKE A GOOD FAITH EFFORT TO
10 IDENTIFY EVERY PERSON SPECIFIED IN THE ORDER OR A PARTY TO ANY INTERCEPTED
11 COMMUNICATION.

12 Q. A LAW ENFORCEMENT AGENCY THAT SEEKS AN EX PARTE ORDER PURSUANT
13 TO THIS SECTION MAY SUBMIT A REQUEST, AND THE COURT MAY GRANT PERMISSION,
14 TO DELAY THE NOTIFICATION OR A PORTION OF THE NOTIFICATION REQUIRED BY
15 SUBSECTION I OF THIS SECTION FOR A PERIOD OF TIME THAT DOES NOT EXCEED
16 THIRTY DAYS IF THE COURT DETERMINES THAT THERE IS REASONABLE CAUSE TO
17 BELIEVE THAT THE NOTIFICATION MAY DO ANY OF THE FOLLOWING:

- 18 1. ENDANGER THE LIFE OR PHYSICAL SAFETY OF AN INDIVIDUAL.
- 19 2. CAUSE A PERSON TO FLEE FROM PROSECUTION.
- 20 3. LEAD TO THE DESTRUCTION OF OR TAMPERING WITH EVIDENCE.
- 21 4. INTIMIDATE A POTENTIAL WITNESS.
- 22 5. SERIOUSLY JEOPARDIZE AN INVESTIGATION OR UNDULY DELAY A TRIAL.

23 R. IF THE COURT GRANTS A DELAY OF THE NOTIFICATION PURSUANT TO
24 SUBSECTION Q OF THIS SECTION AND ON APPLICATION OF THE LAW ENFORCEMENT
25 AGENCY, THE COURT MAY GRANT ADDITIONAL EXTENSIONS OF UP TO THIRTY DAYS
26 EACH.

27 S. NOTWITHSTANDING SUBSECTION R OF THIS SECTION, ON APPLICATION BY
28 A LAW ENFORCEMENT AGENCY, THE COURT MAY GRANT AN EXTENSION OF UP TO SIXTY
29 DAYS IF THE COURT DETERMINES THAT A DELAYED NOTIFICATION IS JUSTIFIED
30 BECAUSE THE INVESTIGATION INVOLVING THE ORDER IS EITHER:

- 31 1. INTERSTATE IN NATURE AND SUFFICIENTLY COMPLEX.
- 32 2. LIKELY TO EXTEND UP TO OR BEYOND AN ADDITIONAL SIXTY DAYS.

33 T. ON EXPIRATION OF THE PERIOD OF DELAYED NOTIFICATION PURSUANT TO
34 SUBSECTION Q, R OR S OF THIS SECTION, THE COURT SHALL SERVE ON OR DELIVER
35 BY FIRST CLASS MAIL OR, BY OTHER MEANS IF DELIVERY IS IMPRACTICABLE, TO
36 THE PERSON WHO IS SPECIFIED IN THE ORDER A COPY OF THE ORDER TOGETHER WITH
37 NOTICE THAT:

- 38 1. STATES WITH REASONABLE SPECIFICITY THE NATURE OF THE LAW
39 ENFORCEMENT INQUIRY.
- 40 2. CONTAINS ALL OF THE FOLLOWING:
 - 41 (a) THE INFORMATION REQUIRED BY SUBSECTION I, PARAGRAPHS 1, 2, 3,
42 4, 5 AND 6 OF THIS SECTION.
 - 43 (b) A STATEMENT THAT THE NOTIFICATION OF THE SEARCH WAS DELAYED.
 - 44 (c) THE NAME OF THE COURT THAT AUTHORIZED THE DELAY OF THE
45 NOTIFICATION.

1 (d) A REFERENCE TO THE SPECIFIC LAW THAT ALLOWED A DELAY OF THE
2 NOTIFICATION.

3 U. THE NOTIFICATION REQUIREMENTS IN THIS SECTION DO NOT APPLY TO A
4 PERSON WHO IS SPECIFIED IN THE ORDER, WHO IS LOCATED OUTSIDE OF THE UNITED
5 STATES AND WHO IS NOT A CITIZEN OF THE UNITED STATES.

