

Appendix B

State Wiretap Legislation (as of June 1, 2002)

Overview

This survey indicates, for each state, whether pertinent legislation relating to electronic communications was introduced subsequent to the events of September 11 and has either been enacted or is still pending before the legislature of the state in question. If such legislation exists, this survey provides the bill number and status of each piece of legislation and a summary of the legislation. No reference is made to pertinent legislation that was introduced but subsequently voted upon and defeated.

The research for the survey was conducted by attorneys in the Washington, D.C. office of Morrison & Foerster LLP, in conjunction with the Constitution Project Initiative on Liberty and Security. The Constitution Project is a nonprofit bipartisan organization dedicated to achieving consensus on controversial issues. Its Liberty and Security Initiative is addressing a broad range of issues that have arisen since September 11, including the use of military tribunals, the detention of aliens, and government security.

The research that provides the basis for this survey was limited to review of each piece of legislation, with consultation to the websites of the legislatures of the various states and other written materials and Internet resources. Representatives of the respective legislatures, governments and law enforcement agencies of the states were generally not consulted. Because of the limitations in the methodology used and the generality of the survey, the information provided may not be applicable to all situations and should not be relied or acted upon without specific legal advice based upon the particular situation at issue. Moreover, because the survey reflects the state of the state of the legislation as of June 1, 2002, the status of each bill may have subsequently changed and additional legislation introduced.

Updated information may be found on the website of each jurisdiction and at: <http://www.ncsl.org>.¹ This summary and possible updates are also available at <http://www.constitutionproject.org> and <http://www.peterswire.net>.²

In addition, Peter Swire, the reporter responsible for the Constitution Project's Liberty and Security activities, may be contacted by e-mail at pswire@mofo.com, as can William D. Freedman of Morrison & Foerster, LLP, at wfreedman@mofo.com.

STATE: ARIZONA

S.B. 1427

STATUS: (Introduced February 4, 2002; signed into law by Governor on May 15, 2002; Chapter 219)

SUMMARY: Amends various provisions of the state criminal code to conform to USA Patriot Act to include terrorist acts of crime and allow access to certain financial institution records. In addition, amends the wiretapping provisions relevant to an *ex parte* order for pen register or trap and trace device. Specifically, would allow a prosecuting attorney or investigating peace officer to secure an *ex parte* order for a pen register or trap and trace device by simply providing identity or telephone line information, if known. Would also eliminate the need for the applicant to submit a statement of the likely offense. Moreover, an order would apply to anyone served by the *ex parte* order that provides wire or electronic communication whose assistance may facilitate the execution of the order.

Expands the exemptions to allow a communication service provider, or its officers or employees, to divulge information to a law enforcement official if either (a) it obtained information lawfully or inadvertently and the communication appears to pertain to the commission of a crime or (b) communication service provider believes there is imminent danger, death, or serious physical injury.

STATE: CALIFORNIA

A.B. 2733

STATUS: (Introduced February 22, 2002; failed passage; reconsideration granted; in Assembly Committee on Public Safety)

1. The specific web page may be directly accessed at <http://www.ncsl.org/login.htm?returnpage=http://www.ncsl.org/programs/lis/CIP/surveillance.htm>.

2. The specific web pages may be directly accessed at the following: <http://www.peterswire.net/pssurv.html>, <http://www.mofo.com/practice/ArticleDetail.cfm?MCatID=&concentrationID=&ID=938&Type=3>, and http://www.constitutionproject.org/lis/Chart_for_State_Wiretap_Legislation_v1.DOC.

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SUMMARY: Allows the attorney general, district attorney, or other specified law enforcement official to record any communication that it could lawfully overhear or record. Also extends the provision of this law to peace officers.

