

Amendment No. 550

Assembly Amendment to Assembly Bill No. 433	(BDR 14-913)
Proposed by: Assembly Committee on Judiciary	
Amends: Summary: No Title: Yes Preamble: No Joint Sponsorship: No Digest: Yes	

ASSEMBLY ACTION		Initial and Date		SENATE ACTION		Initial and Date			
Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____	Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____
Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____	Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____
Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____	Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____

EXPLANATION: Matter in (1) *blue bold italics* is new language in the original bill; (2) variations of green bold underlining is language proposed to be added in this amendment; (3) ~~red strikethrough~~ is deleted language in the original bill; (4) ~~purple double strikethrough~~ is language proposed to be deleted in this amendment; (5) orange double underlining is deleted language in the original bill proposed to be retained in this amendment.

MNM/BAW



Date: 4/17/2015

A.B. No. 433—Revises provisions concerning the interception of wire, electronic or oral communications. (BDR 14-913)



ASSEMBLY BILL NO. 433—COMMITTEE ON JUDICIARY

MARCH 23, 2015

Referred to Committee on Judiciary

SUMMARY—Revises provisions concerning the interception of wire, electronic or oral communications. (BDR 14-913)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: No.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to criminal procedure; defining certain terms relating to the interception of wire, electronic or oral communications; providing that the interception, listening or recording of a wire, electronic or oral communication by a peace officer or certain other persons is not unlawful in certain circumstances; authorizing district courts to issue orders requiring a provider of electronic communication service to disclose the contents of a wire or electronic communication or a record or other information pertaining to a subscriber to, or customer of, such service in certain circumstances; providing immunity from liability to a provider of electronic communication service and associated persons for disclosing such information; revising certain existing definitions relating to the interception of wire or oral communications; authorizing the interception of electronic communications in certain circumstances; ~~requiring~~ providing immunity from liability to a provider of electronic communication service, a public utility and associated persons for providing information or assistance concerning court-ordered interceptions of wire, electronic or oral communications; authorizing a judge to accept a facsimile or electronic copy of the signature of certain persons as part of an application for an order authorizing the interception of a wire, electronic or oral communication as an original signature; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

1 Existing law authorizes the Attorney General or the district attorney of any county to
2 apply to a Supreme Court justice or to a district judge in the county where the interception is
3 to take place for an order authorizing the interception of wire or oral communications. The
4 judge may grant an order authorizing such interception by certain investigative or law
5 enforcement officers when the interception may provide evidence of the commission of
6 certain crimes. (NRS 179.460) **Section 16** of this bill additionally authorizes the Attorney
7 General or the district attorney to apply for an order authorizing the interception of an

8 electronic communication. Section 16 also provides that a provider of electronic
 9 communication service, a public utility and associated persons are immune from any
 10 liability relating to the interception of a wire, electronic or oral communication made
 11 pursuant to such a court order. Sections 9-12, 16-23 and 25 of this bill add a reference to
 12 an electronic communication to the provisions of existing law that reference wire or oral
 13 communications. Section 24 of this bill adds a reference to an electronic or oral
 14 communication to make the section consistent with the references to communications
 15 included in the federal statute cited therein.

16 Existing law also requires that each application for an order authorizing the interception
 17 of a wire or oral communication be made in writing upon oath or affirmation to a justice of the
 18 Supreme Court or district judge. (NRS 179.470) ~~Section 18 of this bill [requires]~~ authorizes
 19 the judge to accept a facsimile or electronic copy of the signature of any person required to
 20 give an oath or affirmation as part of an application for an order authorizing the interception
 21 of a wire, electronic or oral communication as an original signature to the application.

22 **Section 6** of this bill provides that the interception, listening or recording of a wire,
 23 electronic or oral communication by a peace officer or certain other persons is not unlawful if
 24 the peace officer or person is intercepting the communication of a person who has: (1)
 25 barricaded himself or herself, resulting in an imminent risk of harm to ~~the life [or property]~~
 26 of another person; (2) created a hostage situation; or (3) threatened the imminent illegal use
 27 of an explosive.

28 **Section 7** of this bill authorizes district courts of this State to issue orders requiring a
 29 provider of electronic communication service to disclose the contents of a wire or electronic
 30 communication or a record or other information pertaining to a subscriber to, or customer of,
 31 such service upon the application of a district attorney or the Attorney General, or their
 32 deputies, supported by an affidavit of a peace officer under the circumstances and upon the
 33 conditions prescribed by federal law. Section 7 provides that a provider of electronic
 34 communication service and associated persons are immune from any liability relating to
 35 a disclosure made pursuant to such a court order. Sections 11, 15, 19 and 25 of this bill
 36 replace existing references to a communications common carrier with the term "provider of
 37 electronic communication service."

