

MAINE STATE LEGISLATURE

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ONE HUNDRED AND FOURTH LEGISLATURE

Legislative Document

No. 1002

H. P. 769

House of Representatives, February 25, 1969

Referred to Committee on Judiciary. Sent up for concurrence and 1,000 ordered printed.

BERTHA W. JOHNSON, Clerk

Presented by Mrs. Payson of Falmouth.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SIXTY-NINE

AN ACT to Provide for the Interception of Wire and Oral Communications.

Be it enacted by the People of the State of Maine, as follows:

R. S., T. 15, c. 102, additional. Title 15 of the Revised Statutes is amended by adding a new chapter 102, to read as follows:

CHAPTER 102

INTERCEPTION OF WIRE AND ORAL COMMUNICATIONS

§ 708. Definitions

The following words and phrases as used in this chapter, shall have the following meanings:

1. **Aggrieved person.** "Aggrieved person" means an individual who was a party to an intercepted wire or oral communication, or who was named in the warrant authorizing the interception, or whose property interests were invaded in the course of the interception.

2. **Communication common carrier.** "Communication common carrier" means any telephone or telegraph company.

3. **Contents.** "Contents," when used with respect to any wire or oral communication, means any information concerning the identity of the parties to such communication or the existence, contents, substance, purport or meaning of that communication.

4. **Designated offense.** "Designated offense" shall include the following offenses: Murder, kidnapping, gambling, robbery, bribery, extortion, selling

or dealing in narcotic drugs, marijuana or other dangerous drugs, or other crimes dangerous to life, limb or property and punishable by imprisonment for more than one year, or any conspiracy to commit any of the foregoing offenses.

5. Intercepting device. "Intercepting device" means any device or apparatus which is capable of transmitting, receiving, amplifying, or recording a wire or oral communication other than;

A. An extension telephone instrument furnished to the subscriber or user by any communication common carrier in the ordinary course of its business as such carrier, or

B. A hearing aid or similar device which is being used to correct sub-normal hearing to normal.

6. Interception. "Interception" means to hear, record, or aid another to hear or record the contents of any wire or oral communication through the use of any intercepting device by any person other than;

A. The sender or receiver of such communication,

B. A person within the range of normal unaided hearing or subnormal hearing corrected to not better than normal, or

C. A person given prior authority by such sender.

7. Judge of competent jurisdiction. "Judge of competent jurisdiction" means any Justice of the Superior Court or any Judge of the District Court.

8. Law enforcement officer. "Law enforcement officer" means any law enforcement officer of the United States, a state or a political subdivision of a state and any attorney authorized by law to participate in the prosecution of the designated offenses.

9. Oral communications. "Oral communications" means speech.

10. Person. "Person" means any individual, partnership, association, joint stock company, trust, or corporation, or any other legal entity, whether or not any of the foregoing is an officer, agent or employee of the United States, a state or a political subdivision of a state.

11. Wire communication. "Wire communication" means any communication made in whole or in part through the use of facilities for transmission of communications by the aid of wire, cable or other like connection between the point of origin and the point of reception.

§ 709. Offenses.

1. Interception, oral communications prohibited. Except as otherwise specifically provided in this chapter, any person who willfully intercepts, attempts to intercept, or procures any other person to intercept or attempt to intercept, any wire or oral communication shall be punished by a fine of not more than \$10,000, or by imprisonment in the State Prison for not more than 5 years, or by both.

2. Editing of tape recordings in judicial proceedings prohibited. Except as otherwise specifically provided in this chapter, any person who willfully edits, alters or tampers with any tape, transcription or other sound recording, or knows of such editing, altering or tampering, and presents such recording in any judicial proceeding or proceeding under oath, without fully indicating the nature of the changes made and the original state of the recording, shall be punished by a fine of not more than \$10,000, or by imprisonment in the State Prison for not more than 5 years, or by both.