A.B. 2343

STATUS: (Introduced March 14, 2002; failed passage; reconsideration granted; in Assembly Committee on Public Safety)

SUMMARY: Adds to the enumerated offenses crimes related to weapons of mass destruction and destructive devices. Clarifies that communications include email, and electronically stored messages; permits an application that covers more than one communication device; and adds Internet service and private cellular telephone providers to the list of providers required to assist in intercepting activities. Requires progress reports every six days (current law requires one every seventy-two and eliminate the January 1, 2003, repeal of California's interceptive provisions.

A.B. 74

STATUS: (Introduced December 22, 2000; passed by Assembly and referred to Senate Committee on Public Safety)

SUMMARY: Proposes to expand the list of enumerated offenses to incorporate weapons of mass destruction and destructive devices, as well as large quantity drug precursor cases. Allows an *ex parte* order to be granted for any "attempt" to commit any of the enumerated offenses. Allows interception orders for any electronic pagers, and allow the next available judge designated by the presiding judge to issue an order. Current law requires that an applicant include information (if known) of previous interception orders involving the same target. Only requires the results of an inquiry to the California attorney general or the US DOJ concerning prior applications. Finally, reports required to be made with the judge are expanded to every six days, not every seventy-two hours.

STATE: COLORADO

H.B. 1102

STATUS: (Postponed indefinitely by Committee on Appropriations)

SUMMARY: Increases the wiretapping of a cordless telephone from a class 1 misdemeanor to a class 6 felony.

STATE: CONNECTICUT

H.B. 5741

STATUS: (Introduced March 12, 2002; to Joint Committee on Judiciary)

SUMMARY: Authorizes the “installation and use of pen registers and trap and trace devices and the subpoenaing of telephone records; establishes a procedure for prosecutors to apply for, and for courts to issue, orders authorizing the installation and use of pen registers and trap and trace devices; authorizes prosecutors and law enforcement officers to subpoena telephone records.”

H.B. 5759

STATUS: (Enacted June 3, 2002 effective October 1, 2002)

SUMMARY: Creates various crimes involving acts of terrorism, including computer crime in furtherance of terrorist purposes (a person, “with intent to intimidate or coerce the civilian population or a unit of government commits computer crime as defined in Section 53a-251 of the general statutes or commits a violation of Section 53-451 of the General statutes”).

STATE: DELAWARE

H.B. 194

STATUS: (Introduced April 2000; to Senate Committee on Judiciary)

SUMMARY: Would add the crimes of rape, sexual solicitation of a child, and certain child pornography felonies to the list of offenses for which a wiretap or intercept order may be requested.

STATE: FLORIDA

H.B. 1439

STATUS: (Introduced February 5, 2002; signed into law April 22, 2002 by Governor, Chapter 2002-72)

SUMMARY: Redefines certain of Florida’s wiretapping and pen register definitions and authorizes interception for investigating acts of terrorism. If an applicant demonstrates that an act involves or will involve terrorism, a judge can authorize an interception for anywhere in the state no matter if it is beyond the jurisdictional bounds of the court. The proposed law would also amend the application requirements of pen registers and require that the applicant submit further information on the facility where the pen register will be installed.

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STATE: GEORGIA

S.B. 459

STATUS: (Signed into law by Governor May 16, 2002)**SUMMARY:** Revises the definitions of "device", "pen register", "private place" and "trap and trace device." In addition, eliminates detailed procedures for obtaining an investigation warrant and relies on federal law. Would strike provisions relating to cellular radio telephone communications and replaces them with provisions for disclosure of stored wire or electronic communications.

STATE: IDAHO

S.B. 1349

STATUS: (Signed into law arch 22, 2002 by Governor, Chapter 223, effective July 1, 2002,)**SUMMARY:** Updates wiretap statute to conform to key provisions of federal law. Amends the definition of wire communications to recognize all new forms of electronic communication and makes unlawful interception of electronic communications a felony. Makes it a felony to disclose information obtained through lawful interception, where the disclosure is made with the intent of obstructing an investigation.

