

SENATE BILL NO. 41—COMMITTEE ON JUDICIARY

(ON BEHALF OF THE ATTORNEY GENERAL)

PREFILED NOVEMBER 18, 2020

Referred to Committee on Judiciary

SUMMARY—Revises provisions relating to orders authorizing the installation and use of a pen register or trap and trace device. (BDR 14-412)

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; revising provisions relating to orders authorizing the installation and use of a pen register or trap and trace device; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

1 Existing law authorizes a district court to issue an order that allows the use of a
2 pen register or trap and trace device in accordance with the conditions provided in
3 federal law if the request for such an order is supported by an affidavit signed by a
4 peace officer. (NRS 179.530) This bill revises the definition of “peace officer,” as
5 used in such a context, to include federal law enforcement officers who are
6 members of a task force comprised of federal and state or local law enforcement
7 agencies. This bill also: (1) prohibits, except as otherwise provided in federal law, a
8 person from installing or using a pen register or trap and trace device without first
9 obtaining an order from a district court of this State; (2) authorizes a peace officer
10 to apply to a district court for an order that allows the installation and use of a pen
11 register or trap and trace device; (3) eliminates the reference to the provisions of
12 federal law as those provisions existed on July 1, 1989; (4) authorizes the district
13 court to accept a facsimile or electronic copy of the signature of any person
14 required to give an oath or affirmation as part of an application for an order
15 authorizing the installation and use of a pen register or trap and trace device as an
16 original signature to the application; (5) authorizes the use of secure electronic
17 transmission for the submission of an application and affidavit for, and the issuance
18 of, an order authorizing the installation and use of a pen register or trap and trace
19 device; and (6) makes a technical, nonsubstantive, change to the statute by
20 reorganizing the language of the statute to be consistent with the style and format of
21 the Nevada Revised Statutes.



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

1 **Section 1.** NRS 179.530 is hereby amended to read as follows:
2 179.530 1. *Except as otherwise provided in 18 U.S.C. §§*
3 *3121-3127, a person shall not install or use a pen register or trap*
4 *and trace device without first obtaining an order from a district*
5 *court of this State.*

6 2. District courts of this State may issue orders authorizing the
7 *installation and* use of a pen register or trap and trace device upon
8 the application of a district attorney, the Attorney General or their
9 deputies ~~{}~~ *or of a peace officer*, supported by an affidavit of a
10 peace officer under the circumstances and upon the conditions
11 prescribed by 18 U.S.C. §§ 3121-3127 . ~~{as those provisions existed~~
12 ~~on July 1, 1989.~~

13 ~~—2.} 3. The district court may accept a facsimile or electronic~~
14 ~~copy of the signature of any person required to give an oath or~~
15 ~~affirmation as part of an application submitted pursuant to~~
16 ~~subsection 2 as an original signature to the application.~~

17 4. *Secure electronic transmission may be used for the*
18 *submission of an application and affidavit required by subsection*
19 *2 and for the issuance of an order authorizing the installation and*
20 *use of a pen register or trap and trace device. The Nevada*
21 *Supreme Court may adopt rules not inconsistent with the laws of*
22 *this State to carry out the provisions of this subsection.*

23 5. *A public utility that relies, in good faith, upon an order of a*
24 *district court authorizing the installation and use of a pen register*
25 *or trap and trace device is not liable in any civil or criminal action*
26 *brought against the public utility for the installation and use of the*
27 *pen register or trap and trace device in accordance with the order*
28 *of the court.*

29 6. As used in this section ~~{, “peace”~~ :

30 (a) *“Peace officer”* means:

31 ~~{(a)}~~ (1) Sheriffs of counties and metropolitan police
32 departments and their deputies;

33 ~~{(b)}~~ (2) Personnel of the Department of Public Safety who
34 have the powers of peace officers pursuant to NRS 289.270;

35 ~~{(c)}~~ (3) Police officers of cities and towns;

36 ~~{(d)}~~ (4) Agents of the Nevada Gaming Control Board who are
37 investigating any violation of subsection 2 or 3 of NRS 463.360 or
38 chapter 465 of NRS;

39 ~~{(e)}~~ (5) Special investigators employed by the Attorney
40 General who have the powers of peace officers pursuant to
41 NRS 289.170;



1 ~~[(f)]~~ (6) Investigators employed by a district attorney who have
2 the powers of peace officers pursuant to NRS 289.170; ~~and~~

3 ~~—(g)]~~ (7) The Inspector General of the Department of Corrections
4 and the criminal investigators employed by the Department who
5 have the powers of peace officers pursuant to NRS 289.220 ~~[-~~

6 ~~—3.— A public utility that relies, in good faith, upon an order of a~~
7 ~~district court authorizing the use of a pen register or trap and trace~~
8 ~~device is not liable in any civil or criminal action brought against~~
9 ~~the public utility for the use of the pen register or trap and trace~~
10 ~~device in accordance with the order of the court.] ; and~~

11 (8) *Federal law enforcement officers who are members of a*
12 *task force comprised of federal and state or local law enforcement*
13 *agencies.*

14 (b) *“Pen register” has the meaning ascribed to it in 18 U.S.C.*
15 *§ 3127(3).*

16 (c) *“Secure electronic transmission” means the sending of*
17 *information from one computer system to another computer*
18 *system in such a manner as to ensure that:*

19 (1) *No person other than the intended recipient receives the*
20 *information;*

21 (2) *The identity and signature of the sender of the*
22 *information can be authenticated; and*

23 (3) *The information which is received by the intended*
24 *recipient is identical to the information that was sent.*

25 (d) *“Trap and trace device” has the meaning ascribed to it in*
26 *18 U.S.C. § 3127(4).*

