CHAPTER 30

Interception of Wire, Electronic, or Oral Communications

Editor’s Note

2002 Act No. 339, Section 1, provides as follows:

“This act may be cited as the ‘South Carolina Homeland Security Act’”.

**SECTION 17‑30‑10.** Interception of wire, electronic, or oral communications authorized.

 The interception of wire, electronic, or oral communications is hereby authorized only in the manner permitted by this chapter.

HISTORY: 2002 Act No. 339, Section 14, eff July 2, 2002.

Library References

Telecommunications 1426 to 1487.

Westlaw Topic No. 372.

C.J.S. Telecommunications Sections 215 to 293.

NOTES OF DECISIONS

In general 1

1. In general

State supreme court would look to federal courts’ interpretations of Omnibus Crime Control and Safe Streets Act when interpreting comparable provisions of state Homeland Security Act in connection with defendant’s motion to suppress contents of phone calls intercepted pursuant to state Homeland Security Act, as Homeland Security Act was patterned after federal act and no state cases addressed issues raised in defendant’s motion. State v. Guerrero‑Flores (S.C.App. 2013) 402 S.C. 530, 741 S.E.2d 577. Criminal Law 12.7(1); Criminal Law 392.21

**SECTION 17‑30‑15.** Definitions.

 As used in this chapter:

 (1) “Wire communication” means any aural transfer made in whole or in part through the use of facilities for the transmission of communications by the aid of wire, cable, or other like connection between the point of origin and the point of reception including the use of this connection in a switching station furnished or operated by any person engaged in providing or operating the facilities for the transmission of intrastate, interstate, or foreign communications or communications affecting intrastate, interstate, or foreign commerce. The term includes any electronic storage of the communication.

 (2) “Oral communication” means any oral communication uttered by a person exhibiting an expectation that the communication is not subject to interception under circumstances justifying the expectation and does not mean any public oral communication uttered at a public meeting or any electronic communication.

 (3) “Intercept” means the aural or other acquisition of the contents of any wire, electronic, or oral communication through the use of any electronic, mechanical, or other device.

 (4) “Electronic, mechanical, or other device” means any device or apparatus which can be used to intercept a wire, electronic, or oral communication other than:

 (a) any telephone or telegraph instrument, equipment, or facility, or any component thereof:

 (i) furnished to the subscriber or user by a provider of wire or electronic communication service in the ordinary course of its business and being used by the subscriber or user in the ordinary course of its business or furnished by the subscriber or user for connection to the facilities of the service and used in the ordinary course of its business; or

 (ii) being used by a provider of wire or electronic communications service in the ordinary course of its business or by an investigative or law enforcement officer in the ordinary course of his duties; or

 (b) a hearing aid or similar device being used to correct subnormal hearing to not better than normal.

 (5) “Person” means an employee or agent of the State of South Carolina or political subdivision of the State, of the United States, or of any other state or political subdivision of the State, and any individual, partnership, association, joint stock company, trust, or corporation.

 (6) “Investigative or law enforcement officer” means an officer of the State of South Carolina or political subdivision of the State, of the United States, or of any other state or political subdivision of the State, who is empowered by law to conduct on behalf of the government investigations of or to make arrests for offenses enumerated in this chapter or similar federal offenses.

 (7) “Contents”, when used with respect to any wire, oral, or electronic communication, include any information concerning the substance, purport, or meaning of that communication.

 (8) “Judge of competent jurisdiction” means a circuit court judge designated by the Chief Justice of the Supreme Court of the State of South Carolina.

 (9) “Reviewing authority” means a panel of three judges of the South Carolina Court of Appeals designated by the Chief Judge of the South Carolina Court of Appeals.

 (10) “Aggrieved person” means a person who was a party to any intercepted wire, oral, or electronic communication or a person against whom the interception was directed.

 (11) “Law enforcement agency” means the South Carolina Law Enforcement Division (SLED) or an agency of the United States if the primary responsibility of the agency is the prevention and detection of crime and if its agents and officers are empowered by law to conduct criminal investigations and to make arrests.

 (12) “Communication common carrier” has the same meaning which is given the term “common carrier” in 47 U.S.C. Section 153(h).

 (13) “Electronic communication” means any transfer of signs, signals, writing, images, sounds, data, or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photoelectronic, photooptical system, or any other device that affects intrastate, interstate, or foreign commerce, but does not include:

 (a) any wire or oral communication;

 (b) any communication made through a tone‑only paging device;

 (c) any communication from an electronic or mechanical device which permits the tracking of the movement of a person or an object; or

 (d) electronic funds transfer information stored by a financial institution in a communications system used for the electronic storage and transfer of funds.

 (14) “User” means any person or entity who:

 (a) uses an electronic communication service; and

 (b) is duly authorized by the provider of the service to engage in its use.

 (15) “Electronic communications system” means any wire, radio, electromagnetic, photooptical, or photoelectronic facilities for the transmission of wire or electronic communications, and any computer facilities or related electronic equipment for the electronic storage of these communications.

 (16) “Electronic communication service” means any service which provides to users of the service the ability to send or receive wire or electronic communications.

 (17) “Readily accessible to the general public” means, with respect to a radio communication, that the communication is not:

 (a) scrambled or encrypted;

 (b) transmitted using modulation techniques whose essential parameters have been withheld from the public with the intention of preserving the privacy of the communication;

 (c) carried on a subcarrier or other signal subsidiary to a radio transmission;

 (d) transmitted over a communications system provided by a common carrier, unless the communication is a tone‑only paging system communication; or

 (e) transmitted on frequencies allocated under Part 25; Subpart D, Subpart E, or Subpart F of Part 74; or Part 94 of the Rules of the Federal Communications Commission, unless, in the case of a communication transmitted on a frequency allocated under Part 74 that is not exclusively allocated to broadcast auxiliary services, the communication is a two‑way voice communication by radio.

 (18) “Electronic storage” means:

 (a) any temporary intermediate storage of a wire or electronic communication incidental to the electronic transmission of the communication; or

 (b) any storage of a wire or electronic communication by an electronic communication service for purposes of backup protection of such communication.

 (19) “Aural transfer” means a transfer containing the human voice at any point between and including the point of origin and the point of reception.

 (20) “Remote computing service” means the provision to the public of computer storage or processing services by means of an electronic communications system.

 (21) “Pen register” means a device which records or decodes electronic or other impulses which identify the numbers dialed or otherwise transmitted on the telephone line to which the device is attached, but the term does not include any device used by a provider or customer of a wire or electronic communication service for billing or recording as an incident to billing, for communication services provided by the provider, or any device used by a provider or customer of a wire communication service for cost accounting or other like purposes in the ordinary course of its business.

 (22) “Trap and trace device” means a device which captures the incoming electronic or other impulses which identify the originating number of an instrument or a device from which a wire or electronic communication was transmitted.

 (23) “State” means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any other possession or territory of the United States.

HISTORY: 2002 Act No. 339, Section 14, eff July 2, 2002.

**SECTION 17‑30‑20.** Prohibited acts.

 Except as otherwise specifically provided in this chapter, a person who commits any of the following acts is guilty of a felony and, upon conviction, must be punished as provided in Section 17‑30‑50 of this chapter:

 (1) intentionally intercepts, attempts to intercept, or procures any other person to intercept or attempt to intercept any wire, oral, or electronic communication;

 (2) intentionally uses, attempts to use, or procures any other person to use or attempt to use any electronic, mechanical, or other device to intercept any oral communication when:

 (a) the device is affixed to or otherwise transmits a signal through a wire, cable, or other like connection used in wire communication; or

 (b) the device transmits communications by radio or interferes with the transmission of the communication;

 (3) intentionally discloses or attempts to disclose to any other person the contents of any wire, oral, or electronic communication, knowing or having reason to know that the information was obtained through the interception of a wire, oral, or electronic communication in violation of this subsection;

 (4) intentionally uses or attempts to use the contents of any wire, oral, or electronic communication, knowing or having reason to know that the information was obtained through the interception of a wire, oral, or electronic communication in violation of this subsection;

 (5) intentionally discloses or attempts to disclose to any other person the contents of any wire, oral, or electronic communication intercepted by means authorized by Section 17‑30‑70 or Section 17‑30‑95 when that person knows or has reason to know that the information was obtained through the interception of such a communication in connection with a criminal investigation and the disclosure is not otherwise authorized under this chapter; or

 (6) intentionally uses, attempts to use, or procures any other person to use any electronic, mechanical, or other device or service that causes the telephone network to display a telephone number on a phone call recipient’s caller identification display that is not the number of the originating device. This provision shall not apply to:

 (a) the legitimate law enforcement use of this procedure by the South Carolina Law Enforcement Division;

 (b) a person or entity that places a call and blocks or otherwise prevents the delivery of a telephone number to a call recipient’s caller identification display;

 (c) a person or entity that places an authorized call on behalf of another person or entity and inserts a telephone number identified with the person or entity on behalf of whom the call is being placed; or

 (d) a communications service provider that delivers a call originated by another person or entity.