Expands wiretap authorization beyond the court's territorial jurisdiction to include the state of Idaho.

Permits a wiretap to be conducted by government personnel or by an individual operating under a contract with the federal, state or local government and acting under the supervision of investigative or law enforcement officer authorized to conduct the interception.

STATE: ILLINOIS

H.B. 4074

STATUS: (Passed both Houses)**SUMMARY:** Defines electronic criminal surveillance officer to include retired law enforcement officers certified by the Department of State Police to intercept private oral communications. Also provides that the Electronic Criminal Surveillance Article of the code does not permit a retired law enforcement officer to display or use a firearm.

H.B. 5603/H.B. 220

STATUS: (Referred to House Rules Committee)**SUMMARY:** Exempts electronic video and audio recordings made of a custodial interrogation of an individual by a law enforcement officer with respect to eavesdropping.

H.B. 5669**STATUS:** (Referred to House Rules Committee)**SUMMARY:** Provides that an electronic criminal surveillance officer specially designated by the state's attorney may intercept a private oral communication before a court order authorizing the interception is issued under certain emergency situations if an application for the order is filed with the chief judge within forty-eight hours after interception of the communication begins. Provides that the order is retroactive to the time the interception began to occur (current law requires the state's attorney to obtain oral approval for the interception). Provides that, if there is at least one electronic criminal surveillance officer at the scene of the emergency, any other police officer responding to the emergency is authorized to overhear any oral communication that is intercepted.**H.B. 5925****STATUS:** (Referred to Senate Rules Committee)**SUMMARY:** Exempts from an eavesdropping violation, recordings made simultaneously with a security video recording by a publicly visible camera in vehicles used by authorized public mass transit districts in the normal course of public transportation. Audio recordings must be confined to a passenger boarding or driver areas of the vehicle (rather than the bus), or both. Provides that every vehicle (other than a bus) equipped with a recording camera must have a sign posted indicating that audio and video are being recorded.**S.B. 1788****STATUS:** (Referred to Senate Rules Committee)**SUMMARY:** Exempts from an eavesdropping violation, electronic recordings made of a custodial interrogation of a person by a law enforcement officer at a police station or other place of detention in investigations of homicide and certain sex crimes. Provides that statements made by a suspect at a custodial interrogation in the above circumstances are presumed inadmissible unless electronically recorded. Provides that the presumption may be overcome by preponderance of the evidence that the statements were voluntary and reliable based on the totality of the circumstances.**S.B. 2087****STATUS:** (Referred to Senate Rules Committee)**SUMMARY:** Provides that, during a first-degree murder or Class X felony investigation, every interview between a peace officer and a suspect or witness in that case must be videotaped and provides that

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such videotapings are exempt from the provisions in the Criminal Code that prohibit eavesdropping.

S.B. 2143

STATUS: (Referred to Senate Rules Committee)

SUMMARY: Creates the Electronic Privacy Act. Permits an employer to collect any information, so long as the information is collected at the employer's premises and is confined to the employee's work, with exceptions. Requires for an employer that engages in any type of electronic monitoring to provide prior written notice to all employees who may be affected.

STATE: KANSAS

H.B. 2986/S.B. 594

STATUS: (To House Committee on Judiciary)/(referred to Judiciary)

SUMMARY: Each bill defines terrorism and terrorist activities, each includes terrorism among offenses subject to wiretap authorization; expands government's authority to capture voicemail.

STATE: KENTUCKY

H.B. 119

STATUS: (Recommitted to House Committee on Appropriations and Revenue)

SUMMARY: Defines eavesdropping for the purpose of creating the crimes of eavesdropping and related offenses; expands list of government officials who can seek wiretap orders.

STATE: LOUISIANA

H.B. 53

STATUS: (Signed into law on April 23, 2002; Act No. 128)

SUMMARY: Adds terrorist activities to the list of enumerated offenses for which electronic surveillance may be authorized; expands list of government officials who can apply for wiretap orders.

