

Amendment No. CA5

Conference Committee Amendment to
Senate Bill No. 52 First Reprint

(BDR 14-159)

Proposed by: Conference Committee

Amends: Summary: Yes Title: Yes Preamble: No Joint Sponsorship: No Digest: Yes

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.

NCA/BAW



Date: 5/31/2015

S.B. No. 52—Revises provisions governing search warrants. (BDR 14-159)



SENATE BILL NO. 52—COMMITTEE ON JUDICIARY

(ON BEHALF OF THE ATTORNEY GENERAL)

PREFILED DECEMBER 20, 2014

Referred to Committee on Judiciary

SUMMARY—Revises provisions governing ~~search warrants;~~ criminal procedure. (BDR 14-159)

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

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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 ~~search warrants;~~ criminal procedure; defining certain terms relating to the interception of wire, electronic or oral communications; authorizing the use of secure electronic transmission for the submission of an application and affidavit for, and the issuance by a magistrate of, a search warrant; 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 the issuance of 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; 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:

Existing law provides that a search warrant may only be issued: (1) pursuant to an affidavit or affidavits sworn to before a magistrate and establishing the grounds for issuing the warrant; or (2) in lieu of an affidavit, pursuant to an oral statement taken by a magistrate, given under oath and filed with the clerk of the court. (NRS 179.045) ~~[[This]]~~ Section 9 of this bill authorizes the use of secure electronic transmission for the submission of an application and affidavit for, and the issuance by a magistrate of, a search warrant.

Existing law authorizes the Attorney General or the district attorney of any county to apply to a Supreme Court justice or to a district judge in the county where the interception is to take place for an order authorizing the interception of wire or oral communications. The judge may grant an order authorizing such interception by certain investigative or law enforcement officers when the interception may provide evidence of the commission of certain crimes. (NRS 179.460) Section 18 of this bill additionally authorizes the Attorney General or the district attorney to apply for an order authorizing the interception of an electronic communication. Section 18 also provides that a provider of electronic communication service, a public utility and associated persons are immune from any liability relating to the interception of a wire, electronic or oral communication made pursuant to such a court order. Sections 11-14, 18-25 and 27 of this bill add a reference to an electronic communication to the provisions of existing law that reference wire or oral communications. Section 26 of this bill adds a reference to an electronic or oral communication to make the section consistent with the references to communications included in the federal statute cited therein.

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

Section 7 of this bill provides that the interception, listening or recording of a wire, electronic or oral communication by a peace officer or certain other persons is not unlawful if the peace officer or person is intercepting the communication of a person who has: (1) barricaded himself or herself, resulting in an imminent risk of harm to the life of another person; (2) created a hostage situation; or (3) threatened the imminent illegal use of an explosive.

Section 8 of this bill authorizes the Nevada Supreme Court and the district courts of this State 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 upon the application of a district attorney or the Attorney General, or their deputies, supported by an affidavit of a peace officer under the circumstances and upon the conditions prescribed by federal law. Section 8 provides that a provider of electronic communication service and associated persons are immune from any liability relating to a disclosure made pursuant to such a court order. Sections 13, 17, 21 and 27 of this bill replace existing references to a communications common carrier with the term "provider of electronic communication service."

Sections 2-6 of this bill add new definitions of terms relating to the interception of wire, electronic or oral communications, and sections 13 and 15-17 of this bill revise certain 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:

Section 1. Chapter 179 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 8, inclusive, of this act.

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

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

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

16 Sec. 4. "Peace officer" means a category I peace officer, as defined in NRS
17 289.460.

18 Sec. 5. "Tracking device" means an electronic or mechanical device that
19 permits the tracking of the movement of a person or an object.

20 Sec. 6. "User" means a person or entity who:

- 21 1. Uses an electronic communication service; and
- 22 2. Is authorized by the provider of the electronic communication service to
23 engage in such use.

24 Sec. 7. 1. The interception, listening or recording of a wire, electronic or
25 oral communication by a peace officer specifically designated by the Attorney
26 General or the district attorney of any county, or a person acting under the
27 direction or request of a peace officer, is not unlawful if the peace officer or
28 person is intercepting the communication of a person who has:

29 (a) Barricaded himself or herself and is not exiting or surrendering at the
30 lawful request of a peace officer, in circumstances in which there is imminent
31 risk of harm to the life of another person as a result of the barricaded person's
32 actions or the actions of law enforcement in resolving the barricade situation;

33 (b) Created a hostage situation; or

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

35 2. For the purposes of subsection 1:

36 (a) A barricade occurs when a person:

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

39 (2) Is contained in an open area and the presence or approach of a peace
40 officer precipitates an imminent risk of harm to the life of another person.