6 V. THIS SECTION DOES NOT LIMIT A PROSECUTOR OR OTHER LAW
7 ENFORCEMENT OFFICIAL FROM SECURING A WARRANT FROM ANY JUDGE FOR THE
8 INTERCEPTION OF WIRE, ELECTRONIC OR ORAL COMMUNICATIONS OR ASSESSING ANY
9 STORED ORAL, WRITTEN, WIRE AND ELECTRONIC COMMUNICATIONS.

10 ~~P.~~ W. For the purposes of this section, "crime":

11 1. Means murder, ~~gaming~~, kidnapping, robbery, bribery, extortion,
12 theft, an act in violation of chapter 23 of this title, dealing in
13 narcotic drugs, ~~marijuana~~ or dangerous drugs, sexual exploitation of
14 children in violation of chapter 35.1 of this title or any felony that is
15 dangerous to life, limb or property. ~~Crime~~

16 2. Includes conspiracy to commit any of the offenses listed in
17 PARAGRAPH 1 OF this subsection.

18 Sec. 4. Section 13-3011, Arizona Revised Statutes, is amended to
19 read:

20 13-3011. Disclosing confidential information relating to ex
21 parte order; exceptions; classification

22 A. Except in any trial, hearing or other judicial proceeding, a
23 person shall not knowingly disclose to another person any information
24 concerning either:

25 1. The application for or the granting or denial of orders for the
26 interception or installation of a pen register or trap and trace device or
27 a request for the preservation of records or evidence pursuant to section
28 13-3016 or a subpoena issued pursuant to section 13-3018.

29 2. The identity of the person or persons whose communications are
30 the subject of an ex parte order, subpoena or records preservation request
31 granted pursuant to sections 13-3010, 13-3015, 13-3016, 13-3017 and
32 13-3018.

33 B. Subsection A of this section does not apply to the disclosure of
34 information to the communication service provider whose facilities are
35 involved or to an employee or other authorized agent of the county
36 attorney, attorney general or law enforcement agency that applies for an
37 order permitting interception or installation of a pen register or trap
38 and trace device or who requests the preservation of records or evidence
39 pursuant to section 13-3016 or a subpoena issued pursuant to section
40 13-3018.

41 C. Notwithstanding subsection A of this section, a peace officer or
42 prosecuting attorney who obtains knowledge of the contents of a wire,
43 electronic or oral communication as authorized by sections 13-3010,
44 13-3015, 13-3016, 13-3017 and 13-3018 or evidence derived from that
45 knowledge may:

1 1. Disclose the contents of the communication to a peace officer or
2 prosecuting attorney to the extent the disclosure is appropriate to the
3 proper performance of the official duties of the peace officer or
4 prosecuting attorney making or receiving the disclosure.

5 2. Use the contents of the communication to the extent that the use
6 is appropriate to the proper performance of the official duties of the
7 peace officer or prosecuting attorney.

8 3. NOT USE, COPY OR DISCLOSE FOR ANY PURPOSE SUCH CONTENTS OR
9 KNOWLEDGE THAT:

10 (a) IS NOT THE SUBJECT OF AN ORDER, SUBPOENA OR WARRANT AS
11 AUTHORIZED BY SECTIONS 13-3010, 13-3015, 13-3016, 13-3017 AND 13-3018.

12 (b) IS COLLECTED AS PART OF AN EFFORT TO OBTAIN KNOWLEDGE OF THE
13 CONTENTS OF A WIRE, ELECTRONIC OR ORAL COMMUNICATION AS AUTHORIZED BY
14 SECTIONS 13-3010, 13-3015, 13-3016, 13-3017 AND 13-3018.