STATE: MARYLAND

H.B. 74 and S.B. 380

STATUS: (Given an unfavorable report by Judicial Proceedings Committee)

SUMMARY: Adds offenses committed by or on behalf of an international terrorist organization to those crimes for which evidence

may be gathered by the interception of oral, wire, or electronic communications. Requires the Department of State Police and Attorney General to study the use and effectiveness of state's wiretap laws and submit a report to the General Assembly before December 2006.

H.B. 100

STATUS: (Given an unfavorable report by the Judicial Proceedings Committee)

SUMMARY: Adds unauthorized access to a computer to those crimes for which evidence may be gathered by the interception of oral, wire, or electronic communications.

H.B. 180 and S.B. 20

STATUS: (Passed both Houses; awaiting Governor's signature)

SUMMARY: Allows the interception by officers of oral communications when detaining a vehicle of those joining the conversation after the officer has identified himself as an officer.

H.B. 880

STATUS: (Given an unfavorable report by the Environmental Matters Committee)

SUMMARY: Establishes an exception to the prohibition against willfully intercepting a wire or electronic communication for a person who intercepts wire, oral, or electronic communications in a healthcare institution or facility under specified circumstances. Requires institution to permit a resident (or their legal representative) to install devices to monitor themselves.

S.B. 448

STATUS: (Given unfavorable report by Judicial Proceedings Committee)

SUMMARY: Authorizes interception of a wire, oral or electronic communication for evidence of the commission of specified offenses relating to the sale, rental, purchase or transfer of a regulated firearm.

S.B. 716

STATUS: (Unfavorable report by Judicial Proceedings Committee)

SUMMARY: Adds money laundering offenses related to the proceeds of drug crimes to those offenses for which evidence may be gathered by intercepting communications and for which authorized persons may seek an interception order from a judge.

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S.B. 116

STATUS: (Unfavorable report by Judicial Proceedings Committee)

SUMMARY: Authorizes the interception of wire, oral or electronic communications in order to provide evidence of the commission of the offenses of escape in the first degree, conspiracy, or solicitation to escape in the first degree.

H.B. 1036 and S.B. 639 (“Maryland Security Protection Act of 2002”)

STATUS: (Signed by Governor, Chapter 100)

SUMMARY: Proposes changes to state wiretapping provisions, including expanding the jurisdictional reach of a judge’s *ex parte* order and allows government to search through voicemail. Also, provides an exception to the requirement that a specified description be provided in order to obtain an interception order under certain circumstances.

In the case of an order for intercepting oral communications, a particular description of the nature and location of the facilities from which or the place where the communications is to be intercepted is not required if the application: (1) is by an officer; (2) is approved by the attorney general, the state prosecutor, or a state’s attorney; (3) contains a statement as to why a specific description is not practical; and (4) identifies the person committing the offense and whose communications are to be intercepted.

In the case of an order for intercepting wire or electronic communications, a particular description of the nature and location of the facilities from which or the place where the communications is to be intercepted is not required if the application: (1) is by an officer; (2) is approved by the attorney general, the state prosecutor, or a state’s attorney; (3) identifies the person committing the offense and whose communications are to be intercepted; (4) makes a showing of probable cause that the person could thwart the interception from that facility; and (5) specifies that the interception will be limited to any period of time in which the offer has a reasonable articulable belief that the suspect will be using those facilities.

A judge may authorize continued interception through out the state—both within and outside the judge’s jurisdiction—if the original interception occurred within the judge’s jurisdiction. The definition of an authorizing judge is expanded to include circuit court’s having jurisdiction over the crime being investigated, regardless of the location of the instrument or process from which a wire or electronic communication is transmitted or received. The regulations concerning trap and trace and pen registers are expanded to include all information but the content of the communications.

