

**22-2514. Authorized interception of wire, oral or electronic communications; definitions.** This act shall be a part of and supplemental to the code of criminal procedure. As used in this act:

(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 such connection in a switching station, furnished or operated by any person engaged in providing or operating such facilities for the transmission of intrastate, interstate or foreign communications. Wire communication shall include any electronic storage of such communication;

(2) "oral communication" means any oral communication uttered by a person exhibiting an expectation that such communication is not subject to interception under circumstances justifying such expectation, but such term does not include any electronic communication;

(3) "intercept" means the aural or other acquisition of the contents of any wire, oral or electronic communication through the use of any electronic, mechanical or other device;

(4) "persons" means any individual, partnership, association, joint stock company, trust or corporation, including any official, employee or agent of the United States or any state or any political subdivision thereof;

(5) "investigative or law enforcement officer" means any law enforcement officer who is empowered by the law of this state to conduct investigations of or to make arrests for offenses enumerated in this act, including any attorney authorized by law to prosecute or participate in the prosecution of such offenses and agents of the United States federal bureau of investigation, drug enforcement administration, marshals service, secret service, treasury department, customs service, justice department and internal revenue service;

(6) "contents" when used with respect to any wire, oral or electronic communication, includes any information concerning the substance, purport or meaning of such communication;

(7) "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;

(8) "judge of competent jurisdiction" means a justice of the supreme court, a judge of the court of appeals or any district judge but does not include a district magistrate judge;

(9) "electronic, mechanical or other device" means any device or apparatus which can be used to intercept a wire, oral or electronic 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 such subscriber or user for connection to the facilities of such service and used in the ordinary course of its business or (ii) being used by a provider of wire or electronic communication service in the ordinary course of its business, or by an investigative or law enforcement officer in the ordinary course of the officer's duties; or

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

(10) "communication common carrier" means common carrier, as defined by section 153(h) of title 47 of the United States Code;

(11) "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 or photo-optical system but does not include:

(a) Any wire or oral communication;

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

(c) any communication from a tracking device, as defined in section 3117, chapter 205 of title 18, United States Code;

(12) "user" means any person or entity who:

(a) Uses an electronic communication service; and

(b) is duly authorized by the provider of such service to engage in such use;

(13) "electronic communications system" means any wire, radio, electromagnetic, photo-optical or photoelectronic facilities for the transmission of electronic communications, and any computer facilities or related electronic equipment for the electronic storage of such communications;

(14) "electronic communication service" means any service which provides to users thereof the ability to send or receive wire or electronic communications;

(15) "readily accessible to the general public" means, with respect to a radio communication, that such 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 such communication;

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

(d) transmitted over a communication 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, E or 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;

(16) "electronic storage" means:

(a) Any temporary, intermediate storage of a wire or electronic communication incidental to the electronic transmission thereof; and

(b) any storage of such communication by an electronic communication service for purposes of backup protection of such communication; and

(17) "aural transfer" means a transfer containing the human voice at any point between and including the point of origin and the point of reception.

**History:** L. 1974, ch. 150, § 1; L. 1976, ch. 165, § 1; L. 1976, ch. 163, § 4; L. 1976, ch. 165, § 2; L. 1986, ch. 115, § 55; L. 1988, ch. 117, § 1; L. 1995, ch. 92, § 1; July 1.