38 **Sections 2-5** of this bill add new definitions of terms relating to the interception of wire,
 39 electronic or oral communications, and **sections 11 and 13-15** of this bill revise certain
 40 existing definitions relating to the interception of wire or oral communications.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
 SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 **Section 1.** Chapter 179 of NRS is hereby amended by adding thereto the
 2 provisions set forth as sections 2 to 7, inclusive, of this act.

3 **Sec. 2.** *"Electronic communication" means a transfer of signs, signals,*
 4 *writings, images, sounds, data or intelligence of any nature transferred in whole*
 5 *or in part by a wire, radio, electromagnetic, photoelectric or photo-optical system.*
 6 *The term does not include:*

- 7 1. *A wire or oral communication.*
- 8 2. *A communication made through a tone-only paging device.*
- 9 3. *A communication from a tracking device.*
- 10 4. *Electronic funds transfer information stored by a financial institution in*
 11 *a communication system used for the electronic storage and transfer of funds.*
- 12 5. *The incoming or outgoing electronic or other impulses that identify the*
 13 *originating number of an instrument or device from which or to which a wire or*
 14 *electronic communication was transmitted.*

15 **Sec. 3.** *"Electronic communication service" means a service that provides*
 16 *to users of the service the ability to send or receive a wire or electronic*
 17 *communication.*

1 Sec. 3.5. "Peace officer" means a category I peace officer, as defined in
2 NRS 289.460.

3 Sec. 4. "Tracking device" means an electronic or mechanical device that
4 permits the tracking of the movement of a person or an object.

5 Sec. 5. "User" means a person or entity who:

- 6 1. Uses an electronic communication service; and
7 2. Is authorized by the provider of the electronic communication service to
8 engage in such use.

9 Sec. 6. 1. The interception, listening or recording of a wire, electronic or
10 oral communication by a peace officer specifically designated by the Attorney
11 General or the district attorney of any county, or a person acting under the
12 direction or request of a peace officer, is not unlawful if the peace officer or
13 person is intercepting the communication of a person who has:

14 (a) Barricaded himself or herself and is not exiting or surrendering at the
15 direction or lawful request of a peace officer, in circumstances in which there is
16 the potential for imminent risk of harm to the life for property of the another
17 person for others as a result of this or her the barricaded person's actions or
18 the actions of law enforcement in resolving the barricade situation;

19 (b) Created a hostage situation; or

20 (c) Threatened the imminent illegal use of an explosive.

21 2. For the purposes of subsection 1:

22 (a) A barricade occurs when a person refuses :

23 (1) Refuses to come out from a covered or enclosed position after being
24 provided an order to exit by a peace officer ; or

25 (2) Is contained in an open area and the presence or approach of a peace
26 officer may precipitate an adverse reaction by the person.

27 (b) A hostage situation occurs when a person holds another person against
28 the other person's will, regardless of whether the person holding the other person
29 has made a demand.

30 ~~3. As used in this section, "peace officer" means:~~

31 ~~(a) Sheriffs of counties and metropolitan police departments and their~~
32 ~~deputies;~~

33 ~~(b) Investigators, agents, officers and employees of the Investigation Division~~
34 ~~of the Department of Public Safety who have the powers of peace officers~~
35 ~~pursuant to paragraph (d) of subsection 1 of NRS 289.270;~~

36 ~~(c) Police officers of cities and towns;~~

37 ~~(d) Agents of the State Gaming Control Board who are investigating any~~
38 ~~violation of subsection 2 or 3 of NRS 463.360 or chapter 465 of NRS;~~

39 ~~(e) Special investigators employed by the Attorney General who have the~~
40 ~~powers of peace officers pursuant to NRS 289.170; and~~

41 ~~(f) Investigators employed by a district attorney who have the powers of~~
42 ~~peace officers pursuant to NRS 289.170.~~

43 Sec. 7. 1. District courts of this State may issue orders requiring a
44 provider of electronic communication service to disclose the contents of a wire or
45 electronic communication or a record or other information pertaining to a
46 subscriber to, or customer of, such service upon the application of a district
47 attorney or the Attorney General, or their deputies, supported by an affidavit of
48 a peace officer under the circumstances and upon the conditions prescribed by 18
49 U.S.C. § 2703. As used in this section, "peace officer" has the meaning ascribed
50 to it in section 6 of this act.

