

Introduced: 1/28/70
Referred: Judiciary

1 IN THE SENATE

BY MERDES

2 SENATE BILL NO. 422

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act allowing the interception of certain telecommuni-
7 cations, radio communications and conversations in order
8 to protect human life, to effectively deal with organized
9 crime, and to apprehend traffickers in narcotic drugs."

10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

11 * Section 1. FINDINGS. The legislature finds that the rising crime rates
12 and the increasing sophistication of those involved in criminal activities
13 necessitate providing law enforcement officers with additional legal methods
14 of preventing crime and apprehending criminal offenders. The legislature
15 determines that one very effective method of accomplishing the goal of effec-
16 tive crime prevention, and swift apprehension of criminal offenders especial-
17 ly in regard to organized crime and the illicit traffic in drugs, is to
18 allow court ordered interception of telecommunications, radio communications
19 or conversations under certain circumstances. Because this authority may in-
20 fringe the right of personal privacy, it must be strictly limited by law and
21 subject to the review of both the courts and the legislature.

22 * Sec. 2. AS 12 is amended by adding a new chapter to read:

23 CHAPTER 37. INTERCEPTION OF TELECOMMUNICATIONS, RADIO
24 COMMUNICATIONS AND CONVERSATIONS.

25 Sec. 12.37.010. APPLICATION FOR ORDER. (a) An ex parte
26 order for the interception of telecommunications, radio communications
27 or conversations by peace officers of the state or of a political
28 subdivision of the state, may be applied for to the presiding
29 judge of the superior court for the judicial district in which the

1 interception will take place, by a district attorney with the approval
2 of the attorney general.

3 (b) Each application for the order must be in writing, subscribed
4 and sworn to by the applicant, and must contain:

5 (1) the identity of the officer making the application;

6 (2) a full and complete statement of the facts and circum-
7 stances relied upon by the applicant to justify his belief that an
8 order should be issued, including:

9 (A) details as to the particular designated offense
10 that has been or is about to be committed,

11 (B) a particular description of the nature and location
12 of the facilities from which, or the place where the telecommunica-
13 tions, radio communications or conversations are to be intercepted,

14 (C) a particular description of the type of communica-
15 tions sought to be intercepted, and

16 (D) the identity of the person, if known, committing
17 the offense and whose communications or conversations are to be
18 intercepted;

19 (3) a full and complete statement as to whether or not
20 other investigative procedures have been tried and failed or why they
21 reasonably appear to be unlikely to succeed if tried or to be too
22 dangerous;

23 (4) a statement of the period of time for which the inter-
24 ception is required to be maintained, and if the nature of the
25 investigation is such that the authorization of interception should
26 not automatically terminate when the described type of communication
27 or conversation has been first obtained, a particular description of
28 facts establishing probable cause to believe that additional com-
29 munications or conversations of the same type will occur again;

1 (5) a full and complete statement of the facts concerning
2 all previous applications, known to the individual making the applica-
3 tion, made to the presiding judge of a superior court for authorization
4 to intercept communications or conversations involving any of the
5 same persons, facilities or places specified in the application, and
6 the action taken by the judge on each such application; and

7 (6) where the application is for the extension of an order,
8 a statement setting out the results already obtained from the inter-
9 ception, or a reasonable explanation of the failure to obtain any
10 results.

11 (c) The presiding judge of the superior court may require the
12 applicant to furnish additional testimony or documentary evidence in
13 support of the application.

14 (d) Allegations of fact in the application may be based either
15 upon the personal knowledge of the applicant or upon information and
16 belief. If the applicant personally knows the fact alleged, it shall
17 be stated. If the facts are derived in whole or in part from the
18 statements of persons other than the applicant, the sources of the
19 information and belief shall be either disclosed or described, and the
20 application shall contain facts establishing the existence and
21 reliability of the informant, or the reliability of the information
22 supplied by him. The application shall also state, so far as possible,
23 the basis of the informant's knowledge or belief. If the applicant's
24 information and belief is derived from tangible evidence or recorded
25 oral evidence, a copy or detailed description of the evidence shall be
26 annexed to or included in the application. Affidavits of persons
27 other than the applicant shall be submitted in conjunction with the
28 application if they tend to support any fact or conclusion alleged in
29 it. Accompanying affidavits may be based either on personal knowledge

1 of the affiant, or information and belief with the source of and
2 reason for the information and belief specified.