HISTORY: 2002 Act No. 339, Section 14, eff July 2, 2002; 2010 Act No. 270, Section 2, eff June 24, 2010.

Library References

Telecommunications 1426 to 1453.

Westlaw Topic No. 372.

C.J.S. Telecommunications Sections 215 to 254.

**SECTION 17‑30‑25.** Interception and disclosure of information by provider of wire or electronic communications service; exceptions when authorized by law.

 (A) It is lawful under this chapter for an operator of a switchboard, or an officer, employee, or agent of a provider of wire or electronic communication service whose facilities are used in the transmission of a wire or electronic communication to intercept, disclose, or use that communication in the normal course of his employment while engaged in any activity which is a necessary incident to the rendition of his service or to the protection of the rights or property of the provider of that service, except that a provider of wire communication service to the public must not utilize service observing or random monitoring except for mechanical or service quality control checks.

 (B) Notwithstanding any other provision of law, a provider of wire, oral, or electronic communication service, or an officer, employee, or agent thereof, or landlord, custodian, or other person may provide information, facilities, or technical assistance to a person authorized by law to intercept wire, oral, or electronic communications if the provider, or an officer, employee, or agent thereof, or landlord, custodian, or other person, has been provided with:

 (1) a court order directing such assistance signed by the authorizing judge; or

 (2) a certification in writing by a person specified in Section 17‑30‑95 that no warrant or court order is required by law, that all statutory requirements have been met, and that the specified assistance is required, setting forth the period of time during which the provision of the information, facilities, or technical assistance is authorized and specifying the information, facilities, or technical assistance required.

 (C) A provider of wire, oral, or electronic communication service, or an officer, employee, or agent thereof, or landlord, custodian, or other person must not disclose the existence of any interception or the device used to accomplish the interception with respect to which the person has been furnished an order under this chapter, except as may otherwise be required by legal process and then only after prior notice to the Attorney General or his Assistant Attorney General. Any such disclosure renders the person liable for the civil damages provided under Section 17‑30‑135, and the person may be prosecuted. An action shall not be brought against a provider of wire, oral, or electronic communication service, or an officer, employee, or agent thereof, or landlord, custodian, or other person for providing information, facilities, or assistance in accordance with the terms of a court order under this chapter.

HISTORY: 2002 Act No. 339, Section 14, eff July 2, 2002.

Library References

Telecommunications 1426 to 1453.

Westlaw Topic No. 372.

C.J.S. Telecommunications Sections 215 to 254.

**SECTION 17‑30‑30.** Interception by employee of Federal Communications Commission, by person acting under color or law, and when party has given prior consent.

 (A) It is lawful under this chapter for an officer, employee, or agent of the Federal Communications Commission, in the normal course of his employment and in discharge of the monitoring responsibilities exercised by the commission in the enforcement of 47 U.S.C. Chapter 5, to intercept a wire, oral, or electronic communication transmitted by radio or to disclose or use the information thereby obtained.

 (B) It is lawful under this chapter for a person acting under color of law to intercept a wire, oral, or electronic communication, where the person is a party to the communication or one of the parties to the communication has given prior consent to the interception.

 (C) It is lawful under this chapter for a person not acting under color of law to intercept a wire, oral, or electronic communication where the person is a party to the communication or where one of the parties to the communication has given prior consent to the interception.

HISTORY: 2002 Act No. 339, Section 14, eff July 2, 2002.

Library References

Telecommunications 1440.

Westlaw Topic No. 372.

C.J.S. Telecommunications Sections 217, 227, 231 to 233, 244, 247 to 249.

RESEARCH REFERENCES

ALR Library

25 ALR 7th 6 , Facial and As‑Applied Validity of State Wiretapping Acts in Criminal Proceedings.

NOTES OF DECISIONS

Vicarious consent 1

1. Vicarious consent

As long as minor child’s mother had a good faith and objectively reasonable basis for believing that the recording of child’s telephone conversation with defendant, the child’s father, was necessary and in the best interest of the child, the consent provision of Wiretap Act encompassed the vicarious consent doctrine such that mother could vicariously consent on behalf of child to the recording, in prosecution for first‑degree criminal sexual conduct (CSC). State v. Whitner (S.C. 2012) 399 S.C. 547, 732 S.E.2d 861, habeas corpus denied 2017 WL 2868570. Telecommunications 1440

The consent provision in the Wiretap Act encompasses vicarious consent such that guardians, who have a good faith and objectively reasonable basis for believing that it is necessary and in the best interest of the child, may consent on behalf of the child to the recording of telephone conversations. State v. Whitner (S.C. 2012) 399 S.C. 547, 732 S.E.2d 861, habeas corpus denied 2017 WL 2868570. Telecommunications 1440

The vicarious consent doctrine, under which a parent may vicariously consent on behalf of minor child to recording of electronic communication in satisfaction of consent provision of Wiretap Act, does not turn on an age‑mandated bright‑line rule, nor does it require a minor’s lack of capacity. State v. Whitner (S.C. 2012) 399 S.C. 547, 732 S.E.2d 861, habeas corpus denied 2017 WL 2868570. Telecommunications 1440

Minor child’s mother was shown to have had a good faith and objectively reasonable basis for believing that it was necessary and in child’s best interest to record child’s telephone conversation with her father, the defendant who had been accused of sexual abuse, and thus, mother could vicariously consent to recording on behalf of child, in accordance with consent provision of Wiretap Act, such that recording was admissible at trial; testimony showed that mother believed recordings would assist her in deciding the best course of action and in determining whether child needed counseling, and mother felt that recording was necessary to determine if it was in child’s best interest to have continued visitation with defendant. State v. Whitner (S.C. 2012) 399 S.C. 547, 732 S.E.2d 861, habeas corpus denied 2017 WL 2868570. Telecommunications 1440

**SECTION 17‑30‑35.** Lawful interceptions of electronic communications.

 (A) It is lawful under this chapter for a person to:

 (1) intercept or access an electronic communication made through an electronic communication system that is configured so that the electronic communication is readily accessible to the general public;

 (2) intercept any radio communication which is transmitted by:

 (a) any station for the use of the general public, or that relates to ships, aircraft, vehicles, or persons in distress;

 (b) any governmental, law enforcement, civil defense, private land mobile, or public safety communications system, including any police or fire communications system, readily accessible to the general public;

 (c) a station operating on an authorized frequency within the bands allocated to the amateur, citizens band, or general mobile radio services; or

 (d) any marine or aeronautical communications system;

 (3) engage in conduct which is:

 (a) prohibited by Section 633 of the Communications Act of 1934; or

 (b) excepted from the application of Section 705(a) of the Communications Act of 1934 and by Section 705(b) of that act;

 (4) intercept any wire or electronic communication the transmission of which is causing harmful interference to any lawfully operating station of consumer electronic equipment to the extent necessary to identify the source of the interference;

 (5) intercept, if the person is another user of the same frequency, any radio communication that is not scrambled or encrypted made through a system that utilizes frequencies monitored by individuals engaged in the provision or the use of the system;

 (6) intercept a satellite transmission that is not scrambled or encrypted and that is transmitted:

 (a) to a broadcasting station for purposes of retransmission to the general public; or

 (b) as an audio subcarrier intended for redistribution to facilities open to the public, but not including data transmissions or telephone calls, when the interception is not for the purposes of direct or indirect commercial advantage or private financial gain; or

 (7) intercept and privately view a private satellite video communication that is not scrambled or encrypted or to intercept a radio communication that is transmitted on frequencies allocated under Subpart D of Part 74 of the rules of the Federal Communications Commission that is not scrambled or encrypted, if the interception is not for an unlawful purpose or for purposes of direct or indirect commercial advantage or private commercial gain.