51 2. A provider of electronic communication service, an officer, employee or
52 agent thereof or another person associated with the provider of electronic
53 communication service who, pursuant to an order issued by a district court

1 *pursuant to subsection 1, discloses the contents of a wire or electronic*
2 *communication or a record or other information pertaining to a subscriber to, or*
3 *customer of, the electronic communication service is immune from any liability*
4 *relating to any disclosure made pursuant to the order.*

5 **Sec. 8.** NRS 179.410 is hereby amended to read as follows:

6 179.410 As used in NRS 179.410 to 179.515, inclusive, *and sections 2 to 7,*
7 *inclusive, of this act*, except where the context otherwise requires, the words and
8 terms defined in NRS 179.415 to 179.455, inclusive, *and sections 2 to 5, inclusive,*
9 *of this act* have the meanings ascribed to them in those sections.

10 **Sec. 9.** NRS 179.415 is hereby amended to read as follows:

11 179.415 “Aggrieved person” means a person who was a party to any
12 intercepted wire , *electronic* or oral communication or a person against whom the
13 interception was directed.

14 **Sec. 10.** NRS 179.420 is hereby amended to read as follows:

15 179.420 “Contents” when used with respect to any wire , *electronic* or oral
16 communication includes any information concerning the identity of the parties to
17 such communication or the existence, substance, purport or meaning of that
18 communication.

19 **Sec. 11.** NRS 179.425 is hereby amended to read as follows:

20 179.425 “Electronic, mechanical or other device” means any device or
21 apparatus which can be used to intercept a wire , *electronic* or oral communication
22 other than:

23 1. Any telephone instrument, equipment or facility, or any component
24 thereof:

25 (a) Furnished to the subscriber or user by a ~~telecommunications common carrier~~
26 *provider of electronic communication service* in the ordinary course of its business
27 and being used by the subscriber or user in the ordinary course of its business; ~~or~~

28 (b) *Furnished by the subscriber or user for connection to the facilities of an*
29 *electronic communication service and being used by the subscriber or user in the*
30 *ordinary course of its business; or*

31 (c) Being used by a ~~telecommunications common carrier~~ *provider of electronic*
32 *communication service* in the ordinary course of its business, or by an investigative
33 or law enforcement officer in the ordinary course of his or her duties.

34 2. A hearing aid or similar device being used to correct subnormal hearing to
35 not better than normal.

36 **Sec. 12.** NRS 179.430 is hereby amended to read as follows:

37 179.430 “Intercept” means the aural acquisition of the contents of any wire ,
38 *electronic* or oral communication through the use of any electronic, mechanical or
39 other device or of any sending or receiving equipment.

40 **Sec. 13.** NRS 179.435 is hereby amended to read as follows:

41 179.435 “Investigative or law enforcement officer” means any officer of the
42 *United States or this State* or a political subdivision thereof who is empowered by
43 the law of this ~~state~~ *State* to conduct investigations of or to make arrests for
44 felonies, and any attorney authorized by law to prosecute or participate in the
45 prosecution of such offenses.

46 **Sec. 14.** NRS 179.440 is hereby amended to read as follows:

47 179.440 “Oral communication” means any verbal message uttered by a
48 person exhibiting an expectation that such communication is not subject to
49 interception, under circumstances justifying such expectation. *The term does not*
50 *include an electronic communication.*

51 **Sec. 15.** NRS 179.455 is hereby amended to read as follows:

52 179.455 “Wire communication” means any ~~communication~~ *aural transfer*
53 made in whole or in part through the use of facilities for the transmission of

1 communications by the aid of wire, cable or other like connection between the point
2 of origin and the point of reception , *including the use of such connection in a*
3 *switching station*, furnished or operated by any person engaged ~~as a common~~
4 ~~carrier~~ in providing or operating such facilities for the transmission of intrastate,
5 interstate or foreign communications.