3 Sec. 12.37.020. ISSUANCE OF ORDER FOR INTERCEPTION OF TELECOM-
4 MUNICATIONS, RADIO COMMUNICATIONS OR CONVERSATIONS. (a) Upon applica-
5 tion as provided for in sec. 10 of this chapter, the presiding judge
6 of the superior court may enter an ex parte order, as required or
7 modified, authorizing the interception of telecommunications, radio
8 communications or conversations if he determines on the basis of the
9 facts submitted by the applicant that

10 (1) there is probable cause for belief that an individual
11 has committed or is about to commit a crime directly and immediately
12 affecting the safety of human life or directly and immediately involv-
13 ing the sale or traffic in narcotic, hallucinogenic, depressant or
14 stimulant drugs;

15 (2) there is probable cause for belief that particular
16 communications or conversations concerning that offense will be ob-
17 tained through the interception;

18 (3) normal investigative procedures have been tried and
19 have failed or reasonably appear to be unlikely to succeed if tried,
20 or to be too dangerous;

21 (4) there is probable cause for belief that the facilities
22 from which, or the place where, the communications or conversations
23 are to be intercepted, are being used, or are about to be used, in
24 connection with the commission of an offense listed in (1) of this
25 section, or are leased to, listed in the name of, or commonly used by
26 an individual who has committed or is about to commit such an offense.

27 (b) If the facilities from which telecommunications, radio
28 communications or conversations are to be intercepted are public, no
29 order of authorization may be issued unless the court, in addition to

1 the requirements of (a) of this section, determines that there is a
2 special need to intercept the communications or conversations over
3 those facilities.

4 (c) If the facilities from which, or the place where, the
5 telecommunications, radio communications or conversations are to be
6 intercepted are being used, or are about to be used, or are leased
7 to, listed in the name of, or commonly used by, a licensed attorney-at-
8 law, or an ordained minister of the gospel, priest or rabbi of any
9 denomination, or is a place used primarily for habitation by a husband
10 and wife, no order may be issued unless the court, in addition to the
11 requirements of (a) of this section, determines that there is a special
12 need to intercept communications or conversations over those facilities
13 or in those places, and that the interceptions will be so conducted as
14 to minimize or eliminate interception of privileged communication or
15 conversation between lawyers and clients, clergymen and confidants, or
16 husbands and wives.

17 (d) Orders issued under this section may not be effective for a
18 period longer than 10 days. After that period the court which issued
19 the order may, upon application of the original applicant, in the
20 manner prescribed by sec. 10 of this chapter, renew or continue the
21 order for an additional period not to exceed 10 days. All further
22 renewals shall also be for periods not to exceed 10 days.

23 Sec. 12.37.030. PROCEEDING UNDER EXPIRED ORDER PROHIBITED. A
24 person who knowingly proceeds under an order which has expired and has
25 not been renewed as provided in secs. 10 - 20 of this chapter is con-
26 sidered to act without the authority of this chapter and shall be
27 subject to the penalties provided in sec. 80 of this chapter, as
28 though he had never obtained the order.

29 Sec. 12.37.040. RECORDS CONFIDENTIAL. The application for an

1 order under secs. 10 - 20 of this chapter and any supporting documents
2 and testimony in connection with it as well as the order, shall remain
3 confidential in the custody of the court, in which the order was
4 applied for and these materials shall not be released or information
5 concerning them in any manner disclosed except upon written order of
6 that court. No person having custody of any records maintained
7 under secs. 10 - 40 of this chapter may disclose or release any
8 materials or information contained in the materials except upon written
9 order of the court having custody of the records.