 (B) It is lawful under this chapter for a provider of electronic communication service to record the fact that a wire or electronic communication was initiated or completed in order to protect the provider, another provider furnishing service toward the completion of the wire or electronic communication, or a user of that service, from fraudulent, unlawful, or abusive use of such service.

HISTORY: 2002 Act No. 339, Section 14, eff July 2, 2002.

Library References

Telecommunications 1426 to 1453.

Westlaw Topic No. 372.

C.J.S. Telecommunications Sections 215 to 254.

LAW REVIEW AND JOURNAL COMMENTARIES

The surveillance society and the third‑party privacy problem. Shaun B. Spencer, 65 S.C. L. Rev. 373 (Winter 2013).

**SECTION 17‑30‑40.** Disclosure of content of communication by provider of electronic communication service.

 (A) Except as provided in subsection (B), a person or entity providing an electronic communication service to the public must not intentionally divulge the contents of any communication while in transmission on that service to any person or entity other than an addressee or intended recipient of the communication or an agent of the addressee or intended recipient.

 (B) A person or entity providing electronic communication service to the public may divulge the contents of the communication:

 (1) as otherwise authorized by this chapter;

 (2) with the lawful consent of the originator or any addressee or intended recipient of the communication;

 (3) to a person employed or authorized, or whose facilities are used to forward the communication to its destination; or

 (4) which were inadvertently obtained by the service provider and which appeared to pertain to the commission of a crime, if the divulgence is made to a law enforcement agency.

HISTORY: 2002 Act No. 339, Section 14, eff July 2, 2002.

Library References

Telecommunications 1435.

Westlaw Topic No. 372.

C.J.S. Telecommunications Sections 217 to 219, 226 to 235, 241, 244 to 249.

**SECTION 17‑30‑45.** Use of pen register or trap and trace device.

 It is lawful under this chapter to use a pen register or a trap and trace device as authorized under South Carolina law or under federal law.

HISTORY: 2002 Act No. 339, Section 14, eff July 2, 2002.

Library References

Telecommunications 1435, 1475.

Westlaw Topic No. 372.

C.J.S. Telecommunications Sections 217 to 219, 226 to 235, 239, 241, 244 to 249, 276, 291.

**SECTION 17‑30‑50.** Penalty for violating Sections 17‑30‑20 through 17‑30‑45.

 (A) Except as provided in subsection (B), whoever violates the provisions of Sections 17‑30‑20 through 17‑30‑45, upon conviction, must be imprisoned not more than five years or fined not more than five thousand dollars, or both.

 (B) If the offense is a first offense under this chapter and is not for any unlawful purpose or for purposes of direct or indirect commercial advantage or private commercial gain, and the wire or electronic communication with respect to which the offense under this chapter was committed is a radio communication that is not scrambled, encrypted, or transmitted using modulation techniques the essential parameters of which have been withheld from the public with the intention of preserving the privacy of the communication, then:

 (1) if the communication is not the radio portion of a cellular telephone communication, a cordless telephone communication that is transmitted between the cordless telephone handset and the base unit, a public land mobile radio service communication, or a paging service communication, and the conduct is not that described in Section 17‑30‑35(7), the person committing the offense is guilty of a misdemeanor and, upon conviction, must be imprisoned not more than one year or fined not more than one thousand dollars, or both;

 (2) if the communication is the radio portion of a cellular telephone communication, a cordless telephone communication that is transmitted between the cordless telephone handset and the base unit, a public land mobile radio service communication, or a paging service communication, the person committing the offense is guilty of a misdemeanor, and must, upon conviction, be fined not more than one thousand dollars for each violation.

HISTORY: 2002 Act No. 339, Section 14, eff July 2, 2002.

Library References

Telecommunications 1453.

Westlaw Topic No. 372.

C.J.S. Telecommunications Sections 236, 241, 250, 252.

**SECTION 17‑30‑55.** Mailing or manufacturing devices for unlawful interception of wire, oral, or electronic communications.

 (A) Except as otherwise specifically provided in this chapter, any person is guilty of a felony and, upon conviction, must be fined not more than five thousand dollars or imprisoned not more than five years, or both, who intentionally:

 (1) sends through the mail or otherwise sends or carries any electronic, mechanical, or other device, knowing or having reason to know that the design of the device renders it primarily useful for the purpose of the unlawful interception of wire, oral, or electronic communications as specifically defined by this chapter; or

 (2) manufactures, assembles, possesses, or sells any electronic, mechanical, or other device, knowing or having reason to know that the design of the device renders it primarily useful for the purpose of the unlawful interception of wire, oral, or electronic communications as specifically defined by this chapter.

 (B) It is lawful under this section for the persons listed in items (1) and (2) of this subsection to send through the mail, send, or carry in intrastate, interstate, or foreign commerce or manufacture, assemble, possess, or sell any electronic, mechanical, or other device, knowing or having reason to know that the design of the device renders it primarily useful for the purpose of the surreptitious interception of wire, oral, or electronic communications.

 The persons to whom this subsection applies are:

 (1) a provider of wire or electronic communication service or an officer, agent, or employee of, or a person under contract with, such a provider, in the normal course of the business of providing that wire or electronic communication service; or

 (2) an officer, agent, or employee of, or a person under contract with, bidding upon contracts with, or in the course of doing business with, the United States, a state, or a political subdivision of the State, in the normal course of the activities of the United States, a state, or a political subdivision of the State.

HISTORY: 2002 Act No. 339, Section 14, eff July 2, 2002.

Library References

Telecommunications 1453.

Westlaw Topic No. 372.

C.J.S. Telecommunications Sections 236, 241, 250, 252.

**SECTION 17‑30‑60.** Seizure and forfeiture.

 Any electronic, mechanical, or other device used, sent, carried, manufactured, assembled, possessed, or sold in violation of this chapter may be seized and forfeited to the State.

HISTORY: 2002 Act No. 339, Section 14, eff July 2, 2002.

Library References

Forfeitures 3.

Searches and Seizures 30.

Westlaw Topic Nos. 180, 349.

C.J.S. Forfeitures Sections 22 to 29.

C.J.S. Searches and Seizures Sections 62, 87 to 89.

**SECTION 17‑30‑65.** Admissibility of contents of, or evidence derived from, intercepted communications; contents as public record.

 (A) Whenever any wire, oral, or electronic communication has been intercepted, no part of the contents of the communication and no evidence derived therefrom may be received in evidence in any trial, hearing, or other proceeding in or before any court, grand jury, department, officer, agency, regulatory body, legislative committee, or other authority of the State, or a political subdivision thereof, if the disclosure of that information would be in violation of this chapter. The prohibition of use as evidence provided in this section does not apply in cases of prosecution for criminal interception in violation of the provisions of this chapter.

 (B) The contents of any wire, oral, or electronic communication intercepted pursuant to this chapter and the contents of any application for an order and an order of authorization issued pursuant to this chapter are not included in the definition of a public record contained in Section 30‑4‑20(c), and may only be disclosed in a manner provided by this chapter.

HISTORY: 2002 Act No. 339, Section 14, eff July 2, 2002.

Library References

Criminal Law 392.21.

Westlaw Topic No. 110.

**SECTION 17‑30‑70.** Orders authorizing interception; application process; agencies and individuals authorized to conduct interception.