15 D. A person who violates this section is guilty of a class 1
16 misdemeanor.

17 Sec. 5. Section 13-3012, Arizona Revised Statutes, is amended to
18 read:

19 13-3012. Exemptions

20 The following are exempt from ~~the provisions of this chapter~~
21 SECTIONS 13-3005, 13-3006, 13-3008, 13-3011 AND 13-3019:

22 1. The interception of wire, electronic or oral communications, the
23 installation and operation of a pen register or trap and trace device, the
24 providing of information, facilities or technical assistance to an
25 investigative or law enforcement officer pursuant to a subpoena or an ex
26 parte order granted pursuant to sections 13-3010, 13-3015, 13-3016,
27 13-3017 and 13-3018 or an emergency interception made in good faith
28 pursuant to section 13-3015, including any of the foregoing acts by a
29 communication service provider or its officers, agents or employees.

30 2. The normal use of services, equipment and facilities that are
31 provided by a communication service provider pursuant to tariffs that are
32 on file with the Arizona corporation commission or the federal
33 communications commission and the normal functions of any operator of a
34 switchboard.

35 3. Any officer, agent or employee of a communication service
36 provider who performs acts that are otherwise prohibited by this article
37 in providing, constructing, maintaining, repairing, operating or using the
38 provider's services, equipment or facilities, protecting the provider's
39 service, equipment and facilities from illegal use in violation of tariffs
40 that are on file with the Arizona corporation commission or the federal
41 communications commission and protecting the provider from the commission
42 of fraud against it.

43 4. Providing requested information or any other response to a
44 subpoena or other order that is issued by a court of competent
45 jurisdiction or on demand of any other lawful authority.

1 5. The interception of wire or electronic communications or the use
2 of a pen register or trap and trace device by a communication service
3 provider or by a person providing technical assistance at the request of
4 the communication service provider if the interception or use either:

5 (a) Relates to the operation, maintenance and testing of that
6 service, the protection of the rights or property of the provider or the
7 protection of users of that service from fraudulent, abusive or unlawful
8 use of that service.

9 (b) Records the fact that a wire or electronic communication was
10 initiated or completed in order to protect the provider, another provider
11 furnishing service toward the completion of the communication or a user of
12 that service from fraudulent, unlawful or abusive use of that service.

13 6. The interception of any radio communication that is transmitted:

14 (a) By any station for the use of the general public or if the
15 transmission relates to ships, aircraft, vehicles or persons in distress.

16 (b) By any government, law enforcement, civil defense, private land
17 mobile or public safety communication system, including police and fire
18 systems, and that is readily accessible to the general public.

19 (c) By any station that operates on an authorized frequency within
20 the bands that are allocated to the amateur, citizens band or general
21 mobile radio services.

22 (d) By any marine or aeronautical communications system.

23 (e) Through a system using frequencies that are monitored by
24 persons who are engaged in the provision or the use of the system or by
25 other persons who use the same frequency if the communication is not
26 scrambled or encrypted.

27 7. The interception of wire or electronic communication if the
28 transmission is causing harmful interference to any lawfully operating
29 station or consumer electronic equipment, to the extent necessary to
30 identify the source of the interference.

31 8. The use of a pen register or trap and trace device by a
32 communication service provider for billing or recording as an incident to
33 billing for communication services, or for cost accounting or other like
34 purposes in the ordinary course of business.

35 9. The interception of any wire, electronic or oral communication
36 by any person, if the interception is effected with the consent of a party
37 to the communication or a person who is present during the communication,
38 or the installation of a pen register or trap and trace device with the
39 consent of a user or subscriber to the service.

40 10. Divulging the contents of a wire or electronic communication
41 and any related records or information to a law enforcement agency by a
42 remote computing service or communication service provider, officer or
43 employee if either:

1 (a) The contents, records or information were lawfully or
2 inadvertently obtained by the service provider and appear to pertain to
3 the commission of a crime.

4 (b) The provider reasonably believes that an emergency involving
5 immediate danger of death or serious physical injury to any person
6 justifies the disclosure of the contents, records or information without
7 delay.

8 11. Divulging records or other information that pertains to a
9 customer or subscriber by a remote computing service or communication
10 service provider, other than the contents of a communication, either:

11 (a) As authorized by section 13-3016.

12 (b) With the customer's or subscriber's consent.