10 Sec. 12.37.050. RETURN OF INVENTORY. (a) Within a reasonable
11 time but not later than 90 days after the termination of the period of
12 the order or of extensions of the order, the presiding judge of the
13 superior court shall have served on the person named in the order or
14 application, and on other parties to the intercepted communications
15 or conversations that the judge may determine to be in the interest of
16 justice, an inventory which shall include:

17 (1) notice of entry of the order or application for a
18 denied order;

19 (2) the date of the entry of the order or the denial of the
20 application for an order;

21 (3) the period of authorized, approved or disapproved
22 interception;

23 (4) the fact that during the period telecommunications, radio
24 communications or conversations were or were not intercepted.

25 (b) The presiding judge of the superior court, upon the filing
26 of a motion, may in his discretion make available to a person upon
27 whom an inventory is served or his counsel for inspection those por-
28 tions of the intercepted communications or conversations, applications
29 and orders that the judge determines to be in the interest of justice.

1 (c) On an ex parte showing of good cause to the judge, the
2 serving of the inventory required by this section may be postponed.

3 Sec. 12.37.060. FURNISHING CERTAIN INFORMATION BEFORE INTRODUC-
4 TION IN EVIDENCE. The contents of any intercepted telecommunication,
5 radio communication or conversation or evidence derived from the
6 communication or conversation may not be received in evidence or
7 otherwise disclosed in any criminal proceeding unless each party, not
8 less than 10 days before the proceeding has been furnished with a copy
9 of the inventory, application and order under which the interception
10 was authorized or approved. This 10-day period may be waived by the
11 presiding judge of the superior court if he finds that it was not
12 possible to furnish the party with the information more than 10 days
13 before the proceeding and that the party will not be prejudiced by the
14 delay in receiving the information.

15 Sec. 12.37.070. SUPPRESSION OF EVIDENCE. (a) An aggrieved
16 person may move to suppress the contents of any intercepted telecom-
17 munication, radio communication or conversation or evidence derived
18 from the communication or conversation, on the grounds that:

- 19 (1) the communication or conversation was unlawfully
20 intercepted;
21 (2) the order under which it was intercepted is insufficient
22 on its face;
23 (3) the interception was not made in conformity with the
24 order;
25 (4) information was not furnished as provided in sec. 60
26 of this chapter.

27 Sec. 12.37.080. PENALTY FOR VIOLATION. A person who violates
28 any of the provisions of secs. 30 - 40 of this chapter is guilty of a
29 misdemeanor and upon conviction is punishable by a fine of not more

1 than \$1,000, or by imprisonment for not more than one year, or by both.

2 Sec. 12.37.090. REPORT TO LEGISLATURE. Each presiding judge of a
3 superior court shall make a report to the legislature at the beginning
4 of each session giving the number of orders issued during the previous
5 year under this chapter, the number of renewals of orders, the nature
6 of the reasons for the issuance of the orders, and the number of
7 indictments believed to be obtained as a result of the interceptions.

8 Sec. 12.37.100. DEFINITIONS. In this chapter

9 (1) "conversation" means any oral communication uttered by
10 a person exhibiting an expectation that the communication is not
11 subject to interception under circumstances justifying that expectation

12 (2) "court" means the superior court of the presiding
13 judge to whom an application for interception is made and who issues or
14 denies the requested order;

15 (3) "intercept" means to acquire aurally the contents of
16 any telecommunication, radio communication or conversation through the
17 use of an intercepting device;

18 (4) "intercepting device" means any device capable of being
19 used to hear or record oral conversations or to intercept telecommuni-
20 cations or radio communications; provided that this definition does
21 not include devices used for the restoration of the deaf or hard-of-
22 hearing to normal or partial hearing;

23 (5) "judge" means the presiding judge of a superior court
24 to whom an application for interception is made and who issues or
25 denies the requested order;

26 (6) "telecommunications and radio communications" include
27 any communication made in whole or in part through the use of facili-
28 ties for the transmission of communications by the aid of wire, cable,
29 radio, communication satellite, or other like connection between the

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point of origin and the point of reception.