 (A) An application for an order authorizing or approving the interception of wire, oral, or electronic communications must be initiated by the Chief of SLED. After reviewing the application, the Attorney General or his designated Assistant Attorney General may authorize the submission of the application to a judge of competent jurisdiction for, and the judge may grant in conformity with this chapter, an order authorizing or approving the interception of wire, oral, or electronic communications by:

 (1) the South Carolina Law Enforcement Division for the investigation of the offense as to which the application is made when the interception may provide or has provided evidence of the commission of the offenses of murder (Section 16‑3‑10); assault and battery with intent to kill (Section 16‑3‑620); kidnapping (Section 16‑3‑910); voluntary manslaughter (Section 16‑3‑50); armed robbery (Section 16‑11‑330(A)); attempted armed robbery (Section 16‑11‑330(B)); drug trafficking as defined in Sections 44‑53‑370(e) and 44‑53‑375(C); arson in the first degree (Section 16‑11‑110(A)); arson in the second degree (Section 16‑11‑110(B)); accessory before the fact to commit any of the above offenses (Section 16‑1‑40); or attempt to commit any of the above offenses (Section 16‑1‑80). This interception may also be authorized when it may provide or has provided evidence of any conspiracy or solicitation to commit any violation of the offenses specified in this subsection;

 (2) the South Carolina Law Enforcement Division for the investigation of the offense as to which the application is made when the interception may provide or has provided evidence of the commission of any offense related to terrorism or the commission of a terrorist act, any offense related to bombs, destructive devices, bacteriological and biological weapons, and weapons of mass destruction as provided for in Article 7, Chapter 23, Title 16 or evidence of any conspiracy or solicitation to commit any crime specifically enumerated in this subsection; or

 (3) an individual operating under a contract with the South Carolina Law Enforcement Division for the investigation of an offense listed in subsection (1) or (2). Any interception conducted under this chapter by persons authorized by this subsection must conduct the interception under the direct supervision of an agent or officer of the South Carolina Law Enforcement Division.

 (B) Any person authorized to intercept wire, oral, or electronic communications pursuant to this section must have completed training provided by SLED pursuant to Section 17‑30‑145.

HISTORY: 2002 Act No. 339, Section 14, eff July 2, 2002.

Code Commissioner’s Note

Section 16‑3‑620, referenced in subsection (A)(1) was repealed by 2010 Act No. 273, Section 5.

Editor’s Note

2010 Act No. 273, Section 7.C, provides:

“Wherever in the 1976 Code of Laws reference is made to the common law offense of assault and battery of a high and aggravated nature, it means assault and battery with intent to kill, as contained in repealed Section 16‑3‑620, and, except for references in Section 16‑1‑60 and Section 17‑25‑45, wherever in the 1976 Code reference is made to assault and battery with intent to kill, it means attempted murder as defined in Section 16‑3‑29.”

Library References

Telecommunications 1460 to 1479.

Westlaw Topic No. 372.

C.J.S. Telecommunications Sections 234, 239, 243, 255 to 291.

**SECTION 17‑30‑75.** Disclosure of content of intercepted communication.

 (A) Any SLED agent who, by any means authorized by this chapter, has obtained knowledge of the contents of any wire, oral, or electronic communication or evidence derived from it may disclose the contents to an attorney authorized by law to investigate and institute any action on behalf of the State of South Carolina or political subdivision of the State, or to another SLED agent, investigative, or law enforcement officer to the extent that the disclosure is appropriate to the proper performance of the official duties of the officer or person making or receiving the disclosure.

 (B) Any SLED agent, investigative, or law enforcement officer who, by any means authorized by this chapter, has obtained knowledge of the contents of any wire, oral, or electronic communication or evidence derived from it may use the contents to the extent the use is appropriate to the proper performance of his official duties.

 (C) Any person who has received, by any means authorized by this chapter, or by the laws of any other state or the United States, any information concerning a wire, oral, or electronic communication or evidence derived from it, intercepted in accordance with the provisions of this chapter, may disclose the contents of that communication or the derivative evidence while giving testimony under oath or affirmation in any criminal proceeding in any court of the State or of the United States or in any grand jury proceedings.

 (D) No otherwise privileged wire, oral, or electronic communication intercepted in accordance with or in violation of the provisions of this chapter loses its privileged character.

 (E) When a SLED agent, while engaged in intercepting wire, oral, or electronic communications in the manner authorized by this chapter, intercepts wire, oral, or electronic communications relating to offenses other than those specified in the order of authorization or approval, the contents thereof and evidence derived from it may be disclosed or used as provided in subsections (A) and (B). The contents and any evidence derived from it may be used under subsection (C) when authorized or approved by a judge of competent jurisdiction when the judge finds on subsequent application that the contents were otherwise intercepted in accordance with the provisions of this chapter. The application must be made as soon as practicable.

HISTORY: 2002 Act No. 339, Section 14, eff July 2, 2002.

**SECTION 17‑30‑80.** Application for interception order; contents; establishing allegations of fact; additional evidence; basis for entry of order.

 (A) Each application for an order authorizing or approving the interception of a wire, oral, or electronic communication under this chapter must be made in writing upon oath or affirmation to a judge of competent jurisdiction and must state the applicant’s authority to make the application. Each application must include the following information:

 (1) the identity of the SLED agent making the application and the person authorizing 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, is being, or is about to be committed;

 (b) except as otherwise provided, a particular description of the nature and location of the facilities from which or the place where the communications are to be intercepted;

 (c) a particular description of the type of communications sought to be intercepted;

 (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 that the communications sought to be intercepted are not otherwise legally privileged;

 (5) a statement of the period of time for which the interception is required to be maintained and, 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 first obtained, a particular description of facts establishing probable cause to believe that additional communications of the same type will occur thereafter;

 (6) a full and complete statement of the facts concerning all previous applications known to the individual authorizing and making the application, made to a judge 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 the judge on each of the applications; and

 (7) when 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 the results.

 (B) Allegations of fact in the application may be based either upon the personal knowledge of the applicant or upon information and belief. If the applicant personally knows the facts alleged, this knowledge must be stated in the application. If the facts stated in the application are derived in whole or in part from the statements of persons other than the applicant, the sources of these facts must be either disclosed or described, and the application must contain the facts establishing the existence and reliability of the informants or the reliability of the information supplied by them. The application must also state, so far as possible, the basis of the informant’s knowledge or belief. Affidavits of persons other than the applicant may be submitted in conjunction with the application if they tend to support any fact or conclusion alleged in the application. An accompanying affidavit may be based either on the personal knowledge of the affiant, or information and belief with the source of the information and the reason for belief specified.

 (C) The judge may require the applicant to furnish additional testimony or documentary evidence in support of the application. Any hearing ordered by the judge regarding the application must be tape recorded.

 (D) Upon application, the judge may enter an ex parte order, as requested or as modified, authorizing or approving interception of wire, oral, or electronic communications within the territorial jurisdiction of the court in which the judge is sitting, and outside the jurisdiction but within the State of South Carolina in the case of a mobile interception device authorized by the judge within the jurisdiction, if the judge 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 as provided in Section 17‑30‑70;

 (2) there is probable cause for belief that particular communications concerning that offense will be obtained through the 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 otherwise provided, 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 the offense, or are leased to, listed in the name of, or commonly used by that person.

HISTORY: 2002 Act No. 339, Section 14, eff July 2, 2002.

Library References

Telecommunications 1464.

Westlaw Topic No. 372.

C.J.S. Telecommunications Sections 259 to 268.