6 **Sec. 16.** NRS 179.460 is hereby amended to read as follows:

7 179.460 1. The Attorney General or the district attorney of any county may
8 apply to a Supreme Court justice or to a district judge in the county where the
9 interception is to take place for an order authorizing the interception of wire ,
10 *electronic* or oral communications, and the judge may, in accordance with NRS
11 179.470 to 179.515, inclusive, *and sections 6 and 7 of this act*, grant an order
12 authorizing the interception of wire , *electronic* or oral communications by
13 investigative or law enforcement officers having responsibility for the investigation
14 of the offense as to which the application is made, when the interception may
15 provide evidence of the commission of murder, kidnapping, robbery, extortion,
16 bribery, escape of an offender in the custody of the Department of Corrections,
17 destruction of public property by explosives, a sexual offense against a child, sex
18 trafficking, a violation of NRS 200.463, 200.464 or 200.465, trafficking in persons
19 in violation of NRS 200.467 or 200.468 or the commission of any offense which is
20 made a felony by the provisions of chapter 453 or 454 of NRS.

21 2. A ~~good faith reliance by a~~ *provider of electronic communication service*
22 *or a public utility* ~~for a court order shall constitute~~ *constitutes a complete defense*
23 *to any civil or criminal action brought against the public utility on account of* , *an*
24 *officer, employee or agent thereof or another person associated with the provider*
25 *of electronic communication service or public utility who, pursuant to an order*
26 *issued pursuant to subsection 1, provides information or otherwise assists an*
27 *investigative or law enforcement officer in the interception of a wire, electronic*
28 *or oral communication is immune from any liability relating to* any interception
29 made pursuant to the order.

30 3. As used in this section, “sexual offense against a child” includes any act
31 upon a child constituting:

- 32 (a) Incest pursuant to NRS 201.180;
33 (b) Lewdness with a child pursuant to NRS 201.230;
34 (c) Sado-masochistic abuse pursuant to NRS 201.262;
35 (d) Sexual assault pursuant to NRS 200.366;
36 (e) Statutory sexual seduction pursuant to NRS 200.368;
37 (f) Open or gross lewdness pursuant to NRS 201.210; or
38 (g) Luring a child or a person with mental illness pursuant to NRS 201.560, if
39 punished as a felony.

40 **Sec. 17.** NRS 179.465 is hereby amended to read as follows:

41 179.465 1. Any investigative or law enforcement officer who, by any means
42 authorized by NRS 179.410 to 179.515, inclusive, *and sections 2 to 7, inclusive, of*
43 *this act* or 704.195 or 18 U.S.C. §§ 2510 to ~~2520,~~ *2522*, inclusive, has obtained
44 knowledge of the contents of any wire , *electronic* or oral communication, or
45 evidence derived therefrom, may disclose the contents to another investigative or
46 law enforcement officer or use the contents to the extent that the disclosure or use is
47 appropriate to the proper performance of the official duties of the officer making or
48 receiving the disclosure.

49 2. Any person who has received, by any means authorized by NRS 179.410 to
50 179.515, inclusive, *and sections 2 to 7, inclusive, of this act* or 704.195 or 18
51 U.S.C. §§ 2510 to ~~2520,~~ *2522*, inclusive, or by a statute of another state, any
52 information concerning a wire , *electronic* or oral communication, or evidence
53 derived therefrom intercepted in accordance with the provisions of NRS 179.410 to

1 179.515, inclusive, *and sections 2 to 7, inclusive, of this act* may disclose the
2 contents of that communication or the derivative evidence while giving testimony
3 under oath or affirmation in any criminal proceeding in any court or before any
4 grand jury in this state, or in any court of the United States or of any state, or in any
5 federal or state grand jury proceeding.

6 3. An otherwise privileged wire , *electronic* or oral communication
7 intercepted in accordance with, or in violation of, the provisions of NRS 179.410 to
8 179.515, inclusive, *and sections 2 to 7, inclusive, of this act* or 18 U.S.C. §§ 2510
9 to ~~2520~~ *2522*, inclusive, does not lose its privileged character.

10 4. When an investigative or law enforcement officer engaged in intercepting
11 wire , *electronic* or oral communications as authorized by NRS 179.410 to 179.515,
12 inclusive, *and sections 2 to 7, inclusive, of this act*, intercepts wire , *electronic* or
13 oral communications relating to offenses other than those specified in the order
14 provided for in NRS 179.460, the contents of the communications and the evidence
15 derived therefrom may be disclosed or used as provided in subsection 1. The direct
16 evidence derived from the communications is inadmissible in a criminal
17 proceeding, but any other evidence obtained as a result of knowledge obtained from
18 the communications may be disclosed or used as provided in subsection 2 when
19 authorized or approved by a justice of the Supreme Court or district judge who
20 finds upon application made as soon as practicable that the contents of the
21 communications were intercepted in accordance with the provisions of NRS
22 179.410 to 179.515, inclusive, *and sections 2 to 7, inclusive, of this act* or 18
23 U.S.C. §§ 2510 to ~~2520~~ *2522*, inclusive.

