

Editorial Notes

REFERENCES IN TEXT

The National Security Act of 1947, referred to in par. (6), is act July 26, 1947, ch. 343, 61 Stat. 495, which was formerly classified principally to chapter 15 (§401 et seq.) of Title 50, War and National Defense, prior to editorial reclassification in chapter 44 (§3001 et seq.) of Title 50. Section 3 of the Act is now classified to section 3003 of Title 50. For complete classification of this Act to the Code, see Tables.

AMENDMENTS

2002—Pars. (7), (8). Pub. L. 107-296 added pars. (7) and (8).

2001—Par. (6). Pub. L. 107-56 added par. (6).

1986—Pub. L. 99-508 substituted “wire, oral, or electronic” for “wire or oral” in section catchline and wherever appearing in text.

1970—Par. (3). Pub. L. 91-452 substituted “proceeding held under the authority of the United States or of any State or political subdivision thereof” for “criminal proceeding in any court of the United States or of any State or in any Federal or State grand jury proceeding”.

Statutory Notes and Related Subsidiaries

CHANGE OF NAME

Reference to the Director of Central Intelligence or the Director of the Central Intelligence Agency in the Director's capacity as the head of the intelligence community deemed to be a reference to the Director of National Intelligence. Reference to the Director of Central Intelligence or the Director of the Central Intelligence Agency in the Director's capacity as the head of the Central Intelligence Agency deemed to be a reference to the Director of the Central Intelligence Agency. See section 1081(a), (b) of Pub. L. 108-458, set out as a note under section 3001 of Title 50, War and National Defense.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107-296 effective 60 days after Nov. 25, 2002, see section 4 of Pub. L. 107-296, set out as an Effective Date note under section 101 of Title 6, Domestic Security.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-508 effective 90 days after Oct. 21, 1986, and, in case of conduct pursuant to court order or extension, applicable only with respect to court orders and extensions made after such date, with special rule for State authorizations of interceptions, see section 111 of Pub. L. 99-508, set out as a note under section 2510 of this title.

PROCEDURES FOR DISCLOSURE OF INFORMATION

Pub. L. 107-56, title II, §203(c), Oct. 26, 2001, 115 Stat. 280, as amended by Pub. L. 107-296, title VIII, §897(b), Nov. 25, 2002, 116 Stat. 2258; Pub. L. 108-458, title VI, §6501(b), Dec. 17, 2004, 118 Stat. 3760, provided that: “The Attorney General shall establish procedures for the disclosure of information pursuant to paragraphs (6) and (8) of section 2517 of title 18, United States Code, and Rule 6(e)(3)(D) of the Federal Rules of Criminal Procedure [18 U.S.C. App.] that identifies a United States person, as defined in section 101 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801) [sic].”

§ 2518. Procedure for interception of wire, oral, or electronic communications

(1) Each application for an order authorizing or approving the interception of a wire, oral, or electronic communication under this chapter shall be made in writing upon oath or affirma-

tion to a judge of competent jurisdiction and shall state the applicant's authority to make such application. Each application shall include the following information:

(a) the identity of the investigative or law enforcement officer making the application, and the officer authorizing the application;

(b) 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 (i) details as to the particular offense that has been, is being, or is about to be committed, (ii) except as provided in subsection (11), a particular description of the nature and location of the facilities from which or the place where the communication is to be intercepted, (iii) a particular description of the type of communications sought to be intercepted, (iv) the identity of the person, if known, committing the offense and whose communications are to be intercepted;

(c) 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;

(d) a statement of the period of time for which the interception is required to be maintained. If the nature of the investigation is such that the authorization for interception should not automatically terminate when the described type of communication has been first obtained, a particular description of facts establishing probable cause to believe that additional communications of the same type will occur thereafter;

(e) a full and complete statement of the facts concerning all previous applications known to the individual authorizing and making the application, made to any 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 such application; and

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

(2) The judge may require the applicant to furnish additional testimony or documentary evidence in support of the application.

(3) Upon such 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 that jurisdiction but within the United States in the case of a mobile interception device authorized by a Federal court within such jurisdiction), if the judge determines on the basis of the facts submitted by the applicant that—

(a) there is probable cause for belief that an individual is committing, has committed, or is about to commit a particular offense enumerated in section 2516 of this chapter;

(b) there is probable cause for belief that particular communications concerning that

offense will be obtained through such interception;

(c) normal investigative procedures have been tried and have failed or reasonably appear to be unlikely to succeed if tried or to be too dangerous;

(d) except as provided in subsection (11), there is probable cause for belief that the facilities from which, or the place where, the wire, oral, or electronic communications are to be intercepted are being used, or are about to be used, in connection with the commission of such offense, or are leased to, listed in the name of, or commonly used by such person.