NOTES OF DECISIONS

In general 1

Jurisdiction 2

1. In general

Interception orders were within territorial jurisdiction of issuing judge, within scope of Homeland Security Act, where orders were directed at phones located in South Carolina, and directed law enforcement officers to listen to intercepted communications in real time at specified secure listening post in South Carolina. State v. Guerrero‑Flores (S.C.App. 2013) 402 S.C. 530, 741 S.E.2d 577. Telecommunications 1463

For purposes of the entry of an interception order under the Homeland Security Act, the interception of a phone call can occur in two locations, namely, the place where the tapped phone is located and the place where law enforcement officers first overhear the phone call. State v. Guerrero‑Flores (S.C.App. 2013) 402 S.C. 530, 741 S.E.2d 577. Telecommunications 1463

Judge has the power to order the interception within South Carolina of a communication pursuant to the state Homeland Security Act on the basis of either the phone being located in South Carolina or law enforcement officers listening to the call in South Carolina. State v. Guerrero‑Flores (S.C.App. 2013) 402 S.C. 530, 741 S.E.2d 577. Telecommunications 1463

Involvement of persons not employed by or under contract to South Carolina Law Enforcement Division (SLED) in acquisition of cell phone calls pursuant to interception order did not violate Homeland Security Act, where SLED officers listened to intercepted calls in real time. State v. Guerrero‑Flores (S.C.App. 2013) 402 S.C. 530, 741 S.E.2d 577. Telecommunications 1472

2. Jurisdiction

Delay of two to three seconds in routing intercepted cell phone calls to officer in South Carolina from Georgia facility at which they were intercepted did not require finding that calls were not “first overhea[rd]” in South Carolina for jurisdictional purposes, and that intercept order thus violated Homeland Security Act, where aural acquisition of calls occurred simultaneously in South Carolina and Georgia; federal telecommunication specialist testified that delay was necessary consequence of distance, that technological limitations made delay unavoidable, and that officers in both stated heard intercepted communications simultaneously. State v. Guerrero‑Flores (S.C.App. 2013) 402 S.C. 530, 741 S.E.2d 577. Telecommunications 1463

Provision of interception order issued pursuant to Homeland Security Act stating that interception would be conducted at secure regional facility in Georgia did not exceed jurisdiction of issuing court, where order also provided that intercepted communications would be routed to secure listening post in South Carolina which was networked with Georgia facility, and federal telecommunication specialist testified that it was not practically possible for law enforcement agency to intercept phone calls in South Carolina without using regional intercept system facility in Georgia. State v. Guerrero‑Flores (S.C.App. 2013) 402 S.C. 530, 741 S.E.2d 577. Telecommunications 1463

Evidence was sufficient to support jurisdictional finding under Homeland Security Act that cell phones at which interception order was directed were located within South Carolina; all but two phones had South Carolina area codes, one phone had default California area code assigned to telephones for which a subscriber provides no number at time of activation, user of such phone had current South Carolina address, other evidence established that second phone with California area code was being used by same person, and applications and supporting affidavits provided details to support fact that phones were being used in South Carolina as integral part of heroin trafficking occurring in state. State v. Guerrero‑Flores (S.C.App. 2013) 402 S.C. 530, 741 S.E.2d 577. Telecommunications 1463

**SECTION 17‑30‑85.** Information to be specified in order.

 Each order authorizing or approving the interception of any wire, oral, or electronic communication must specify:

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

 (2) the nature and location of the communications facilities as to which, or the place where, authority to intercept is granted;

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

 (4) the identity of the agency authorized to intercept the communications and of the person authorizing the application; and

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

 An order authorizing the interception of a wire, oral, or electronic communication, upon the request of the applicant, must direct that a provider of wire or electronic communication service, landlord, custodian, or other person must furnish the applicant at once all information, facilities, and technical assistance necessary to accomplish the interception unobtrusively and with a minimum of interference with the services that the service provider, landlord, custodian, or person is according the person whose communications are to be intercepted. The obligation of a provider of wire, oral, or electronic communication service under such an order may include, but is not limited to, conducting an in‑progress trace during an interception, or providing other assistance to support the investigation as may be specified in the order.

HISTORY: 2002 Act No. 339, Section 14, eff July 2, 2002.

Library References

Telecommunications 1470.

Westlaw Topic No. 372.

C.J.S. Telecommunications Sections 269 to 270.

**SECTION 17‑30‑90.** Duration and termination of interception; reports to authorizing judge.

 (A) No order entered may authorize or approve the interception of any wire, oral, or electronic communication for any period longer than is necessary to achieve the objective of the authorization or in any event longer than thirty days. The thirty‑day period begins on the day on which the South Carolina Law Enforcement Division first begins to conduct an interception under the order or ten days after the order is entered, whichever occurs earlier. Extensions of an order may be granted but only upon application for an extension made in accordance with Section 17‑30‑80(A) and upon the court making the findings required by Section 17‑30‑80(C). The period of extension must be no longer than the authorizing judge determines necessary to achieve the purposes for which the extension was granted and in no event for longer than thirty days. Every order and extension of the order must contain a provision that the authorization to intercept must be executed as soon as practicable, must be conducted in such a way as to minimize the interception of communications not otherwise subject to interception under this chapter, and must terminate upon attainment of the authorized objective or in any event in thirty days. If the intercepted communication is in 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 chapter may be conducted by an agent of the South Carolina Law Enforcement Division or by an individual operating under a contract with and under the direct supervision of an agent of the South Carolina Law Enforcement Division.

 (B) When an order authorizing interception is entered pursuant to this chapter, the order must require reports to be made to the judge who issued the order showing what progress has been made toward achievement of the authorized objective and the need for continued interception. The reports must be made at such intervals as the judge may require.

 (C) Upon termination of the authorization in the warrant, all interception must cease and as soon as practicable after termination any device installed to accomplish interception must be removed or must be permanently deactivated by any means approved by the issuing judge.

HISTORY: 2002 Act No. 339, Section 14, eff July 2, 2002.

Library References

Telecommunications 1434, 1435.

Westlaw Topic No. 372.

C.J.S. Telecommunications Sections 215, 217 to 220, 222 to 223, 225 to 235, 241, 243 to 249.

**SECTION 17‑30‑95.** Interception prior to obtaining order; oral notification of judge in emergency.

 (A) Notwithstanding any other provision of this chapter, any agent of the South Carolina Law Enforcement Division specifically designated by the Attorney General or his designated Assistant Attorney General may intercept the wire, oral, or electronic communication if an application for an order approving the interception is made within forty‑eight hours after the interception begins to occur, and the agent determines that more likely than not:

 (1) an emergency exists that involves an offense provided for in Section 17‑30‑70 and an immediate danger of death or serious physical injury to any person or the danger of escape of a prisoner and requires that a wire, oral, or electronic communication be intercepted before an order authorizing the interception can, with due diligence, be obtained; and

 (2) there are grounds upon which an order could be entered under this chapter to authorize the interception.

 (B) In the absence of an order, the interception must immediately terminate when the communication sought is obtained or when the application for the order is denied, whichever is earlier. If the application for approval is denied, or in any other case in which the interception is terminated without an order having been issued, the contents of any wire, oral, or electronic communication intercepted must be treated as having been obtained in violation of Section 17‑30‑20, and an inventory must be served as provided for in Section 17‑30‑100(E) on the person named in the application.

 (C) Agents of the South Carolina Law Enforcement Division designated to intercept wire, oral, or electronic communications pursuant to this section must have completed training provided by SLED pursuant to Section 17‑30‑145.

 (D) A judge of competent jurisdiction must be notified orally of the intent to begin the interception of any wire, oral, or electronic communication when an emergency exists pursuant to the provisions of this section before any interception is conducted. The judge must make a written record of this notification.

HISTORY: 2002 Act No. 339, Section 14, eff July 2, 2002.

Library References

Telecommunications 1462.

Westlaw Topic No. 372.

C.J.S. Telecommunications Sections 239, 243, 258.

RESEARCH REFERENCES

ALR Library

25 ALR 7th 6 , Facial and As‑Applied Validity of State Wiretapping Acts in Criminal Proceedings.

NOTES OF DECISIONS

In general 1

1. In general

Standoff over road construction project across property owned by defendant’s family, in which family members had threatened violence and claimed they would fight to the death if anyone tried to do any construction work on their property, was an “emergency” under wiretap statute so as to allow commencement of a wiretap on family’s phone upon oral notification of a judge. State v. Bixby (S.C. 2010) 388 S.C. 528, 698 S.E.2d 572, rehearing denied, certiorari denied, certiorari denied 131 S.Ct. 2154, 563 U.S. 963, 179 L.Ed.2d 940, habeas corpus dismissed 2014 WL 6969829. Telecommunications 1462

**SECTION 17‑30‑100.** Recording, sealing, custody, and destruction of intercepted communications; notification of and inspection by parties to interception.