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

44 Sec. 8. 1. The Nevada Supreme Court and the district courts of this State
45 may issue orders requiring a provider of electronic communication service to
46 disclose the contents of a wire or electronic communication or a record or other
47 information pertaining to a subscriber to, or customer of, such service upon the
48 application of a district attorney or the Attorney General, or their deputies,
49 supported by an affidavit of a peace officer under the circumstances and upon
50 the conditions prescribed by 18 U.S.C. § 2703.

51 2. A provider of electronic communication service, an officer, employee or
52 agent thereof or another person associated with the provider of electronic

communication service who, pursuant to an order issued by a district court pursuant to subsection 1, discloses the contents of a wire or electronic communication or a record or other information pertaining to a subscriber to, or customer of, the electronic communication service is immune from any liability relating to any disclosure made pursuant to the order.

~~Section 1~~ **Sec. 9.** NRS 179.045 is hereby amended to read as follows:

179.045 1. A search warrant may issue only on affidavit or affidavits sworn to before the magistrate and establishing the grounds for issuing the warrant or as provided in subsection ~~2~~ **3**. If the magistrate is satisfied that grounds for the application exist or that there is probable cause to believe that they exist, the magistrate shall issue a warrant identifying the property and naming or describing the person or place to be searched.

2. *Secure electronic transmission may be used for the submission of an application and affidavit required by subsection 1, and for the issuance of a search warrant by a magistrate. The Nevada Supreme Court ~~shall~~ may adopt rules not inconsistent with the laws of this State to carry out the provisions of this subsection.*

3. In lieu of the affidavit required by subsection 1, the magistrate may take an oral statement given under oath, which must be recorded in the presence of the magistrate or in the magistrate's immediate vicinity by a certified court reporter or by electronic means, transcribed, certified by the reporter if the reporter recorded it, and certified by the magistrate. The statement must be filed with the clerk of the court.

~~3~~ **4.** Upon a showing of good cause, the magistrate may order an affidavit or a recording of an oral statement given pursuant to this section to be sealed. Upon a showing of good cause, a court may cause the affidavit or recording to be unsealed.

~~4~~ **5.** After a magistrate has issued a search warrant, whether it is based on an affidavit or an oral statement given under oath, the magistrate may orally authorize a peace officer to sign the name of the magistrate on a duplicate original warrant. A duplicate original search warrant shall be deemed to be a search warrant. It must be returned to the magistrate who authorized the signing of it. The magistrate shall endorse his or her name and enter the date on the warrant when it is returned. Any failure of the magistrate to make such an endorsement and entry does not in itself invalidate the warrant.

~~5~~ **6.** The warrant must be directed to a peace officer in the county where the warrant is to be executed. It must:

(a) State the grounds or probable cause for its issuance and the names of the persons whose affidavits have been taken in support thereof; or

(b) Incorporate by reference the affidavit or oral statement upon which it is based.

➤ The warrant must command the officer to search forthwith the person or place named for the property specified.

~~6~~ **7.** The warrant must direct that it be served between the hours of 7 a.m. and 7 p.m., unless the magistrate, upon a showing of good cause therefor, inserts a direction that it be served at any time.

~~7~~ **8.** The warrant must designate the magistrate to whom it is to be returned.

9. *As used in this section, "secure electronic transmission" means the sending of information from one computer system to another computer system in such a manner as to ensure that:*

(a) No person other than the intended recipient receives the information;

(b) The identity of the sender of the information can be authenticated; and
(c) The information which is received by the intended recipient is identical to the information that was sent.

Sec. 10. NRS 179.410 is hereby amended to read as follows:

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

Sec. 11. NRS 179.415 is hereby amended to read as follows:

179.415 "Aggrieved person" means a person who was a party to any intercepted wire, electronic or oral communication or a person against whom the interception was directed.

Sec. 12. NRS 179.420 is hereby amended to read as follows:

179.420 "Contents" when used with respect to any wire, electronic or oral communication includes any information concerning the identity of the parties to such communication or the existence, substance, purport or meaning of that communication.