STATE: MASSACHUSETTS**H.B. 3485**

STATUS: (Introduced January. 3, 2001; last action occurred August. 8, 2001, and was referred to the Committee on Commerce and Labor for investigation and study)

SUMMARY: Provides that employers monitoring employees' electronic communications must provide written notice to the employees and inform potential employees (e.g., in the interview). Also, prohibits the gathering of data on an employee unrelated to employee's work performance.

S.B. 108/S.B. 2231

STATUS: (S.B. 108 introduced January. 3, 2001; was substituted for S.B. 2231, which was introduced on January. 28, 2002. S.B. 2231 was referred to the Senate Committee on Ways and Means)

SUMMARY: Provides employers the right to implement electronic surveillance to collect information on employees. Such information must be collected at the employer's premises, confined to the employee's work, and cannot violate the state's privacy laws. Employers must provide employees notice of specific details of such monitoring. Employers can monitor without providing notice of the employer has probable cause to believe unlawful acts or willful gross misconduct has/will occur, and has/will have a significant adverse effect involving economic loss or injury to the employer, other employees or customers. In this case, the employer must execute a notarized statement with various details of the monitoring. Such monitoring may be disclosed to law enforcement agencies pursuant to a federal or state warrant, grand jury subpoena, or a federal or state administrative subpoena.

S.B. 432

STATUS: (Introduced January. 3, 2001; referred to Joint Committee on Judiciary on July 11, 2001)

SUMMARY: A person not acting under the color of the law (e.g., law enforcement) must receive consent from one of the parties prior to intercepting communications, unless such communication is intercepted to commit any criminal or tortuous act.

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STATE: MICHIGAN

S.B. 803/H.B. 5240

STATUS: (Introduced October 24, 2001; passed by the Senate on February 6, 2002; pending in the House)

SUMMARY: Allows state and local authorities to conduct wiretaps. Creates a new statute with comprehensive provisions concerning the interception of wire, oral or electronic communications (based on the federal statute). The interception, disclosure and use of intercepted communications is unlawful, unless one party to the communications consents. A prosecutor may acquire an order from a judge (judge must be specifically designated by the state supreme court to issue such orders). The order may only be for the interception of communications related to certain enumerated crimes.

May intercept wire or electronic communications of a computer trespasser if: (1) the interception is authorized by the computer's owner; (2) it is within the scope of a lawful investigation; (3) the officer has reasonable grounds to believe that the content of the communications will be relevant to the investigation; and (4) the interception does not acquire communications other than those of the computer trespasser. An electronic service provider may give communications to law enforcement of the contents were inadvertently obtained by the provider and the provider believes they pertain to the commission of a crime.

S.B. 806

STATUS: (Introduced October 25, 2001; passed Senate on February 6, 2002, and pending in the House since February 26, 2002)

SUMMARY: Sets forth sentencing guidelines for crimes involving wiretapping.

STATE: MINNESOTA

S.B. 2563 (Minnesota Anti-Terrorism Act of 2002")

STATUS: (Introduced February 4, 2002; referred to Senate Committee on Crime Prevention on February 4, 2002.)

SUMMARY: Makes a minor change to the definition of wire communications. Adds terrorism, weapons of mass destruction, malicious placement of an explosive or incendiary device, and computer crime to the list of offenses for interception warrant. Would allow a person/entity providing electronic communication service to disclose contents of a communication to a law enforcement agency if the "provider reasonably believes that an emergency involving immediate danger of death or serious physical injury to any person requires disclosure of information without delay."

H.B. 2746 (“Minnesota Anti-Terrorism Act of 2002”)

STATUS: (Introduced January 31, 2002; referred to the House Committee on Crime Prevention on February 11, 2002)

SUMMARY: Has the same provisions as S.B. 2563 (summarized above), except that the definition of offenses does not include terrorism.