24 **Sec. 18.** NRS 179.470 is hereby amended to read as follows:

25 179.470 1. Each application for an order authorizing the interception of a
26 wire , *electronic* or oral communication must be made in writing upon oath or
27 affirmation to a justice of the Supreme Court or district judge and must state the
28 applicant's authority to make such application. Each application must include the
29 following information:

30 (a) The identity of the investigative or law enforcement officer making the
31 application, and the officer authorizing the application.

32 (b) A full and complete statement of the facts and circumstances relied upon by
33 the applicant to justify the applicant's belief that an order should be issued,
34 including:

35 (1) Details as to the particular offense that is being, has been or is about to
36 be committed.

37 (2) A particular description of the nature and location of the facilities from
38 which or the place where the communication is to be intercepted, the facilities to be
39 used and the means by which such interception is to be made.

40 (3) A particular description of the type of communications sought to be
41 intercepted.

42 (4) The identity of the person, if known, who is committing, has committed or
43 is about to commit an offense and whose communications are to be intercepted.

44 (c) A full and complete statement as to whether or not other investigative
45 procedures have been tried and failed or why they reasonably appear to be unlikely
46 to succeed if tried or to be too dangerous.

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

1 (e) A full and complete statement of the facts concerning all previous
2 applications known to the person authorizing and making the application made to
3 any judge for authorization to intercept wire , *electronic* or oral communications
4 involving any of the same persons, facilities or places specified in the application,
5 and the action taken by the judge on each such application.

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

9 2. The judge may require the applicant to furnish additional testimony or
10 documentary evidence under oath or affirmation in support of the application. Oral
11 testimony must be reduced to writing.

12 3. Upon such application the judge may enter an ex parte order, as requested
13 or as modified, authorizing interception of wire , *electronic* or oral communications
14 within the territorial jurisdiction of the court in which the judge is sitting, if the
15 judge determines on the basis of the facts submitted by the applicant that:

16 (a) There is probable cause for belief that a person is committing, has
17 committed or is about to commit an offense for which interception is authorized by
18 NRS 179.460.

19 (b) There is probable cause for belief that particular communications
20 concerning that offense will be obtained through such interception.

21 (c) Normal investigative procedures have been tried and have failed or
22 reasonably appear to be unlikely to succeed if tried or appear to be too dangerous.

23 (d) There is probable cause for belief that the facilities from which, or the place
24 where, the wire , *electronic* or oral communications are to be intercepted are being
25 used or are about to be used by such person in connection with the commission of
26 such offense or are leased to, listed in the name of, or commonly used by such
27 person.

28 *4. The judge ~~shall~~ may accept a facsimile or electronic copy of the*
29 *signature of any person required to give an oath or affirmation as part of an*
30 *application submitted pursuant to this section as an original signature to the*
31 *application.*

32 **Sec. 19.** NRS 179.475 is hereby amended to read as follows:

33 179.475 1. Each order authorizing the interception of any wire , *electronic*
34 or oral communication ~~shall~~ *must* specify:

35 (a) The identity of the person, if known, whose communications are to be
36 intercepted.

37 (b) The nature and location of the place where or communication facilities to
38 which authority to intercept is granted, the facilities to be used and the means by
39 which such interceptions ~~shall~~ *will* be made.

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

42 (d) The identity of the agency authorized to intercept the communications, and
43 of the person authorizing the application.

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

47 2. An order authorizing the interception of a wire , *electronic* or oral
48 communication shall, upon request of the applicant, direct that a ~~communications~~
49 ~~common-carrier,} provider of electronic communication service,~~ landlord,
50 custodian or other person shall furnish the applicant forthwith all information,
51 facilities, and technical assistance necessary to accomplish the interception
52 unobtrusively and with a minimum of interference with the services that such
53 ~~carrier,} provider of electronic communication service,~~ landlord, custodian, or

1 person is according the person whose communications are to be intercepted. Any
2 ~~communications common carrier,~~ *provider of electronic communication service*,
3 landlord, custodian or other person furnishing such facilities or technical assistance
4 ~~shall~~ *must* be compensated therefor by the applicant at the prevailing rates.