 (A) The contents of any wire, oral, or electronic communication intercepted by any means authorized by this chapter, if possible, must be recorded on tape or wire or other comparable device. The recording of the contents of any wire, oral, or electronic communication under this subsection must be kept in such a way as will protect the recording from editing or other alterations. Immediately upon the expiration of the period of the order, or extensions of the order, the recordings must be made available to the judge issuing the order and sealed under his directions. Custody of the recordings must be wherever the judge orders. They must not be destroyed except upon an order of the issuing or denying judge, or that judge’s successor in office, and in any event must be kept for ten years. Duplicate recordings may be made for use or disclosure as permitted by this chapter.

 (B) The presence of the seal provided for by this section, or a satisfactory explanation for the absence thereof, must be a prerequisite for the use or disclosure of the contents of any wire, oral, or electronic communication or evidence derived therefrom as required by federal law.

 (C) Applications made and orders granted under this chapter must be sealed by the judge. Custody of the applications and orders must be wherever the judge directs. As required by federal law, the applications and orders must be disclosed only upon a showing of good cause before a judge of competent jurisdiction and must not be destroyed except on order of the issuing or denying judge, or that judge’s successor in office, and in any event must be kept for ten years.

 (D) A violation of the provisions of this section may be punished as contempt of the issuing or denying judge.

 (E) Within a reasonable time but not later than ninety days after the termination of the period of an order or extensions of the order, the issuing or denying judge must cause to be served on the persons named in the order or the application, and those other parties to intercepted communications as the judge may determine in his discretion to be in the interest of justice, an inventory which must include notice of the:

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

 (2) date of the entry and the period of authorized, approved, or disapproved interception, or the denial of the application; and

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

 The judge, upon the filing of a motion, must make available to the person or the person’s counsel for inspection the portions of the intercepted communications, applications, testimony, recordings, and orders that would otherwise be discoverable under the South Carolina Rules of Evidence, unless otherwise provided by federal law or Rules of Court. On an ex parte showing of good cause to a judge of competent jurisdiction, the serving of the inventory required by this paragraph may be postponed.

HISTORY: 2002 Act No. 339, Section 14, eff July 2, 2002.

Library References

Telecommunications 1435, 1460 to 1474.

Westlaw Topic No. 372.

C.J.S. Telecommunications Sections 217 to 219, 226 to 235, 239, 241, 243 to 249, 255 to 275.

**SECTION 17‑30‑105.** Providing copies of intercepted communications to parties as prerequisite to receiving evidence; prejudice as factor in motions to waive time for providing copies and for continuance.

 As required by federal law, the contents of any intercepted wire, oral, or electronic communication or evidence derived therefrom must not be received in evidence or otherwise disclosed in any trial, hearing, or other proceeding unless each party, not less than ten days before the hearing or proceeding and not less than thirty days prior to trial, has been furnished with a copy of the court order and accompanying application under which the interception was authorized or approved. These time periods may be waived by the judge if the judge finds that it was not possible to furnish the party with the above information within the specified time periods before the trial, hearing, or proceeding and that the party will not be prejudiced by the delay in receiving the information. In determining prejudice, the judge must specifically consider the complexity of the case, the duration of the recordings, and the party’s need to retain experts to review the material and must also take these factors into consideration when deciding a motion for continuance made by a party furnished with these materials after the time periods set out above. Upon filing of a motion by an aggrieved person, the judge must make available to the aggrieved person or his counsel for inspection the portions of the intercepted communication or evidence derived therefrom that would be otherwise discoverable under South Carolina law.

HISTORY: 2002 Act No. 339, Section 14, eff July 2, 2002.

Library References

Criminal Law 392.43.

Westlaw Topic No. 110.

**SECTION 17‑30‑110.** Pretrial motion to suppress; grounds; appeals by State; exclusive remedy.

 (A) Prior to any trial, hearing, or proceeding in or before any court, department, officer, agency, regulatory body, or other authority, any aggrieved person may move to suppress the contents of any intercepted wire, oral, or electronic communication, or evidence derived therefrom, on the grounds that the:

 (1) communication was unlawfully intercepted;

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

 (3) interception was not made in conformity with the order of authorization or approval.

 The motion must be made before the trial, hearing, or proceeding unless there was no opportunity to make the motion or the person was not aware of the grounds of the motion. The motion must be made before the reviewing authority and must be decided on an expedited basis. Upon receiving the motion, the reviewing authority must notify the issuing judge who must transfer copies of the contents of all recordings, applications, orders, and other documents relating to the issuance of the order of authorization. Disclosure of the contents of these materials must only be to the extent necessary to effectively render a decision or to the extent authorized by this chapter. The issuing judge also must designate the portions of these materials that were made available to the aggrieved person. After reviewing the materials, the reviewing authority must first determine whether all materials otherwise discoverable under South Carolina law were made available to the aggrieved person. If a majority of the members of the reviewing authority determines that not all of the necessary materials were made available, the reviewing authority may order that those additional portions be made available and allow the aggrieved person appropriate time to review the materials. The aggrieved person may then amend his motion to include any additional grounds derived from the additional materials. If a majority of the members of the reviewing authority determine that all necessary materials were made available, the reviewing authority must decide whether the order of authorization was issued and the communications were intercepted in conformity with the requirements of this chapter. If the reviewing authority does not unanimously determine that the order of authorization was issued and the communications were intercepted in conformity with the requirements of this chapter, the contents of the intercepted wire or oral communication or evidence derived therefrom must be treated as having been obtained in violation of this chapter. Unless otherwise provided by federal law or Rules of Court, all South Carolina Rules of Evidence apply. The reviewing authority may, in its discretion, conduct a hearing and require additional testimony or documentary evidence. All proceedings requiring the use of the contents of any intercepted communication that are the subject of the motion to suppress pursuant to this section are automatically stayed pending the determination of the motion to suppress.

 (B) The State has the right to appeal an order granting a motion to suppress made under subsection (A). The judges of the South Carolina Court of Appeals en banc have initial appellate jurisdiction over the appeal. All other appellate procedures remain in force and effect.

 (C) The State has the right to appeal the denial of the application of an order of authorization or approval. The appeal must be directed to the reviewing authority and must be conducted in a manner consistent with subsection (A). In addition to the requirements of subsection (A), the reviewing authority must unanimously determine that the issuing judge abused his discretion in denying an application for an order of approval before the decision of the issuing judge may be overturned. Upon a determination of an abuse of discretion, the reviewing authority must order that the application of authorization or approval be granted and an order of authorization or approval be issued. The State has no further right to appeal the decision of the reviewing authority. For purposes of the aggrieved person, an order granted pursuant to this subsection is considered interlocutory. The appeal must be taken within thirty days after the date the order was entered and must be diligently prosecuted.

 (D) The remedies and sanctions described in this chapter with respect to the interception of electronic communications are the only judicial remedies and sanctions for violations of those sections involving the communications.

HISTORY: 2002 Act No. 339, Section 14, eff July 2, 2002.

Library References

Criminal Law 392.46, 1023(3).

Westlaw Topic No. 110.

C.J.S. Criminal Law Sections 2337 to 2339.

RESEARCH REFERENCES

ALR Library

25 ALR 7th 6 , Facial and As‑Applied Validity of State Wiretapping Acts in Criminal Proceedings.

**SECTION 17‑30‑115.** Interception of communications; requirements relating to specifications of facilities; exceptions.

 The requirements 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 the:

 (a) application is initiated by the Chief of the South Carolina Law Enforcement Division (SLED) and is approved by the Attorney General or his designated Assistant Attorney General;

 (b) 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) judge finds that the specification is not practical; and

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

 (a) application is initiated by the Chief of SLED and is approved by the Attorney General or his designated Assistant Attorney General;

 (b) 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) judge finds that such showing has been adequately made; and

 (d) 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.

HISTORY: 2002 Act No. 339, Section 14, eff July 2, 2002.

Library References

Telecommunications 1464 to 1478.

Westlaw Topic No. 372.

C.J.S. Telecommunications Sections 234, 239, 259 to 285, 291.

**SECTION 17‑30‑120.** Determination of facility as prerequisite to interception when facility not specified in order; petition by provider to modify or quash.

 If an interception of a communication is to be carried out pursuant to Section 17‑30‑115, the interception may not begin until the facilities from which, or 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 under Section 17‑30‑115 may petition the court to modify or quash the order on the ground that the interception cannot be performed in a timely or reasonable fashion. The court, upon notice to the State, must decide such a petition expeditiously.