H.B. 2622 (“Minnesota Anti-Terrorism Act of 2002”)

STATUS: (Introduced January 29, 2002; pending in Conference Committee as of March 22, 2002)

SUMMARY: Has the same provisions as H.B. 2746 and also excludes terrorism from the definition of offenses (see H.B. 2746).

H.B. 2909

STATUS: (Introduced February 4, 2002; referred to the House Committee on Crime Prevention on February 19, 2002)

SUMMARY: Would add the crime of terrorism as an offense to allow a warrant to intercept wire or oral communications. An issuing judge granting an application to intercept terrorist communications has to find that (1) the application identifies the person(s) committing the terroristic act and whose communications is to be intercepted; and (2) the applicant has demonstrated probable cause to believe the person’s actions could have the effect of thwarting interception from a specified facility.

H.B. 386

STATUS: (Introduced January 25, 2001; referred to House Committee on Civil Law on the same date)

SUMMARY: Requires employers to give notice before they engage in electronic monitoring of employees or use such monitoring as the basis of an employment decision.

STATE: MISSOURI

H.B. 1764

STATUS: (Introduced January 31, 2002)

SUMMARY: Adds “terrorism, soliciting material support for terrorism, or providing material support for terrorism or any conspiracy to commit any of these offenses” to the list of offenses to allow interception of wire communications.

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S.B. 1112

STATUS: (Introduced February 6, 2002; passed Senate on April 24, 2002 and read in the House on April 25, 2002)

SUMMARY: Adds terrorism to the list of offenses to allow interception of wire communications.

STATE: NEBRASKA

L.B. 1105

STATUS: (Signed by the Governor on April 19, 2002)

SUMMARY: Reorganizes statutory numbering of wiretapping provisions.

STATE: NEW JERSEY

A.B. 911/S.B. 775 ("September 11 Anti-Terrorism Act")

STATUS: (Passed Senate, to Assembly)

SUMMARY: Expands wiretapping statute to include offenses of terrorism, producing or possession of chemical weapons, biological agents or nuclear radiological devices, harboring or providing aid or material support to terrorists as crimes for which wiretapping may be authorized.

STATE: NEW YORK

A.B. 1589

STATUS: (To Assembly Committee on Codes)

SUMMARY: Clarifies that overhearing of cordless or cellular phones falls within statutory definition of eavesdropping.

A.B. 1647

STATUS: (To Assembly Committee on Codes)

SUMMARY: Provides right to civil action for persons whose communications are intercepted, recorded, disclosed or tampered with.

A.B. 4252/S.B. 1450

STATUS: (To Assembly Committee on Codes)

SUMMARY: Adds to designated felonies for wiretap/video surveillance warrants (false reporting of use of weapon for mass destruction) for purposes of seeking eavesdropping/video surveillance warrants.

A.B. 5212/S.B. 2156

STATUS: (To Assembly Committee on Codes)

SUMMARY: Adds chief counsel of temporary state commission of investigation to those who may apply for pen register/trap and trace device order.

A.B. 5524/S.B. 852 (“Anti-Weapons of Mass Destruction Act”)

STATUS: (To Assembly Committee on Codes)

SUMMARY: Creates felonies and adds them to designed felonies for wiretap/video surveillance warrants (possession, manufacture, or use of a weapon of mass destruction).

A.B. 8778/S.B. 5237

STATUS: (To Assembly Committee on Codes)

SUMMARY: Allows parents to monitor their children’s communications.

S.B. 619 (“Telecommunications Privacy Law”)

STATUS: (To Energy Telecommunications Committee)

SUMMARY: Regulates collection, use, or disclosure of information by telecommunications carriers; limits collection and distribution of customer information.

S.B. 1496

STATUS: (To Consumer Protection)

SUMMARY: Prohibits making or transmission over Internet of surreptitious/unauthorized video recordings unless for journalistic purposes.

S.B. 4633

STATUS: (To Rules Committee)

SUMMARY: Stricter regulation of money transmitters; authorizes use of wiretapping/video surveillance to investigate violations.