13 (c) As may be necessary incident to the rendition of the service or
14 for the protection of the rights or property of the provider of that
15 service.

16 (d) To any person other than a governmental agency.

17 12. The interception or access of an electronic communication that
18 is made through an electronic communication system and that is configured
19 so that the electronic communication is readily accessible to the general
20 public.

21 13. For other users of the same frequency to intercept a radio
22 communication that is made through a system that uses frequencies that are
23 monitored by individuals who provide or use the system, if the
24 communication is not scrambled or encrypted.

25 14. The interception of oral communications by means of a child
26 monitoring device.

27 Sec. 6. Section 13-3016, Arizona Revised Statutes, is amended to
28 read:

29 13-3016. Stored oral, wire and electronic communications;
30 agency access; backup preservation; delayed
31 notice; records preservation request; violation;
32 classification

33 A. This section applies to oral, wire and electronic communications
34 that are entrusted to a communication service provider or remote computing
35 service solely for the purpose of transmission, storage or processing.
36 Oral, wire and electronic communications that are in the possession of a
37 person who is entitled to access the contents of such communications for
38 any purpose other than transmission, storage or processing are ordinary
39 business records that may be obtained by A subpoena, SEARCH WARRANT or
40 court order.

41 B. An agency or political subdivision of this state may require the
42 disclosure by a communication service provider or remote computing service
43 of the contents of an oral, wire or electronic communication that has been
44 in electronic storage for one hundred eighty days or less in one of the
45 following ways:

1 1. Without prior notice to the subscriber or party, by obtaining a
2 search warrant issued pursuant to chapter 38, article 8 of this title.

3 2. With prior notice to the subscriber or party, by serving a
4 subpoena, except that notice may be delayed pursuant to subsection D of
5 this section.

6 3. With prior notice to the subscriber or party, by obtaining a
7 court order on an application and certification that contains specific and
8 articulable facts showing that there are reasonable grounds to believe
9 that the communication content sought is relevant to an ongoing criminal
10 investigation, except that notice may be delayed pursuant to subsection D
11 of this section.

12 C. An agency or political subdivision of this state may require the
13 disclosure by a communication service provider or remote computing service
14 of the contents of an oral, wire or electronic communication that has been
15 in electronic storage for more than one hundred eighty days in one of the
16 following ways:

17 1. Without notice to the subscriber or party, by obtaining a search
18 warrant issued pursuant to chapter 38, article 8 of this title.

19 2. With prior notice to the subscriber or party, by serving a
20 subpoena, except that notice may be delayed pursuant to subsection D of
21 this section.

22 3. With prior notice to the subscriber or party, by obtaining a
23 court order on an application and certification that contains specific and
24 articulable facts showing that there are reasonable grounds to believe
25 that the communication content sought is relevant to an ongoing criminal
26 investigation, except that notice may be delayed pursuant to subsection D
27 of this section.

28 D. Except as provided in subsection E of this section, the notice
29 to the subscriber or party that is required by this section may be delayed
30 for a period of not to exceed ~~ninety~~ THIRTY days under any of the
31 following circumstances:

32 1. If the applicant for a search warrant or court order pursuant to
33 this section requests a delay of notification and the court finds that
34 delay is necessary to protect the safety of any person or to prevent
35 flight from prosecution, tampering with evidence, intimidation of
36 witnesses or jeopardizing an investigation.

37 2. If the investigator or prosecuting attorney proceeding by
38 subpoena executes a written certification that there is reason to believe
39 that notice to the subscriber or party may result in danger to the safety
40 of any person, flight from prosecution, tampering with evidence,
41 intimidation of witnesses or jeopardizing an investigation. The agency
42 shall retain a true copy of the certification with the subpoena FOR THE
43 DURATION OF ANY RELATED INVESTIGATION AND SUBSEQUENT LITIGATION OR TRIAL
44 THAT IS RELATED TO THE SUBPOENA'S PURPOSE.

1 E. If further delay of notification is necessary, extensions of up
2 to ~~ninety~~ THIRTY days each may be obtained by application to the court ~~or~~
3 ~~certification~~ pursuant to subsection D, PARAGRAPH 1 of this section.