HISTORY: 2002 Act No. 339, Section 14, eff July 2, 2002.

Library References

Telecommunications 1464 to 1478.

Westlaw Topic No. 372.

C.J.S. Telecommunications Sections 234, 239, 259 to 285, 291.

**SECTION 17‑30‑125.** On‑scene orders to cut or divert telephone lines; grounds; administrative subpoena for production of certain subscriber or customer information; regulations; good faith reliance as defense.

 (A) For purposes of this section:

 (1) “Attorney General” means the Attorney General of the State of South Carolina or the Attorney General’s designee who is employed by the Attorney General and is an officer of the court.

 (2) “SLED” means the South Carolina Law Enforcement Division.

 (B) The supervising agent of SLED or the supervising law enforcement officer of a political subdivision of this State at the scene of an incident where there is reasonable cause to believe that:

 (1) the incident involves immediate danger of death or serious bodily injury to a person or the danger of a prisoner’s escape;

 (2) a person is holding one or more hostages;

 (3) the probability exists that a subject about to be arrested will resist with the use of weapons;

 (4) a person has barricaded himself, is armed, and is threatening to commit suicide; or

 (5) a threat has been made against a critical infrastructure in South Carolina as defined by federal law, pursuant to 42 U.S.C. 5195c(e); may order law enforcement or telephone company personnel to cut, reroute, or divert telephone lines solely for the purpose of preventing telephone communications between the suspect and any person other than a law enforcement officer or the law enforcement officer’s designee, if the cutting, rerouting, or diverting of telephone lines is technically feasible and can be performed without endangering the lives of telephone company or other utility personnel.

 (C) An officer of the court who is employed by SLED may issue an administrative subpoena to a telephone company, Internet service provider, or communications entity for the production of subscriber or customer information as described in subsection (F), not including the contents of any communications, if:

 (1) SLED has reasonable cause to believe that the information is material to an active emergency incident involving at least one of the following situations:

 (a) a threat of death or serious bodily injury to a person;

 (b) the danger of a prisoner’s escape;

 (c) a person who is holding one or more hostages;

 (d) the probability exists that a person about to be arrested will resist arrest with the use of weapons;

 (e) a person who has barricaded himself, is armed, and is threatening to commit suicide; or

 (f) a threat against a critical infrastructure in South Carolina as defined by federal law, pursuant to 42 U.S.C. Section 5195c(e); and

 (2) SLED is not otherwise able to obtain a warrant or subpoena for the information from a court due to:

 (a) the court not being able to issue a warrant or subpoena in a timely fashion and the immediate need to obtain the information; or

 (b) SLED having reasonable cause to believe that obtaining a warrant or subpoena from the court could result in perpetuating an emergency incident that the warrant or subpoena is intended to prevent.

 (D)(1) An administrative subpoena must be made in writing upon oath or affirmation of the officer of the court who is employed by SLED. The officer must sign the administrative subpoena affirming that SLED has reasonable cause to believe that the information is material to an active emergency incident involving at least one of the situations listed in subsection (C)(1), and that SLED is not otherwise able to obtain a warrant or subpoena for the information from a court due to one of the reasons listed in subsection (C)(2).

 (2) The officer must submit the administrative subpoena to the Attorney General for review prior to issuing the administrative subpoena to a telephone company, Internet service provider, or communications entity. The officer must not issue the administrative subpoena without authorization by the Attorney General, pursuant to subsection (E). The officer may submit the administrative subpoena with signature to the Attorney General in person, by mail, by facsimile, or by other electronic means. If the officer, after a good faith effort, is not able to submit the administrative subpoena with signature to the Attorney General in person, by mail, by facsimile, or by other electronic means, the officer may orally or electronically explain and affirm the administrative subpoena to the Attorney General.

 (E)(1) The Attorney General must authorize an officer of the court who is employed by SLED to issue an administrative subpoena to a telephone company, Internet service provider, or communications entity, if, after review, the Attorney General determines that SLED has reasonable cause to believe that the information is material to an active emergency incident involving at least one of the situations listed in subsection (C)(1), and that SLED is not otherwise able to obtain a warrant or subpoena for the information from a court due to one of the reasons listed in subsection (C)(2).

 (2) If the Attorney General authorizes the officer of the court who is employed by SLED to issue the administrative subpoena, the Attorney General must sign and return the administrative subpoena to SLED. The Attorney General may return the administrative subpoena with signature to SLED in person, by mail, by facsimile, or by other electronic means.

 (3) If the Attorney General, after a good faith effort, is not able to return the administrative subpoena with signature to SLED in person, by mail, by facsimile, or by other electronic means, or the officer of the court employed by SLED was not able to submit the administrative subpoena with signature to the Attorney General and had to orally or electronically explain and affirm the administrative subpoena, the Attorney General may orally or electronically confirm authorization of the administrative subpoena. The Attorney General must return the administrative subpoena with signature to SLED within forty‑eight hours after the Attorney General authorizes the administrative subpoena, or by the next business day if the time period falls on a weekend or holiday, whichever is later.

 (4) The good faith reliance by the Attorney General as to the information affirmed by SLED to obtain an administrative subpoena constitutes a complete defense to any civil, criminal, or administrative action arising out of the administrative subpoena. The Attorney General is not responsible for any costs related to the defense of any civil, criminal, or administrative action arising out of the administrative subpoena.

 (F)(1) Upon receipt of an administrative subpoena from SLED, a telephone company, Internet service provider, or communications entity shall disclose, as applicable, the subscriber’s or customer’s:

 (a) name;

 (b) address;

 (c) local and long distance telephone connection or electronic communication records, or records of session times and durations;

 (d) length of service, including the start date, and types of service utilized;

 (e) telephone or instrument number or other customer or subscriber number of identity, including any temporarily assigned network addresses; and

 (f) means and source of payment for such service, including any credit card or bank account numbers.

 (2) If a telephone company, Internet service provider, or communications entity fails to obey an administrative subpoena without lawful excuse, SLED may apply to a circuit court having jurisdiction for an order compelling compliance. The telephone company, Internet service provider, or communications entity may object to the administrative subpoena on the grounds that the administrative subpoena fails to comply with this section, or upon any constitutional or other legal right or privilege. The court may issue an order modifying or setting aside the administrative subpoena or directing compliance with the original administrative subpoena.

 (G) Information obtained by SLED pursuant to an administrative subpoena must not be made public and is not subject to the Freedom of Information Act.

 (H)(1) SLED is authorized to promulgate permanent regulations, pursuant to the Administrative Procedures Act in Chapter 23, Title 1, to define the procedures and guidelines needed to issue an administrative subpoena as provided in this section.

 (2) Pursuant to Section 1‑23‑130, SLED is authorized to promulgate emergency regulations to define the procedures and guidelines needed to issue an administrative subpoena as provided in this section until such time as permanent regulations are promulgated. The provisions of Section 1‑23‑130(A), (B), (D), and (E) are applicable to emergency regulations promulgated pursuant to this item. The provisions of Section 1‑23‑130(C) are not applicable to emergency regulations promulgated pursuant to this item. An emergency regulation promulgated pursuant to this item becomes effective upon issuance and continues for one year unless terminated sooner by SLED or concurrent resolution of the General Assembly.

 (I) An administrative subpoena must comply with the provisions of federal law 18 U.S.C. Section 2703(c)(2).

 (J) The good faith reliance by a telephone company on an oral or written order to cut, reroute, divert, or intercept telephone lines given by a supervising law enforcement officer pursuant to subsection (B), or the good faith reliance by a telephone company, Internet service provider, or communications entity to provide information to SLED pursuant to an administrative subpoena, constitutes a complete defense to any civil, criminal, or administrative action arising out of the order or administrative subpoena.

HISTORY: 2002 Act No. 339, Section 14, eff July 2, 2002; 2010 Act No. 270, Section 1, eff June 24, 2010.

Library References

Telecommunications 1437, 1460 to 1478.

Westlaw Topic No. 372.