S.B. 5182

STATUS: (Recommended)

SUMMARY: Authorizes court order for roving interception of communications under certain circumstances (enacting clause stricken).

S.B. 5793

STATUS: (Amended on 3rd Reading)

SUMMARY: Authorizes court order for roving interception of communications in cases of terrorism.

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1177

STATE: OHIO

S.B. 184

STATUS: (Signed into law by Governor May 15, 2002)**SUMMARY:** Expands the list of offenses that are “designated offenses” under the state’s interception law to include the new offenses of “soliciting or providing support for an act of terrorism,” “making a terroristic threat,” and “terrorism,” complicity in the commission of any of those offenses. An attempt to commit or conspiracy in the commission of a violation of any of those offenses is punishable by a term of imprisonment of more than one year.

STATE: OKLAHOMA

S.B. 1642

STATUS: (Signed into law on May 8, 2002 by Governor)**SUMMARY:** Makes minor, non-substantive changes to provisions regarding pen registers and trap and trace devices.

H.B. 2764

STATUS: (Pending)**SUMMARY:** Adds acts of terrorism to list of offenses for which an order may be obtained authorizing the interception of oral, wire, or electronic communications.

STATE: PENNSYLVANIA

S.B. 1401

STATUS: (Pending)**SUMMARY:** Amends list of crimes for which an interception order may be obtained to include “computer offenses.”

S.B. 1109

STATUS: (To House Committee on Rules)**SUMMARY:** Amends list of crimes for which an interception order may be obtained to include those relating to “weapons of mass destruction” and “facsimile weapons of mass destruction.”

S.B. 970

STATUS: (To Senate Committee on Judiciary)**SUMMARY:** Provides that officers, without obtaining prior court approval, may intercept a wire or oral communication involving suspected criminal activities if the officer is a party to the communication and is involved in an undercover narcotics

investigation and has reasonable cause to believe that the other party to the communication is violating state law with regard to the delivery of illegal narcotics.

S.B. 656

STATUS: (Pending)

SUMMARY: Amends list of crimes for which an interception order may be obtained to include crimes relating to "information technology."

S.B. 369

STATUS: (Signed into law by Governor June 11, 2002)

SUMMARY: Provides that an officer does not need to obtain prior court approval to intercept and record oral communications when acting in the performance of his official duties if: (1) at the time of interception the communication does not occur inside the residence of any individuals; (2) the officer is operating the visual or audible warning system of his vehicle or is clearly identifiable as a law enforcement officer; (3) is using an approved device that is mounted in the officer's vehicle; and (4) informs the individual present as soon as reasonably practicable that his oral communications are being intercepted and recorded.

H.B. 1982

STATUS: (To Senate Committee on Judiciary)

SUMMARY: Amends definition of a trap and trace device to include call ID or similar calling features; provides that an order for a trap and trace shall apply regardless of whether the electronic service provider is headquartered within the state, so long as the interception is otherwise conducted within the state; provides that an application for a trap and trace need not name the place of the interception if the judge determines that such specification is not practical.

STATE: RHODE ISLAND

S.B. 2719

STATUS: (To Senate Committee on Judiciary)

SUMMARY: Amends the interception wire and oral communications law to permit the interception of communication necessary to locate escapees from detention and correctional facilities.

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STATE: SOUTH CAROLINA

S.B. 77

STATUS: (Scheduled for hearing May 7, 2002)**SUMMARY:** Creates statutory system for the interception of wire, oral, and electronic communications, including the installation and use of mobile tracking devices.

H.B. 4416 ("South Carolina Homeland Security Act of 2002")

STATUS: (Enrolled for Governor's signature May 29, 2002)

STATE: TENNESSEE

H.B. 551/S.B. 1313

STATUS: (Taken off notice for calendar in Criminal Procedure and Practice of Judiciary Committee and Senate Judiciary Committee)**SUMMARY:** Changes current law to permit private persons to intercept wire, oral, or electronic communication where all parties consent unless the communication is intercepted for purpose of committing any criminal or tortuous act in violation of the constitution or laws of the state.