(4) Each order authorizing or approving the interception of any wire, oral, or electronic communication under this chapter shall specify—

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

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

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

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

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

An order authorizing the interception of a wire, oral, or electronic communication under this chapter shall, upon request of the applicant, direct that a provider of wire or electronic communication service, landlord, custodian or other person shall furnish the applicant forthwith all information, facilities, and technical assistance necessary to accomplish the interception unobtrusively and with a minimum of interference with the services that such service provider, landlord, custodian, or person is according the person whose communications are to be intercepted. Any provider of wire or electronic communication service, landlord, custodian or other person furnishing such facilities or technical assistance shall be compensated therefor by the applicant for reasonable expenses incurred in providing such facilities or assistance. Pursuant to section 2522 of this chapter, an order may also be issued to enforce the assistance capability and capacity requirements under the Communications Assistance for Law Enforcement Act.

(5) No order entered under this section 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, nor in any event longer than thirty days. Such thirty-day period begins on the earlier of the day on which the investigative or law enforcement officer first begins to conduct an interception under the order or ten days after the order is entered. Extensions of an order may be granted, but only upon application for an extension made in accordance

with subsection (1) of this section and the court making the findings required by subsection (3) of this section. The period of extension shall be no longer than the authorizing judge deems necessary to achieve the purposes for which it was granted and in no event for longer than thirty days. Every order and extension thereof shall contain a provision that the authorization to intercept shall be executed as soon as practicable, shall 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. In the event the intercepted communication is in a code or foreign language, and an expert in that foreign language or code is not reasonably available during the interception period, minimization may be accomplished as soon as practicable after such interception. An interception under this chapter may be conducted in whole or in part by Government personnel, or by an individual operating under a contract with the Government, acting under the supervision of an investigative or law enforcement officer authorized to conduct the interception.

(6) Whenever an order authorizing interception is entered pursuant to this chapter, the order may 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. Such reports shall be made at such intervals as the judge may require.

(7) Notwithstanding any other provision of this chapter, any investigative or law enforcement officer, specially designated by the Attorney General, the Deputy Attorney General, the Associate Attorney General, or by the principal prosecuting attorney of any State or subdivision thereof acting pursuant to a statute of that State, who reasonably determines that—

(a) an emergency situation exists that involves—

(i) immediate danger of death or serious physical injury to any person,

(ii) conspiratorial activities threatening the national security interest, or

(iii) conspiratorial activities characteristic of organized crime,

that requires a wire, oral, or electronic communication to be intercepted before an order authorizing such interception can, with due diligence, be obtained, and

(b) there are grounds upon which an order could be entered under this chapter to authorize such interception,

may intercept such wire, oral, or electronic communication if an application for an order approving the interception is made in accordance with this section within forty-eight hours after the interception has occurred, or begins to occur. In the absence of an order, such interception shall immediately terminate when the communication sought is obtained or when the application for the order is denied, whichever is earlier. In the event such application for approval is denied, or in any other case where the interception is terminated without an order having been issued, the contents of any wire,

oral, or electronic communication intercepted shall be treated as having been obtained in violation of this chapter, and an inventory shall be served as provided for in subsection (d) of this section on the person named in the application.

(8)(a) The contents of any wire, oral, or electronic communication intercepted by any means authorized by this chapter shall, if possible, 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 shall be done 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 thereof, such recordings shall be made available to the judge issuing such order and sealed under his directions. Custody of the recordings shall be wherever the judge orders. They shall not be destroyed except upon an order of the issuing or denying judge and in any event shall be kept for ten years. Duplicate recordings may be made for use or disclosure pursuant to the provisions of subsections (1) and (2) of section 2517 of this chapter for investigations. The presence of the seal provided for by this subsection, or a satisfactory explanation for the absence thereof, shall be a prerequisite for the use or disclosure of the contents of any wire, oral, or electronic communication or evidence derived therefrom under subsection (3) of section 2517.

(b) Applications made and orders granted under this chapter shall be sealed by the judge. Custody of the applications and orders shall be wherever the judge directs. Such applications and orders shall be disclosed only upon a showing of good cause before a judge of competent jurisdiction and shall not be destroyed except on order of the issuing or denying judge, and in any event shall be kept for ten years.