Sec. 13. NRS 179.425 is hereby amended to read as follows:

179.425 "Electronic, mechanical or other device" means any device or apparatus which can be used to intercept a wire, electronic or oral communication other than:

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

(a) Furnished to the subscriber or user by a ~~telecommunications common carrier~~ provider of 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~~

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

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

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

Sec. 14. NRS 179.430 is hereby amended to read as follows:

179.430 "Intercept" means the aural acquisition of the contents of any wire, electronic or oral communication through the use of any electronic, mechanical or other device or of any sending or receiving equipment.

Sec. 15. NRS 179.435 is hereby amended to read as follows:

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

Sec. 16. NRS 179.440 is hereby amended to read as follows:

179.440 "Oral communication" means any verbal message uttered by a person exhibiting an expectation that such communication is not subject to interception, under circumstances justifying such expectation. The term does not include an electronic communication.

Sec. 17. NRS 179.455 is hereby amended to read as follows:

179.455 "Wire communication" means any ~~telecommunication~~ 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 ~~as a common carrier~~ in providing or operating such facilities for the transmission of intrastate, interstate or foreign communications.

Sec. 18. NRS 179.460 is hereby amended to read as follows:

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

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

3. As used in this section, "sexual offense against a child" includes any act upon a child constituting:

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

Sec. 19. NRS 179.465 is hereby amended to read as follows:

179.465 1. Any investigative or law enforcement officer who, by any means authorized by NRS 179.410 to 179.515, inclusive, and sections 2 to 8, inclusive, of this act or 704.195 or 18 U.S.C. §§ 2510 to ~~2520~~ 2522, inclusive, has obtained knowledge of the contents of any wire, electronic or oral communication, or evidence derived therefrom, may disclose the contents to another investigative or law enforcement officer or use the contents to the extent that the disclosure or use is appropriate to the proper performance of the official duties of the officer making or receiving the disclosure.

2. Any person who has received, by any means authorized by NRS 179.410 to 179.515, inclusive, and sections 2 to 8, inclusive, of this act or 704.195 or 18 U.S.C. §§ 2510 to ~~2520~~ 2522, inclusive, or by a statute of another state, any information concerning a wire, electronic or oral communication, or evidence

1 derived therefrom intercepted in accordance with the provisions of NRS 179.410 to
2 179.515, inclusive, and sections 2 to 8, inclusive, of this act may disclose the
3 contents of that communication or the derivative evidence while giving testimony
4 under oath or affirmation in any criminal proceeding in any court or before any
5 grand jury in this state, or in any court of the United States or of any state, or in any
6 federal or state grand jury proceeding.

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

11 4. When an investigative or law enforcement officer engaged in intercepting
12 wire, electronic or oral communications as authorized by NRS 179.410 to 179.515,
13 inclusive, and sections 2 to 8, inclusive, of this act intercepts wire, electronic or
14 oral communications relating to offenses other than those specified in the order
15 provided for in NRS 179.460, the contents of the communications and the evidence
16 derived therefrom may be disclosed or used as provided in subsection 1. The direct
17 evidence derived from the communications is inadmissible in a criminal
18 proceeding, but any other evidence obtained as a result of knowledge obtained from
19 the communications may be disclosed or used as provided in subsection 2 when
20 authorized or approved by a justice of the Supreme Court or district judge who
21 finds upon application made as soon as practicable that the contents of the
22 communications were intercepted in accordance with the provisions of NRS
23 179.410 to 179.515, inclusive, and sections 2 to 8, inclusive, of this act or 18
24 U.S.C. §§ 2510 to ~~2520~~, 2522, inclusive.

25 **Sec. 20. NRS 179.470 is hereby amended to read as follows:**

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

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

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

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

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

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

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

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

48 (d) A statement of the period of time for which the interception is required to
49 be maintained. If the nature of the investigation is such that the authorization for
50 interception should not automatically terminate when the described type of
51 communication has been 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 person authorizing and making the application made to any judge for authorization to intercept wire, electronic 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.

(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 under oath or affirmation in support of the application. Oral testimony must be reduced to writing.

3. Upon such application the judge may enter an ex parte order, as requested or as modified, authorizing interception of wire, electronic 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 an offense for which interception is authorized by NRS 179.460.

(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 appear to be too dangerous.

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

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

Sec. 21. NRS 179.475 is hereby amended to read as follows:

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

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

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

(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.