3. Disclosure, or use of wire or oral communications prohibited. Except as otherwise specifically provided in this chapter, any person who —

A. Willfully discloses or attempts to disclose to any person the contents of any wire or oral communication, knowing that the information was obtained through interception; or

B. Willfully uses or attempts to use the contents of any wire or oral communication, knowing that the information was obtained through interception shall be punished by imprisonment in State Prison for not more than 2 years or by a fine of not more than \$5,000, or by both.

4. Disclosure of contents of applications, warrants, renewals and returns prohibited. Except as otherwise specifically provided in this chapter, any person who willfully discloses to any person, any information concerning or contained in, the application for, the granting or denial of orders for interception, renewals, notice or return on an ex parte order granted pursuant to this chapter, or the contents of any document, tape or recording kept in accordance with section 711, shall be punished by imprisonment in State Prison for not more than 2 years or by a fine of not more than \$5,000, or by both.

5. Duty to report. An employee of any communication common carrier who has knowledge obtained during the course of such employment of any violation of this section and willfully fails to report such knowledge within 7 days to the Attorney General shall be punished by imprisonment in the State Prison for not more than 2 years or by a fine of not more than \$5,000, or by both.

6. Possession of interception devices prohibited. A person who has in his possession any device, contrivance, machine or apparatus designed or commonly used for intercepting wire or oral communications defined in this chapter, under circumstances evincing an intent to unlawfully use or employ or allow the same to be so used or employed for interception, or knowing the same is intended to be so used, shall be punished by imprisonment in the State Prison for not more than 2 years or by a fine of not more than \$5,000, or by both.

§ 710. Exceptions

1. Permitted interception of wire or oral communications. It shall not be a violation of this chapter;

A. For an operator of a switchboard, or an officer, agent or employee of any communication common carrier, whose facilities are used in the transmission of a wire communication, to intercept, disclose or use that communication in the normal course of his employment while engaged in any activity which is necessary incident to the operation of such facilities, provided that when any communication common carrier intercepts or monitors the contents of conversations between users it shall emit a "beep" tone or other identifying signal; and all monitoring must cease as soon as the connection is established between users; or

B. For persons to use intercepting devices for security or business purposes so long as adequate warning is given to the public that such devices are in use; or

C. For persons to use on office intercommunication system for business purposes; or

D. For federal officers to act pursuant to a statute of the United States Government; or

E. For any person duly authorized to make specific interceptions by a warrant issued under section 711 to make such interceptions.

2. Permitted disclosure and use of intercepted wire or oral communications.

A. Any law enforcement officer who, by means authorized by this chapter, has obtained knowledge of the contents of any wire or oral communication, or evidence derived therefrom, may disclose such contents or evidence to another law enforcement officer to the extent that such disclosure is appropriate to the proper performance of the official duties of the officer making and receiving the disclosure.

B. Any law enforcement officer who, by any means authorized by this chapter, has obtained knowledge of the contents of any wire or oral communication, or evidence derived therefrom, may use such contents in the proper discharge of his official duties.

C. Any person who has obtained, by any means authorized by this chapter, knowledge of the contents of any wire or oral communication, or evidence derived therefrom, may disclose such contents while giving testimony under oath or affirmation in any criminal proceeding in any court of the United States or of any state or in any federal or state grand jury proceeding.

D. The contents of any wire or oral communication intercepted in accordance with this chapter, or evidence derived therefrom, may otherwise be disclosed only upon a showing of good cause before a judge of competent jurisdiction.

§ 711. Warrants; application; procedure

The Attorney General, or any assistant attorney general specifically designated by the Attorney General with written approval of the Attorney General,

may apply *ex parte* to a judge of competent jurisdiction for an order authorizing or approving the interception of wire or oral communications, and such judge may grant, in conformity with this section, an order authorizing the interception of wire or oral communications by law enforcement officers having responsibility for the investigation of the designated offense as to which the application is made.

1. Application. Each application for an order authorizing or approving the interception of a wire or oral communication shall be made in writing upon oath or affirmation 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 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 details as to the particular designated offense that has been, is being, or is about to be committed, a particular description of the nature and location of the facilities from which or the place where the communication is to be intercepted, a particular description of the type of communications sought to be intercepted, and 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, the application must specifically state 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 or oral 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. Additional evidence. The judge may require the applicant to furnish additional testimony or documentary evidence in support of the application.