(c) Any violation of the provisions of this subsection may be punished as contempt of the issuing or denying judge.

(d) Within a reasonable time but not later than ninety days after the filing of an application for an order of approval under section 2518(7)(b) which is denied or the termination of the period of an order or extensions thereof, the issuing or denying judge shall cause to be served, on the persons named in the order or the application, and such other parties to intercepted communications as the judge may determine in his discretion that is in the interest of justice, an inventory which shall include notice of—

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

(2) the 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, may in his discretion make available to such person or his counsel for inspection such portions of the intercepted communications, applications and orders as the judge determines to be in the interest of justice. On an ex parte showing of good cause to a judge of competent jurisdiction the serving of the inventory required by this subsection may be postponed.

(9) The contents of any wire, oral, or electronic communication intercepted pursuant to this chapter or evidence derived therefrom shall not be received in evidence or otherwise disclosed in any trial, hearing, or other proceeding in a Federal or State court unless each party, not less than ten days before the trial, hearing, or proceeding, has been furnished with a copy of the court order, and accompanying application, under which the interception was authorized or approved. This ten-day period may be waived by the judge if he finds that it was not possible to furnish the party with the above information ten days before the trial, hearing, or proceeding and that the party will not be prejudiced by the delay in receiving such information.

(10)(a) Any aggrieved person in any trial, hearing, or proceeding in or before any court, department, officer, agency, regulatory body, or other authority of the United States, a State, or a political subdivision thereof, may move to suppress the contents of any wire or oral communication intercepted pursuant to this chapter, or evidence derived therefrom, on the grounds that—

(i) the communication was unlawfully intercepted;

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

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

Such motion shall be made before the trial, hearing, or proceeding unless there was no opportunity to make such motion or the person was not aware of the grounds of the motion. If the motion is granted, the contents of the intercepted wire or oral communication, or evidence derived therefrom, shall be treated as having been obtained in violation of this chapter. The judge, upon the filing of such motion by the aggrieved person, may in his discretion make available to the aggrieved person or his counsel for inspection such portions of the intercepted communication or evidence derived therefrom as the judge determines to be in the interests of justice.

(b) In addition to any other right to appeal, the United States shall have the right to appeal from an order granting a motion to suppress made under paragraph (a) of this subsection, or the denial of an application for an order of approval, if the United States attorney shall certify to the judge or other official granting such motion or denying such application that the appeal is not taken for purposes of delay. Such appeal shall be taken within thirty days after the date the order was entered and shall be diligently prosecuted.

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

(11) The requirements of subsections (1)(b)(ii) and (3)(d) of this section relating to the specification of the facilities from which, or the place where, the communication is to be intercepted do not apply if—

(a) in the case of an application with respect to the interception of an oral communication—

(i) the application is by a Federal investigative or law enforcement officer and is approved by the Attorney General, the Deputy Attorney General, the Associate Attorney General, an Assistant Attorney General, or an acting Assistant Attorney General;

(ii) the application contains a full and complete statement as to why such specification is not practical and identifies the person committing the offense and whose communications are to be intercepted; and

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

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

(i) the application is by a Federal investigative or law enforcement officer and is approved by the Attorney General, the Deputy Attorney General, the Associate Attorney General, an Assistant Attorney General, or an acting Assistant Attorney General;

(ii) the application identifies the person believed to be committing the offense and whose communications are to be intercepted and the applicant makes a showing that there is probable cause to believe that the person's actions could have the effect of thwarting interception from a specified facility;

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

(iv) the order authorizing or approving the interception is limited to interception only for such time as it is reasonable to presume that the person identified in the application is or was reasonably proximate to the instrument through which such communication will be or was transmitted.

(12) An interception of a communication under an order with respect to which the requirements of subsections (1)(b)(i) and (3)(d) of this section do not apply by reason of subsection (11)(a) shall not begin until the place where the communication is to be intercepted is ascertained by the person implementing the interception order. A provider of wire or electronic communications service that has received an order as provided for in subsection (11)(b) may move the court to modify or quash the order on the ground that its assistance with respect to the interception cannot be performed in a timely or reasonable fashion. The court, upon notice to the government, shall decide such a motion expeditiously.