5 3. No order entered under this section may authorize the interception of any
6 wire, *electronic* or oral communication for any period longer than is necessary to
7 achieve the objective of the authorization, and in no event longer than 30 days.
8 Extensions of an order may be granted, but only upon application for an extension
9 made in accordance with the procedures provided in NRS 179.470. The period of
10 extension ~~shall~~ *must* be no longer than the authorizing judge deems necessary to
11 achieve the purposes for which it was granted and in no event for longer than 30
12 days. Every order and extension thereof ~~shall~~ *must* contain a provision that the
13 authorization to intercept ~~shall~~ *must* be executed as soon as practicable, ~~shall~~
14 *must* be conducted in such a way as to minimize the interception of
15 communications not otherwise subject to interception under this statute, and ~~shall~~
16 *will* terminate upon attainment of the authorized objective, or in any event in 30
17 days.

18 **Sec. 20.** NRS 179.485 is hereby amended to read as follows:

19 179.485 The contents of any wire, *electronic* or oral communication
20 intercepted by any means authorized by NRS 179.410 to 179.515, inclusive, ~~shall~~
21 *and sections 2 to 7, inclusive, of this act must*, if possible, be recorded on tape or
22 wire or other comparable device. The recording of the contents of any wire,
23 *electronic* or oral communication under this section ~~shall~~ *must* be done in such a
24 way as will protect the recording from editing or other alterations. Immediately
25 upon the expiration of the period of the order, or extensions thereof, such
26 recordings ~~shall~~ *must* be made available to the judge issuing such order and
27 sealed under the judge's directions. Custody of the recordings ~~shall~~ *must* be
28 placed with whomever the judge directs. They ~~shall~~ *must* not be destroyed except
29 upon an order of the judge issuing such order and in any event ~~shall~~ *must* be kept
30 for 10 years. Duplicate recordings may be made for use or disclosure pursuant to
31 the provisions of subsection 1 of NRS 179.465 for investigations. The presence of
32 the seal provided for by this section, or a satisfactory explanation for the absence
33 thereof, is a prerequisite for the use or disclosure of the contents of any wire,
34 *electronic* or oral communication or evidence derived therefrom under subsection 2
35 of NRS 179.465.

36 **Sec. 21.** NRS 179.495 is hereby amended to read as follows:

37 179.495 1. Within a reasonable time but not later than 90 days after the
38 termination of the period of an order or any extension thereof, the judge who issued
39 the order shall cause to be served on the chief of the Investigation Division of the
40 Department of Public Safety, persons named in the order and any other parties to
41 intercepted communications, an inventory which must include notice of:

42 (a) The fact of the entry and a copy of the order.

43 (b) The fact that during the period wire, *electronic* or oral communications
44 were or were not intercepted.

45 ➤ Except as otherwise provided in NRS 239.0115, the inventory filed pursuant to
46 this section is confidential and must not be released for inspection unless
47 subpoenaed by a court of competent jurisdiction.

48 2. The judge, upon receipt of a written request from any person who was a
49 party to an intercepted communication or from the person's attorney, shall make
50 available to the person or the person's counsel those portions of the intercepted
51 communications which contain the person's conversation. On an ex parte showing
52 of good cause to a district judge, the serving of the inventory required by this
53 section may be postponed for such time as the judge may provide.

1 **Sec. 22.** NRS 179.500 is hereby amended to read as follows:

2 179.500 The contents of any intercepted wire , *electronic* or oral
3 communication or evidence derived therefrom ~~shall~~ *must* not be received in
4 evidence or otherwise disclosed in any trial, hearing or other proceeding in any
5 court of this state unless each party, not less than 10 days before the trial, hearing or
6 proceeding, has been furnished with a copy of the court order and accompanying
7 application under which the interception was authorized and a transcript of any
8 communications intercepted. Such 10-day period may be waived by the judge if the
9 judge finds that it was not possible to furnish the party with such information 10
10 days before the trial, hearing or proceeding and that the party will not be prejudiced
11 by the delay in receiving such information.

12 **Sec. 23.** NRS 179.505 is hereby amended to read as follows:

13 179.505 1. Any aggrieved person in any trial, hearing or proceeding in or
14 before any court, department, officer, agency or other authority of this State, or a
15 political subdivision thereof, may move to suppress the contents of any intercepted
16 wire , *electronic* or oral communication, or evidence derived therefrom, on the
17 grounds that:

18 (a) The communication was unlawfully intercepted.