3. *Ex parte* order. Upon such application the judge may enter an *ex parte* order, as requested or as modified, authorizing or approving interception of wire or oral communications within the territorial jurisdiction of the

court in which the judge is sitting, if the judge determines on the basis of the facts submitted by the applicant that;

- A. There is probable cause for belief that a person is committing, has committed or is about to commit a designated offense as defined in 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 having failed or reasonably appear to be unlikely to succeed if tried or to be too dangerous;
 - D. There is probable cause for belief that the facilities from which, or the place where, the wire or oral 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. Specifications. Each order authorizing or approving the interception of any wire or oral communication 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.
5. Limitations. No order entered under this section may authorize the interception of any wire or oral communication for any period longer than is necessary to achieve the objective of the authorization, nor in any event longer than 30 days. Extensions of an order may be granted, but only upon application for an extension made in accordance with subsection 1 and the court making the findings required by subsection 3. 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 30 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 30 days.
6. Return. Within 14 days after termination of the warrant or the last extension thereof, a return must be made thereon to the judge issuing the warrant by the applicant therefor, stating:

- A. The nature and location of the communications facilities or the place where the interceptions were made;
- B. The period of time during which such interceptions were made;
- C. The names of the parties to the communications intercepted if known; and
- D. A brief summary of evidence or information obtained by the intercept;
- E. 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. Exceptions. Notwithstanding any other provision of this chapter, any law enforcement officer, specially designated by the Attorney General, who reasonably determines that;

A. An emergency situation exists with respect to conspiratorial activities characteristic of organized crime that requires a wire or oral 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 or oral communication if an application for an order approving the interception is made in accordance with this section within 48 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 or oral communication intercepted shall be treated as having been obtained in violation of this chapter, and in inventory shall be served as provided for in subsection 8 on the person named in the application.

8. Recording. The contents of any wire or oral 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 or oral communication under this subsection shall be done in such a way as will protect the recording from editing or other alterations. Not later than 21 days after 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 judge and in any event shall be kept for 10 years. Duplicate recordings may be made for use or disclosure pursuant to section 710, subsection 2 for investigations. The presence of the seal provided for by this section, or a satisfactory explanation for the absence thereof, shall be a prerequisite for the

use or disclosure of the contents of any wire or oral communication or evidence derived therefrom under section 710, subsection 2, paragraph C.

A. 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 10 years.

B. Any violation of this subsection may be punished as contempt of the issuing or denying judge.

C. Within a reasonable time but not later than 90 days after the filing of an application for an order of approval under subsection 7, paragraph B, which is denied, or at 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 or oral 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. As evidence. The contents of any intercepted wire or oral communication 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 10 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 10-day period may be waived by the judge if he finds that it was not possible to furnish the party with the above information 10 days before the trial, hearing or proceeding and that the party will not be prejudiced by the delay in receiving such information.

10. Suppression of contents; appeal. Any aggrieved person in any trial before any court, may move to suppress the contents of any intercepted wire or oral communication, or evidence derived therefrom, on the grounds that;

A. The communication was unlawfully intercepted;

B. The order of authorization or approval under which it was intercepted is insufficient on its face; or

C. 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.

In addition to any other right to appeal, the State shall have the right to appeal from an order granting a motion to suppress made under this subsection, or the denial of an application for an order of approval, if the prosecuting attorney certifies to the judge granting such motion or denying such application that the appeal is not taken for purposes of delay. Such appeal shall be taken within 10 days after the date the order was entered and shall be diligently prosecuted.

§ 712. Civil remedy

Any party to a conversation intercepted, disclosed or used in violation of this chapter shall have a civil cause of action against any person who intercepts, discloses or uses such communications, and shall be entitled to recover from any such persons;

1. Damages. Actual damages but not less than liquidated damages computed at the rate of \$50 per day, for each day of violation.

2. Attorney's fee. A reasonable attorney's fee and other litigation disbursements reasonably incurred.

Good faith reliance on a warrant issued under this chapter shall constitute a complete defense to an action brought under this section.