(Added Pub. L. 90-351, title III, §802, June 19, 1968, 82 Stat. 218; amended Pub. L. 91-358, title II, §211(b), July 29, 1970, 84 Stat. 654; Pub. L. 95-511, title II, §201(d)-(g), Oct. 25, 1978, 92 Stat. 1797, 1798; Pub. L. 98-473, title II, §1203(a), (b), Oct. 12, 1984, 98 Stat. 2152; Pub. L. 99-508, title I, §§101(c)(1)(A), (8), (e), 106(a)-(d)(3), Oct. 21, 1986, 100 Stat. 1851-1853, 1856, 1857; Pub. L. 103-414, title II, §201(b)(1), Oct. 25, 1994, 108 Stat. 4290; Pub. L. 105-272, title VI, §604, Oct. 20, 1998, 112 Stat. 2413.)

Editorial Notes

REFERENCES IN TEXT

The Communications Assistance for Law Enforcement Act, referred to in par. (4), is title I of Pub. L. 103-414, Oct. 25, 1994, 108 Stat. 4279, which is classified generally to subchapter I (§1001 et seq.) of chapter 9 of Title 47, Telecommunications. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 47 and Tables.

AMENDMENTS

1998—Par. (11)(b)(ii). Pub. L. 105-272, §604(a)(1), substituted “that there is probable cause to believe that the person's actions could have the effect of thwarting interception from a specified facility;” for “of a purpose, on the part of that person, to thwart interception by changing facilities; and”.

Par. (11)(b)(iii). Pub. L. 105-272, §604(a)(2), substituted “such showing has been adequately made; and” for “such purpose has been adequately shown.”

Par. (11)(b)(iv). Pub. L. 105-272, §604(a)(3), added cl. (iv).

Par. (12). Pub. L. 105-272, §604(b), substituted “by reason of subsection (11)(a)” for “by reason of subsection (11)”, struck out “the facilities from which, or” after “shall not begin until”, and struck out comma after “the place where”.

1994—Par. (4). Pub. L. 103-414 inserted at end of concluding provisions “Pursuant to section 2522 of this chapter, an order may also be issued to enforce the assistance capability and capacity requirements under the Communications Assistance for Law Enforcement Act.”

1986—Pub. L. 99-508, §101(c)(1)(A), substituted “wire, oral, or electronic” for “wire or oral” in section catchline.

Par. (1). Pub. L. 99-508, §101(c)(1)(A), substituted “wire, oral, or electronic” for “wire or oral” in introductory provisions.

Par. (1)(b)(ii). Pub. L. 99-508, §106(d)(1), inserted “except as provided in subsection (11).”.

Par. (1)(e). Pub. L. 99-508, §101(c)(1)(A), substituted “wire, oral, or electronic” for “wire or oral”.

Par. (3). Pub. L. 99-508, §§101(c)(1)(A), 106(a), in introductory provisions, substituted “wire, oral, or electronic” for “wire or oral” and inserted “(and outside that jurisdiction but within the United States in the case of a mobile interception device authorized by a Federal court within such jurisdiction)”.

Par. (3)(d). Pub. L. 99-508, §§101(c)(1)(A), 106(d)(2), inserted “except as provided in subsection (11).” and substituted “wire, oral, or electronic” for “wire or oral”.

Par. (4). Pub. L. 99-508, §§101(c)(1)(A), (8), 106(b), substituted “wire, oral, or electronic” for “wire or oral” wherever appearing and, in closing provisions, substituted “provider of wire or electronic communication service” for “communication common carrier” wherever appearing, “such service provider” for “such carrier”, and “for reasonable expenses incurred in providing such facilities or assistance” for “at the prevailing rates”.

Par. (5). Pub. L. 99-508, §§101(c)(1)(A), 106(c), substituted “wire, oral, or electronic” for “wire or oral” and inserted provisions which related to beginning of thirty-day period, minimization where intercepted communication is in code or foreign language and expert in that code or foreign language is not immediately available, and conduct of interception by Government personnel or by individual operating under Government contract, acting under supervision of investigative or law enforcement officer authorized to conduct interception.

Pars. (7), (8)(a), (d)(3), (9). Pub. L. 99-508, §101(c)(1)(A), substituted “wire, oral, or electronic” for “wire or oral” wherever appearing.

Par. (10)(c). Pub. L. 99-508, §101(e), added subpar. (c).

Pars. (11), (12). Pub. L. 99-508, §106(d)(3), added pars. (11) and (12).

1984—Par. (7). Pub. L. 98-473, §1203(a), inserted “, the Deputy Attorney General, the Associate Attorney General,” after “Attorney General” in provisions preceding subpar. (a).