4 F. NOTWITHSTANDING SUBSECTION E OF THIS SECTION, IF A DELAY OF
5 NOTIFICATION IS GRANTED PURSUANT TO SUBSECTION D OF THIS SECTION, ON
6 APPLICATION BY A LAW ENFORCEMENT AGENCY, THE COURT MAY GRANT AN ADDITIONAL
7 EXTENSION OF UP TO SIXTY DAYS IF THE COURT DETERMINES THAT A DELAYED
8 NOTIFICATION IS JUSTIFIED BECAUSE THE INVESTIGATION INVOLVING THE
9 SUBPOENA, SEARCH WARRANT OR COURT ORDER IS EITHER:

- 10 1. INTERSTATE IN NATURE AND SUFFICIENTLY COMPLEX.
11 2. LIKELY TO EXTEND UP TO OR BEYOND AN ADDITIONAL SIXTY DAYS.

12 ~~F.~~ G. Any agency acting pursuant to this section may apply for a
13 court order directing the communication service provider or remote
14 computing service not to notify any other person of the existence of the
15 subpoena, court order or warrant for such period as the court deems
16 appropriate. The court shall grant the application if it finds that there
17 is reason to believe that notice may cause an adverse result described in
18 subsection D of this section. A person who violates an order issued
19 pursuant to this subsection is guilty of a class 1 misdemeanor.

20 ~~G.~~ H. ~~or~~ WITHIN FOURTEEN DAYS AFTER the expiration of any period
21 of delay under this section, the agency shall deliver BY FIRST CLASS MAIL
22 OR, IF DELIVERY IS IMPRACTICABLE BY OTHER MEANS, to the subscriber or
23 party a copy of the process used and notice including:

- 24 1. That information was requested from the service provider.
25 2. The date on which the information was requested.
26 3. That notification to the subscriber or party was delayed.
27 4. The identity of the court or agency ordering or certifying the
28 delay.
29 5. The provision of this section by which delay was obtained.
30 6. That any challenge to the subpoena or order must be filed within
31 fourteen days.

32 7. THE PARTICULAR CRIME THAT IS SPECIFIED IN THE SEARCH WARRANT OR
33 SUBPOENA.

34 8. THE IDENTITY OF THE APPLICANT WHO FILED THE APPLICATION.

35 I. AN AGENCY IS NOT REQUIRED TO NOTIFY A PERSON WHO IS SPECIFIED IN
36 THE ORDER IF THE PERSON IS LOCATED OUTSIDE OF THE UNITED STATES AND IS NOT
37 A CITIZEN OF THE UNITED STATES.

38 ~~H.~~ J. On the request of an agency or political subdivision of this
39 state, a communication service provider or remote computing service shall
40 take all necessary steps to preserve records, communication content and
41 other evidence in its possession pending the issuance of a court order or
42 other process. The communication service provider or remote computing
43 service shall retain the preserved records, communication content and
44 other evidence for ninety days. On the renewed request of an agency or
45 political subdivision, the preservation period may be extended for an

1 additional ninety days. Except as provided in section 13-3011 AND THE
2 NOTIFICATION REQUIREMENTS OF THIS SECTION, a person shall not OTHERWISE
3 notify the subscriber or party during the period of the preservation
4 request.

5 Sec. 7. Section 13-3017, Arizona Revised Statutes, is amended to
6 read:

7 13-3017. Ex parte order for pen register or trap and trace
8 device

9 A. Any prosecuting attorney or investigating peace officer of this
10 state or its political subdivisions may apply to any justice of the
11 supreme court, ~~OR A judge of the court of appeals, judge of the superior~~
12 ~~court or magistrate~~ for an ex parte order authorizing the installation and
13 use of a pen register or a trap and trace device. The application shall
14 be made in writing and under oath and shall state:

- 15 1. The name and title of the applicant.
- 16 2. The attributes of the communication, including the number or
17 other identifier, the identity, if known, of the subscriber and, if known,
18 the location of the telephone line or other facility to which the pen
19 register or trap and trace device is to be attached or applied and, if the
20 order authorizes the installation of a trap and trace device, the
21 geographic limits of the order.
- 22 3. A certification by the applicant that the information likely to
23 be obtained is relevant to an ongoing criminal investigation.
- 24 4. A statement of the offense to which the information likely to be
25 obtained by the pen register or trap and trace device relates.