19 (b) The order of authorization under which it was intercepted is insufficient on
20 its face.

21 (c) The interception was not made in conformity with the order of
22 authorization.

23 (d) The period of the order and any extension had expired.

24 2. Such *a* motion ~~shall~~ *must* be made before the trial, hearing or proceeding
25 unless there was no opportunity to make such *a* motion or the person was not aware
26 of the grounds of the motion. If the motion is granted, the contents of the
27 intercepted wire , *electronic* or oral communication, or evidence derived therefrom,
28 ~~shall~~ *must* be treated as having been obtained in violation of NRS 179.410 to
29 179.515, inclusive ~~and~~ , *and sections 2 to 7, inclusive, of this act.* The judge, upon
30 the filing of such motion by the aggrieved person, may in the judge's discretion
31 make available to the aggrieved person or the aggrieved person's counsel for
32 inspection such portions of the intercepted communication or evidence derived
33 therefrom as the judge determines to be in the interest of justice.

34 **Sec. 24.** NRS 179.515 is hereby amended to read as follows:

35 179.515 1. In January of each year, the Attorney General and the district
36 attorney of each county shall report to the Administrative Office of the United
37 States Courts the information required to be reported pursuant to 18 U.S.C. § 2519.
38 A copy of the report must be filed with the Investigation Division of the
39 Department of Public Safety. In the case of a joint application by the Attorney
40 General and a district attorney both shall make the report.

41 2. Every justice of the Supreme Court or district judge who signs an order
42 authorizing or denying an interception shall, within 30 days after the termination of
43 the order or any extension thereof, file with the Investigation Division of the
44 Department of Public Safety on forms approved by the Division a report containing
45 the same information required to be reported pursuant to 18 U.S.C. § 2519. The
46 report must also indicate whether a party to an intercepted wire , *electronic or oral*
47 communication had consented to the interception.

48 3. The willful failure of any officer to report any information known to the
49 officer which is required to be reported pursuant to subsection 1 or 2 constitutes
50 malfeasance in office and, in such cases, the Secretary of State shall, when the
51 wrong becomes known to the Secretary of State, institute legal proceedings for the
52 removal of that officer.

1 4. The Investigation Division of the Department of Public Safety shall, on or
2 before April 30 of each year, compile a report consisting of a summary and analysis
3 of all reports submitted to the Division pursuant to this section during the previous
4 calendar year. The report is a public record and may be inspected by any person
5 during the regular office hours of the Division.

6 **Sec. 25.** NRS 199.540 is hereby amended to read as follows:

7 199.540 1. It is unlawful for an officer or employee of a court or law
8 enforcement agency, or any employee of a ~~communications common carrier,~~
9 *provider of electronic communication service*, landlord, custodian or other person
10 who is ordered pursuant to subsection 2 of NRS 179.475 to furnish information,
11 facilities and technical assistance necessary to accomplish an authorized
12 interception of a wire, *electronic* or oral communication, having knowledge that an
13 order has been applied for or has been issued authorizing the interception of a wire,
14 *electronic* or oral communication in accordance with NRS 179.410 to 179.515,
15 inclusive, *and sections 2 to 7, inclusive, of this act* to:

16 (a) Give notice of the interception; or

17 (b) Attempt to give notice of the interception,
18 ↪ to any person with the intent to obstruct, impede or prevent the interception of
19 the wire, *electronic* or oral communication.

20 2. It is unlawful for an officer or employee of a court or law enforcement
21 agency, or any employee of a ~~communications common carrier,~~ *provider of*
22 *electronic communication service*, landlord, custodian or other person who is
23 ordered pursuant to subsection 2 of NRS 179.475 to furnish information, facilities
24 and technical assistance necessary to accomplish an authorized interception of a
25 wire, *electronic* or oral communication, having knowledge that an order has been
26 applied for or has been issued authorizing the use of a pen register or trap and trace
27 device to:

28 (a) Give notice of the use of the pen register or device; or

29 (b) Attempt to give notice of the use of the pen register or device,
30 ↪ to any person with the intent to obstruct, impede or prevent that use.

31 3. A person who violates any provision of subsection 1 or 2 is guilty of a
32 category D felony and shall be punished as provided in NRS 193.130.