Par. (7)(a). Pub. L. 98-473, §1203(b), amended subpar. (a) generally, adding cl. (i) and designated existing provisions as cls. (ii) and (iii).

1978—Par. (1). Pub. L. 95-511, §201(d), inserted “under this chapter” after “communication”.

Par. (4). Pub. L. 95-511, §201(e), inserted “under this chapter” after “wire or oral communication” wherever appearing.

Par. (9). Pub. L. 95-511, §201(e), substituted “any wire or oral communication intercepted pursuant to this chapter” for “any intercepted wire or oral communication”.

Par. (10). Pub. L. 95-511, §201(g), substituted “any wire or oral communication intercepted pursuant to this chapter,” for “any intercepted wire or oral communication.”

1970—Par. (4). Pub. L. 91-358 inserted the provision that, upon the request of the applicant, an order authorizing the interception of a wire or oral communication direct that a communication common carrier, landlord, custodian, or other person furnish the applicant with all information, facilities, and technical assistance necessary to accomplish the interception unobtrusively and with a minimum of interference with the services provided.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-508 effective 90 days after Oct. 21, 1986, and, in case of conduct pursuant to court order or extension, applicable only with respect to court orders and extensions made after such date, with special rule for State authorizations of interceptions, see section 111 of Pub. L. 99-508, set out as a note under section 2510 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-511 effective Oct. 25, 1978, except as specifically provided, see section 401 of Pub. L. 95-511, formerly set out as an Effective Date note under section 1801 of Title 50, War and National Defense.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91-358 effective on first day of seventh calendar month which begins after July 29, 1970, see section 901(a) of Pub. L. 91-358.

§ 2519. Reports concerning intercepted wire, oral, or electronic communications

(1) In January of each year, any judge who has issued an order (or an extension thereof) under section 2518 that expired during the preceding year, or who has denied approval of an interception during that year, shall report to the Administrative Office of the United States Courts—

(a) the fact that an order or extension was applied for;

(b) the kind of order or extension applied for (including whether or not the order was an order with respect to which the requirements of sections 2518(1)(b)(ii) and 2518(3)(d) of this title did not apply by reason of section 2518(11) of this title);

(c) the fact that the order or extension was granted as applied for, was modified, or was denied;

(d) the period of interceptions authorized by the order, and the number and duration of any extensions of the order;

(e) the offense specified in the order or application, or extension of an order;

(f) the identity of the applying investigative or law enforcement officer and agency making the application and the person authorizing the application; and

(g) the nature of the facilities from which or the place where communications were to be intercepted.

(2) In March of each year the Attorney General, an Assistant Attorney General specially designated by the Attorney General, or the principal prosecuting attorney of a State, or the principal prosecuting attorney for any political subdivision of a State, shall report to the Administrative Office of the United States Courts—

(a) the information required by paragraphs (a) through (g) of subsection (1) of this section with respect to each application for an order or extension made during the preceding calendar year;

(b) a general description of the interceptions made under such order or extension, including (i) the approximate nature and frequency of incriminating communications intercepted, (ii) the approximate nature and frequency of other communications intercepted, (iii) the approximate number of persons whose communications were intercepted, (iv) the number of orders in which encryption was encountered and whether such encryption prevented law enforcement from obtaining the plain text of communications intercepted pursuant to such order, and (v) the approximate nature, amount, and cost of the manpower and other resources used in the interceptions;

(c) the number of arrests resulting from interceptions made under such order or extension, and the offenses for which arrests were made;

(d) the number of trials resulting from such interceptions;

(e) the number of motions to suppress made with respect to such interceptions, and the number granted or denied;

(f) the number of convictions resulting from such interceptions and the offenses for which the convictions were obtained and a general assessment of the importance of the interceptions; and

(g) the information required by paragraphs (b) through (f) of this subsection with respect to orders or extensions obtained in a preceding calendar year.

(3) In June of each year the Director of the Administrative Office of the United States Courts shall transmit to the Congress a full and complete report concerning the number of applications for orders authorizing or approving the interception of wire, oral, or electronic communications pursuant to this chapter and the number of orders and extensions granted or denied pursuant to this chapter during the preceding calendar year. Such report shall include a summary and analysis of the data required to be filed with the Administrative Office by subsections (1) and (2) of this section. The Director of the Administrative Office of the United States Courts is authorized to issue binding regulations dealing with the content and form of the reports required to be filed by subsections (1) and (2) of this section.