

## **CHAPTER 29-29.3 PEN REGISTERS AND TRAP AND TRACE DEVICES**

### **29-29.3-01. Definitions.**

As used in this chapter, unless the context otherwise requires:

1. "Electronic communication" means 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. The term does not include the radio portion of a cordless telephone communication that is transmitted between the cordless telephone handset and the base unit, a wire or oral communication, a communication made through a tone-only paging device, or a communication from a tracking device.
2. "Electronic communication service" means any service that provides to users of the service the ability to send or receive wire or electronic communications.
3. "Pen register" means a device that records or decodes electronic or other impulses that identify the number dialed or otherwise transmitted on the telephone line to which the device is attached, but the term does not include a device used by a provider or customer of a wire or electronic communication service for billing, or recording as an incident to billing, for communications services provided by the provider or a 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.
4. "Tracking device" means an electronic or mechanical device that permits the tracing of the movement of a person or object.
5. "Trap and trace device" means a device which captures the incoming electronic or other impulses that identify the originating number of an instrument or device from which a wire or electronic communication was transmitted.
6. "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 any electronic storage of the communication, but does not include the radio portion of a cordless telephone communication that is transmitted between the cordless telephone handset and the base unit.

### **29-29.3-02. Prohibition on pen register and trap and trace device use - Exception.**

A person may not install or use a pen register or trap and trace device without first obtaining a court order under this chapter. The prohibition in this section does not apply with respect to the use of a pen register or a trap and trace device by a provider of electronic or wire communication service:

1. Relating to the operation, maintenance, and testing of a wire or electronic communication service or to the protection of the rights or property of such provider, or to the protection of users of that service from abuse of service or unlawful use of service;
2. To record the fact that a wire or electronic communication was initiated or completed in order to protect such provider, another provider furnishing service toward the completion of the wire communication, or a user of that service, from fraudulent, unlawful, or abusive use of service; or
3. When the consent of the user of that service has been obtained.

### **29-29.3-03. Application for an order for a pen register or a trap and trace device.**

1. The attorney general, an assistant attorney general, a state's attorney, or an assistant state's attorney may make application, in writing under oath or equivalent affirmation, for an order or an extension of an order under this chapter authorizing or approving the installation and use of a pen register or a trap and trace device under this chapter to a court of competent jurisdiction.

2. An investigative or law enforcement officer may make application, in writing under oath or equivalent affirmation, for an order or an extension of an order under this chapter authorizing or approving the installation and use of a pen register or a trap and trace device under this chapter to a court of competent jurisdiction of this state.
3. An application under subsection 1 or 2 must include:
  - a. The identity of the attorney general, assistant attorney general, state's attorney, or assistant state's attorney or the law enforcement or investigative officer making the application and the identity of the law enforcement agency conducting the investigation; and
  - b. A certification by the applicant that the information likely to be obtained is relevant to an ongoing criminal investigation being conducted by that agency.

**29-29.3-04. Issuance of an order for a pen register or a trap and trace device - Notice.**

1. Upon an application made under this chapter, the court shall enter an ex parte order authorizing the installation and use of a pen register or a trap and trace device within the jurisdiction of the court if the court finds that the attorney general, assistant attorney general, state's attorney, or assistant state's attorney or the law enforcement or investigative officer has certified to the court that the information likely to be obtained by such installation and use is relevant to ongoing criminal investigation.
2. An order issued under this section:
  - a. Must specify:
    - (1) The identity, if known, of the person to whom is leased or in whose name is listed the telephone line to which the pen register or trap and trace device is to be attached;
    - (2) The identity, if known, of the person who is the subject of the criminal investigation;
    - (3) The number and, if known, physical location of the telephone line to which the pen register or trap and trace device is to be attached and, in the case of a trap and trace device, the geographic limits of the trap and trace order; and
    - (4) A statement of the offense to which the information likely to be obtained by the pen register or trap and trace device relates.
  - b. Must direct, upon the request of the applicant, the furnishing of information, facilities, and technical assistance necessary to accomplish the installation of the pen register or trap and trace device under this chapter.
3. An order issued under this section authorizes the installation and use of a pen register or a trap and trace device for a period not to exceed sixty days. Extensions of the order may be granted, but only upon an application for an order under this chapter and upon the judicial finding required by subsection 1. The period of extension may not exceed sixty days.
4. An order authorizing or approving the installation and use of a pen register or a trap and trace device must direct that:
  - a. The order be sealed until otherwise ordered by the court; and
  - b. The person owning or leasing the line to which the pen register or a trap and trace device is attached, or who has been ordered by the court to provide assistance to the applicant, not disclose the existence of the pen register or trap and trace device or the existence of the investigation to the listed subscriber, or to any other person, unless otherwise ordered by the court.
5. Within a reasonable time, but not later than one year after the termination of the period of an order or extension of an order, the judge to whom the application was presented shall cause to be served on the persons named in the order or application, and on any other party the notification of whom the judge determines is in the interest of justice, notice of:
  - a. The fact of the entry of the order.
  - b. The date of the entry and the period of authorized installation and use of the pen register or trap and trace device.

- c. The fact that during the period of the order or extension information was obtained through use of the pen register or trap and trace device.

**29-29.3-05. Assistance in installation and use of a pen register or a trap and trace device.**

1. Upon the request of the attorney general, assistant attorney general, state's attorney, or assistant state's attorney or an officer of a law enforcement agency authorized to install and use a pen register under this chapter, a provider of wire or electronic communication service, landlord, custodian, or other person shall furnish the investigative or law enforcement officer all information, facilities, and technical assistance necessary to accomplish the installation of the pen register unobtrusively and with a minimum of interference with the services that the person so ordered by the court accords the party with respect to whom the installation and use is to take place, if such assistance is directed by a court order as provided in this chapter.
2. Upon the request of the attorney general, assistant attorney general, state's attorney, or assistant state's attorney or an officer of a law enforcement agency authorized to receive the results of a trap and trace device under this chapter, a provider of a wire or electronic communication service, landlord, custodian, or other person shall install the device on the appropriate line and shall furnish the investigative or law enforcement officer all additional information, facilities, and technical assistance, including installation and operation of the device, unobtrusively and with a minimum of interference with the services that the person so ordered by the court accords the party with respect to whom the installation and use is to take place, if such installation and assistance is directed by a court order as provided in this chapter. Unless otherwise ordered by the court, the results of the trap and trace device must be furnished to the officer of a law enforcement agency designated by the court at reasonable intervals during regular business hours for the duration of the order.
3. A provider of a wire or electronic communication service, landlord, custodian, or other person who furnishes facilities or technical assistance under this section must be reasonably compensated for reasonable expenses incurred in providing the facilities and assistance.
4. No cause of action lies in any court against any provider of a wire or electronic communication service, its officers, employees, agents, or other specified persons for providing information, facilities, or assistance in accordance with the terms of a court order under this chapter.
5. A good-faith reliance on a court order, a legislative authorization, or a statutory authorization is a complete defense against any civil or criminal action brought under this chapter or any other law.