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

2. An order authorizing the interception of a wire, electronic or oral communication shall, upon request of the applicant, direct that a ~~communications common-carrier,~~ provider of 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 ~~carrier,~~ provider of electronic communication service, landlord, custodian, or person is according the person whose communications are to be intercepted. Any ~~communications common carrier,~~ provider of electronic communication service, landlord, custodian or other person furnishing such facilities or technical assistance ~~shall~~ must be compensated therefor by the applicant at the prevailing rates.

3. No order entered under this section may authorize the interception of any wire, electronic or oral communication for any period longer than is necessary to achieve the objective of the authorization, and in no event longer than 30 days. Extensions of an order may be granted, but only upon application for an extension made in accordance with the procedures provided in NRS 179.470. The period of extension ~~shall~~ must 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~~ must contain a provision that the authorization to intercept ~~shall~~ must be executed as soon as practicable, ~~shall~~ must be conducted in such a way as to minimize the interception of communications not otherwise subject to interception under this statute, and ~~shall~~ will terminate upon attainment of the authorized objective, or in any event in 30 days.

Sec. 22. NRS 179.485 is hereby amended to read as follows:

179.485 The contents of any wire, electronic or oral communication intercepted by any means authorized by NRS 179.410 to 179.515, inclusive, ~~shall,~~ and sections 2 to 8, inclusive, of this act must, if possible, be recorded on tape or wire or other comparable device. The recording of the contents of any wire, electronic or oral communication under this section ~~shall~~ must 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~~ must be made available to the judge issuing such order and sealed under the judge's directions. Custody of the recordings ~~shall~~ must be placed with whomever the judge directs. They ~~shall~~ must not be destroyed except upon an order of the judge issuing such order and in any event ~~shall~~ must be kept for 10 years. Duplicate recordings may be made for use or disclosure pursuant to the provisions of subsection 1 of NRS 179.465 for investigations. The presence of the seal provided for by this section, or a satisfactory explanation for the absence thereof, is a prerequisite for the use or disclosure of the contents of any wire, electronic or oral communication or evidence derived therefrom under subsection 2 of NRS 179.465.

Sec. 23. NRS 179.495 is hereby amended to read as follows:

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

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

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

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

2. The judge, upon receipt of a written request from any person who was a party to an intercepted communication or from the person's attorney, shall make available to the person or the person's counsel those portions of the intercepted

communications which contain the person's conversation. On an ex parte showing of good cause to a district judge, the serving of the inventory required by this section may be postponed for such time as the judge may provide.

Sec. 24. NRS 179.500 is hereby amended to read as follows:

179.500 The contents of any intercepted wire, electronic or oral communication or evidence derived therefrom ~~shall~~ must not be received in evidence or otherwise disclosed in any trial, hearing or other proceeding in any court of this state 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 and a transcript of any communications intercepted. Such 10-day period may be waived by the judge if the judge finds that it was not possible to furnish the party with such information 10 days before the trial, hearing or proceeding and that the party will not be prejudiced by the delay in receiving such information.

Sec. 25. NRS 179.505 is hereby amended to read as follows:

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

- (a) The communication was unlawfully intercepted.
- (b) The order of authorization under which it was intercepted is insufficient on its face.
- (c) The interception was not made in conformity with the order of authorization.
- (d) The period of the order and any extension had expired.

2. Such a motion ~~shall~~ must be made before the trial, hearing or proceeding unless there was no opportunity to make such a motion or the person was not aware of the grounds of the motion. If the motion is granted, the contents of the intercepted wire, electronic or oral communication, or evidence derived therefrom, ~~shall~~ must be treated as having been obtained in violation of NRS 179.410 to 179.515, inclusive, ~~and sections 2 to 8, inclusive, of this act.~~ The judge, upon the filing of such motion by the aggrieved person, may in the judge's discretion make available to the aggrieved person or the aggrieved person's counsel for inspection such portions of the intercepted communication or evidence derived therefrom as the judge determines to be in the interest of justice.

Sec. 26. NRS 179.515 is hereby amended to read as follows:

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

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

3. The willful failure of any officer to report any information known to the officer which is required to be reported pursuant to subsection 1 or 2 constitutes

malfeasance in office and, in such cases, the Secretary of State shall, when the wrong becomes known to the Secretary of State, institute legal proceedings for the removal of that officer.

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

Sec. 27. NRS 199.540 is hereby amended to read as follows:

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

(a) Give notice of the interception; or

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

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

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

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

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

~~Sec. 2.~~ **Sec. 28.** This act becomes effective upon passage and approval.