STATE: TEXAS

H.B. 1823

STATUS: (Signed by Governor June 15, 2002)**SUMMARY:** Amends the Civil Practice and Remedies Code to increase the amount of damages a person is entitled to if the person establishes a cause of action for the interception of a communication from \$1,000 to \$10,000 in statutory damages for each occurrence and from \$1,000 to \$10,000 for all actual damages.

S.B. 1345

STATUS: (Signed by Governor June 15, 2002)**SUMMARY:** Amends Code of Criminal Procedure: to correct problems with proper venue; make laws consistent regarding possession and use of interception ad pen register equipment; allows Department of Public Safety to utilize federal agents; allows for judicial review of use of device to determine Electronic Serial Number of wireless telephone; allows prosecutor to file application for installation and use of a certain surveillance equipment; allows peace officer to install and use a pen register or trap and trace device under certain circumstances.

STATE: VERMONT**H.B. 106****STATUS:** (To Senate Committee on Judiciary)**SUMMARY:** Requires a search warrant prior to placement on private property surveillance equipment which is not under direct or immediate operator control.**H.B. 230****STATUS:** (To House Committee on Judiciary)**SUMMARY:** Prohibits wiretapping unless both parties consent. Does not apply to law enforcement officers and telecommunications company employees engaged in lawful performance of their official duties.

STATE: VIRGINIA**S.B. 514/H.B. 1120****STATUS:** (Signed into law on April 6, 2002 by Governor, Chapters 588 and 623)**SUMMARY:** Broadens Virginia's ability to respond to terrorism. Includes granting the Attorney General or designee the authority to seek a wiretap for suspected terrorists, expands the applicability of pen registers and trap and trace devices, changes the definition of pen register and trap and trace devices, removes physical location and geographic boundary requirements from wire-tap applications, and adds to the definition of "electronic communication system." Requires authorities to maintain audit trails when conducting carnivore- type Internet surveillance.**H.B. 41****STATUS:** (Signed into law on March 4, 2002 by Governor, Chapter 91)**SUMMARY:** Permits town police officer to observe and monitor an interception at any location if that police department began the investigation leading to the wiretap application.**H.B. 453****STATUS:** (To House Committee on Courts of Justice)**SUMMARY:** Provides penalties for various terrorist activities; expands the use of pen registers and trap and trace devices.

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STATE: WASHINGTON

H.B. 2416

STATUS: (To House Rules Committee for 3rd reading)**SUMMARY:** Permits additional investigation tools to deter terrorism. Under certain circumstances, chief law enforcement officer or designee above the rank of first line supervisor may authorize the interception, transmission, or recording of a conversation or communication by officers.

STATE: WEST VIRGINIA

H.B. 4494

STATUS: (Passed March 5, 2002)**SUMMARY:** The executive director or his or her designee is authorized to monitor, intercept, record, and disclose telephone calls to or from inmates housed in regional jails in accordance with certain enumerated safeguards.

STATE: WISCONSIN

S.B. 363

STATUS: (Failed to pass per Senate Joint Resolution 1)**SUMMARY:** Grants law enforcement officers and prosecutors increased authority to engage in electronic surveillance upon probable cause. Court may authorize surveillance if it may provide or has provided evidence of the commission of any felony that is dangerous to life, limb, or property, not just one of the enumerated crimes. It also permits law enforcement officers or prosecutors to obtain an order, good for 48 hours, permitting electronic surveillance in an emergency situation based on an oral application; the court must determine that requiring a written application may increase or prolong the risk of death or bodily harm. The bill also authorizes law enforcement to obtain roving interception orders permitting the interception of communications of a given individual without specifying the nature and location of the facilities being used.