C.J.S. Telecommunications Sections 234, 239, 243, 246, 255 to 285, 291.

**SECTION 17‑30‑130.** Reporting intercepted communications.

 Any intercepted wire, oral, or electronic communication must be reported to the Administrative Office of the United States Courts as outlined in 18 U.S.C. Section 2519.

HISTORY: 2002 Act No. 339, Section 14, eff July 2, 2002.

Library References

Telecommunications 1476.

Westlaw Topic No. 372.

C.J.S. Telecommunications Sections 277 to 279.

**SECTION 17‑30‑135.** Civil action for wrongful interceptions.

 (A) Any person whose wire, oral, or electronic communication is intercepted, disclosed, or used in violation of this chapter has a civil cause of action against any person or entity who intercepts, discloses, or uses, or procures any other person or entity to intercept, disclose, or use the communications and is entitled to recover from the person or entity which engaged in that violation relief as may be appropriate, including:

 (1) preliminary or equitable or declaratory relief as may be appropriate;

 (2) actual damages, but not less than liquidated damages computed at the rate of five hundred dollars a day for each day of violation or twenty‑five thousand dollars, whichever is greater, not to exceed the limits on liability provided in subsection (F)(3);

 (3) punitive damages, except as may be prohibited in subsection (F)(4); and

 (4) a reasonable attorney’s fee and other litigation costs reasonably incurred.

 (B) A good faith reliance on a court order, subpoena, or a request of an agent of the South Carolina Law Enforcement Division under Section 17‑30‑95 constitutes a complete defense to any civil, criminal, or administrative action, other than an action for preliminary or equitable or declaratory relief.

 (C) A civil action under this section may not be commenced later than five years after the date upon which the claimant first has a reasonable opportunity to discover the violation, except as provided in subsection (F)(2).

 (D) Any person whose wire, oral, or electronic communication is intercepted, disclosed, or used in violation of this chapter is entitled to a jury trial.

 (E) An investigative or law enforcement officer or governmental entity who wilfully discloses or wilfully uses information beyond the extent permitted by law is in violation of this chapter and subject to a civil cause of action and criminal penalties as provided in this chapter.

 (F)(1) Any civil cause of action for damages authorized in subsection (A) and brought against the State, an agency, a political subdivision, or a governmental entity and its employee acting within the scope of his official duty must be brought pursuant to the South Carolina Tort Claims Act, Chapter 78, Title 15. For purposes of the Tort Claims Act, an action authorized in subsection (A) and brought against the State, an agency, a political subdivision, or a governmental entity and its employee acting within the scope of his official duty is a tort within the meaning of the Act.

 (2) In any action authorized in subsection (A) and brought against the State, an agency, a political subdivision, or a governmental entity and its employee acting within the scope of his official duty, the provisions in the Tort Claims Act regarding the statute of limitations provided in Section 15‑78‑110 shall apply in lieu of subsection (C) of this section.

 (3) In any action authorized in subsection (A) and brought against the State, an agency, a political subdivision, or a governmental entity and its employee acting within the scope of his official duty, the provisions in the Tort Claims Act regarding the limits on liability for damages as provided in Section 15‑78‑120(a) shall apply to all awards of damages under item (2) of subsection (A) of this section.

 (4) In any action authorized in subsection (A) and brought against the State, an agency, a political subdivision, or a governmental entity and its employee acting within the scope of his official duty, the provisions in the Tort Claims Act prohibiting the award of punitive damages as provided in Section 15‑78‑120(B) shall apply in lieu of item (3) of subsection (A) of this section.

 (5) For purposes of this subsection, the terms “State”, “agency”, “political subdivision”, “governmental entity”, “employee”, and “scope of his official duty” have the same meanings as provided in the Tort Claims Act.

HISTORY: 2002 Act No. 339, Section 14, eff July 2, 2002.

Library References

Telecommunications 1441.

Westlaw Topic No. 372.

C.J.S. Telecommunications Sections 221, 253.

**SECTION 17‑30‑140.** Mobile tracking devices; contents of application for order authorizing use; standards for installation and monitoring; definition.

 (A) The Attorney General or any solicitor may make application to a judge of competent jurisdiction for an order authorizing or approving the installation and use of a mobile tracking device by the South Carolina Law Enforcement Division or any law enforcement entity of a political subdivision of this State.

 (B) An application under subsection (A) of this section must include:

 (1) a statement of the identity of the applicant;

 (2) a certification by the applicant that probable cause exists to believe that the information likely to be obtained is relevant to an ongoing criminal investigation being conducted by the South Carolina Law Enforcement Division or any law enforcement entity of a political subdivision of this State which may provide evidence relating to any offense or any evidence of any conspiracy or solicitation to commit any violation of the laws of this State;

 (3) a statement of the offense to which the information likely to be obtained relates; and

 (4) a statement whether it may be necessary to use and monitor the mobile tracking device outside the jurisdiction of the court from which the authorization is being sought.

 (C) Upon application made as provided under subsection (B), the court, upon a finding that the certification and statements required by subsection (B) have been made in the application and probable cause exists, must enter an ex parte order authorizing the installation and use of a mobile tracking device. The order may authorize the use of the device within the jurisdiction of the court and outside that jurisdiction but within the State of South Carolina if the device is installed within the jurisdiction of the court.

 (D) A court may require greater specificity or additional information beyond that which is required by this section as a requisite for issuing an order.

 (E) The standards established by the United States Supreme Court for the installation and monitoring of mobile tracking devices apply to the installation and use of any device as authorized by this section.

 (F) As used in this section, a “tracking device” means an electronic or mechanical device which permits the tracking of the movement of a person or object.

HISTORY: 2002 Act No. 339, Section 14, eff July 2, 2002.

Library References

Telecommunications 1485 to 1487.

Westlaw Topic No. 372.

C.J.S. Telecommunications Sections 292 to 293.

RESEARCH REFERENCES

Encyclopedias

82 Am. Jur. Trials 1, Defending Against Claim of Ineffective Assistance of Counsel.

LAW REVIEW AND JOURNAL COMMENTARIES

Where have you been? Your phone knows (and so might the police). W. Jacob Henerey, 65 S.C. L. Rev. 709 (Summer 2014).

Attorney General’s Opinions

The procedures set forth in Section 17‑30‑140 meet the constitutional requirements for issuance of a court order upon probable cause. The application and order under this provision must be sealed or, in the alternative, the applicant should move before the judge to seal the application and order so as to protect and safeguard the integrity of the underlying criminal investigation. The applicant is advised to notify the issuing judge, in writing, within 10 days after the mobile tracking device has been activated and placed on or within the vehicle or item. S.C. Op Atty Gen (April 5, 2012) 2012 WL 1260180.

Notes of Decisions

Ineffective assistance of counsel 1

1. Ineffective assistance of counsel

Even if counsel rendered deficient performance in failing to advise defendant regarding statute requiring court authorization for installation of tracking device on defendant’s vehicle, defendant failed to show that such failure resulted in prejudice in prosecution in which defendant pled guilty to kidnapping, armed robbery, assault and battery, and criminal conspiracy, and thus defendant failed to show that counsel rendered ineffective assistance, where no clear authority at time of prosecution concluded that placement of tracking device on vehicle without court authorization was Fourth Amendment violation, so that it was unclear whether defendant would have prevailed at suppression hearing, and, even if he prevailed, other evidence of defendant’s guilt was overwhelming. Frierson v. State (S.C.App. 2016) 417 S.C. 287, 789 S.E.2d 762, rehearing denied. Criminal Law 1519(8)

**SECTION 17‑30‑145.** Surveillance training requirements.

 Any SLED agent or an individual operating under a contract with the South Carolina Law Enforcement Division authorized under the provisions of this chapter to intercept wire, oral, or electronic communications must undergo training by SLED in conducting such surveillance with emphasis on techniques for minimizing the interception of communications that fall outside of the communications subject to interception pursuant to the provisions of this chapter.

HISTORY: 2002 Act No. 339, Section 14, eff July 2, 2002.

Library References

Telecommunications 1485 to 1487.

Westlaw Topic No. 372.

C.J.S. Telecommunications Sections 292 to 293.