26 B. On proper application pursuant to subsection A OF THIS SECTION,
27 the judge shall issue an ex parte order authorizing the installation and
28 use of a pen register or trap and trace device or process if the judge
29 finds that the applicant has certified that the information likely to be
30 obtained by the installation and use is relevant to an ongoing criminal
31 investigation. On service, the order applies to any person or entity that
32 provides wire or electronic communication service in this state or that
33 does business in this state and whose assistance may facilitate the
34 execution of the order. If an order is served on any person or entity
35 that is not specifically named in the order and on request of the person
36 or entity, the prosecuting attorney or peace officer who serves the order
37 shall provide written or electronic certification that the order applies
38 to the person or entity being served. An order that is issued under this
39 subsection shall specify all of the following:

- 40 1. The identity, if known, of the subscriber of the communication
41 service or telephone line to which the pen register or trap and trace
42 device is to be attached or applied.
- 43 2. The attributes of the communication to which the order applies,
44 including the number or other identifier and, if known, the location of
45 the telephone line or other facility to which the pen register or trap and

1 trace device is to be attached or applied and, if the order authorizes the
2 installation of a trap and trace device, the geographic limits of the
3 order.

4 3. A statement of the offense to which the information likely to be
5 obtained by the pen register or trap and trace device relates.

6 4. That, on the request of the applicant, the communication service
7 provider shall furnish information, facilities and technical assistance
8 necessary to accomplish the installation of the pen register or trap and
9 trace device and to identify subscribers of any communication facility or
10 telephone number obtained by operation of such device.

11 C. An order that is issued under this section authorizes the
12 installation and use of a pen register or trap and trace device for a
13 period of not to exceed ~~sixty~~ THIRTY days. Extensions of the order may be
14 granted, but only on an application and judicial finding pursuant to
15 subsections A and B OF THIS SECTION. The period of each extension granted
16 shall not exceed ~~sixty~~ THIRTY days.

17 D. WITHIN FOURTEEN DAYS AFTER AN APPLICATION SUBMITTED PURSUANT TO
18 SUBSECTION A OF THIS SECTION IS DENIED OR THE PERIOD OF AN ORDER OR ANY
19 EXTENSION EXPIRES, THE ISSUING OR DENYING JUDGE SHALL SERVE THE PERSON WHO
20 IS NAMED IN THE ORDER OR APPLICATION, AND ANY OTHER PARTIES TO THE
21 INTERCEPTED COMMUNICATIONS AS THE JUDGE MAY DETERMINE THE INTERESTS OF
22 JUSTICE REQUIRE, WITH AN INVENTORY, INCLUDING NOTICE OF ALL OF THE
23 FOLLOWING:

- 24 1. THE FACT OF THE ENTRY OF THE ORDER OR THE APPLICATION.
25 2. THE DATE OF THE ENTRY AND THE PERIOD OF AUTHORIZED INTERCEPTION,
26 OR THE DENIAL OF THE APPLICATION.
27 3. THE FACT THAT DURING THE PERIOD OF AUTHORIZED INTERCEPTION WIRE,
28 ELECTRONIC OR ORAL COMMUNICATIONS WERE OR WERE NOT INTERCEPTED.
29 4. THE PARTICULAR CRIME SPECIFIED IN THE APPLICATION FOR THE ORDER.
30 5. THE IDENTITY OF THE APPLICANT WHO FILED THE APPLICATION.
31 6. THE IDENTITY OF THE JUDGE WHO ISSUED THE ORDER.
32 7. ON MOTION OF A PARTY, THE PORTIONS OF THE INTERCEPTED
33 COMMUNICATIONS, APPLICATIONS AND ORDER AS THE JUDGE DETERMINES TO BE IN
34 THE INTEREST OF JUSTICE. THE JUDGE MAY MAKE THIS INFORMATION AVAILABLE TO
35 THE PERSON OR THE PERSON'S ATTORNEY FOR INSPECTION.

36 E. THE NOTIFICATION REQUIRED BY SUBSECTION D OF THIS SECTION IS NOT
37 REQUIRED UNTIL THE IDENTITY OF THE PERSON SPECIFIED IN THE ORDER IS KNOWN
38 OR COULD BE REASONABLY IDENTIFIED BY THE LAW ENFORCEMENT AGENCY.

39 F. A LAW ENFORCEMENT AGENCY THAT SEEKS AN EX PARTE ORDER PURSUANT
40 TO THIS SECTION MAY SUBMIT A REQUEST, AND THE COURT MAY GRANT PERMISSION,
41 TO DELAY THE NOTIFICATION REQUIRED BY SUBSECTION D OF THIS SECTION FOR A
42 PERIOD NOT TO EXCEED THIRTY DAYS IF THE COURT DETERMINES THAT THERE IS
43 REASONABLE CAUSE TO BELIEVE THAT THE NOTIFICATION MAY DO ANY OF THE
44 FOLLOWING:

- 45 1. ENDANGER THE LIFE OR PHYSICAL SAFETY OF AN INDIVIDUAL.

1 AN ELECTRONIC DEVICE or network was used. This subsection does not
2 prevent the prosecutor from obtaining a grand jury subpoena duces tecum.

3 C. The prosecutor who issues a subpoena pursuant to this section
4 shall certify in the body of the subpoena that the information likely to
5 be obtained is relevant to an ongoing criminal investigation.

6 D. An authorized representative of a communication service provider
7 may certify communication service records that are obtained by subpoena if
8 all of the following apply:

9 1. The records are the regular communication service records that
10 are used and kept by the communication service provider.

11 2. The records are made at or near the time the underlying
12 communications occur in the ordinary course of business.

13 3. The authorized representative certifies that the record produced
14 in response to the subpoena is an accurate copy of the communication
15 service provider records.

16 E. Certified communication service records that are obtained by
17 subpoena AND DISCLOSED IN ACCORDANCE WITH THE ARIZONA RULES OF CRIMINAL
18 PROCEDURE may be introduced in evidence at a hearing or trial and
19 constitute prima facie evidence of the facts contained in the records.

20 F. If a certification of communication service provider records is
21 acknowledged by any notary or other officer who is authorized by law to
22 take acknowledgments, the certification shall be received in evidence
23 without further proof of its authenticity.

24 G. NOTWITHSTANDING ANY OTHER SECTION IN THIS TITLE, A LAW
25 ENFORCEMENT AGENCY MAY NOT OBTAIN, USE, COPY OR DISCLOSE A SUBSCRIBER
26 RECORD UNLESS A SUBPOENA HAS BEEN OBTAINED. A LAW ENFORCEMENT AGENCY MAY
27 NOT OBTAIN, USE, COPY OR DISCLOSE, FOR A CRIMINAL INVESTIGATION OR
28 PROSECUTION, ANY RECORD OR INFORMATION, OTHER THAN A SUBSCRIBER RECORD, OF
29 A PROVIDER OF AN ELECTRONIC COMMUNICATION SERVICE OR REMOTE COMPUTING
30 SERVICE RELATED TO A SUBSCRIBER OR CUSTOMER WITHOUT A WARRANT.

31 ~~G.~~ H. For the purposes of this section, "communication service
32 records":

33 1. Includes subscriber information, including name, billing or
34 installation address, length of service, payment method, telephone number,
35 electronic account identification and associated screen names, toll bills
36 or access logs, records of the path of an electronic communication between
37 the point of origin and the point of delivery and the nature of the
38 communication service provided, such as caller identification, automatic
39 number identification, voice mail, ~~electronic mail~~ EMAIL, paging or other
40 service features. ~~Communication service records~~

41 2. Do not include the content of any stored oral, wire or
42 electronic communication.