

1 HB14  
2 203432-6  
3 By Representatives Reynolds, Whitt, Robertson and Stringer  
4 RFD: Judiciary  
5 First Read: 04-FEB-20  
6 PFD: 01/14/2020

ENGROSSED

A BILL  
TO BE ENTITLED  
AN ACT

Relating to wiretapping; to add a new Chapter 2A to Title 20, Code of Alabama 1975; to authorize the Attorney General to submit an application to a circuit court judge to intercept any wire or electronic communication under certain circumstances; to specify the procedures for obtaining an intercept order, the information that must be included in an intercept order, the limitations of an intercept order, and the means by which the communication is to be intercepted; to provide for the extension of intercept orders under certain conditions; to prohibit the destruction of recorded communications for a specified time frame; to allow an investigative officer to submit a written request to the Attorney General, through the Secretary of the Alabama State Law Enforcement Agency, requesting the Attorney General apply for an intercept order; to specify under what conditions recorded communications may be disclosed; to provide for civil and criminal penalties for violations; to amend Section 15-5-40, Code of Alabama 1975, to provide for the sealing of certain records relating to pen registers and trap and trace devices; to provide penalties for unauthorized disclosures;

1 and in connection therewith would have as its purpose or  
2 effect the requirement of a new or increased expenditure of  
3 local funds within the meaning of Amendment 621 of the  
4 Constitution of Alabama of 1901, now appearing as Section  
5 111.05 of the Official ReCompilation of the Constitution of  
6 Alabama of 1901, as amended.

7 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

8 Section 1. This act shall be known and may be cited  
9 as the Agent Billy Clardy III Act.

10 Section 2. Chapter 2A, commencing with Sections  
11 20-2A-1, is added to Title 20, Code of Alabama, 1975, to read  
12 as follows:

13 §20-2A-1.

14 For the purposes of this article, the following  
15 terms shall have the following meanings:

16 (1) AGENCY. Alabama State Law Enforcement Agency.

17 (2) AGGRIEVED PERSON. A person who was a party to an  
18 intercepted wire or electronic communication or a person  
19 against whom the interception was directed.

20 (3) ATTORNEY GENERAL. The Attorney General of the  
21 State of Alabama or his or her designee.

22 (4) COMMUNICATION COMMON CARRIER. The term as  
23 defined in 47 USC §153(h) or a provider of communication  
24 services.

25 (5) CONTENTS. When used with respect to a wire or  
26 electronic communication, any information concerning the

1 identity of the parties to the communication or the existence,  
2 substance, purport, or meaning of that communication.

3 (6) ELECTRONIC COMMUNICATION. Any transfer of an  
4 electronic or other signal, including fax signals, computer  
5 generated signals, other similar signals, or any scrambled or  
6 encrypted signal transferred via wire, radio, electromagnetic,  
7 photoelectric or photo optical system from one party to  
8 another in which the involved parties may reasonably expect  
9 the communication to be private.

10 (7) ELECTRONIC, MECHANICAL, OR OTHER DEVICE. A  
11 device or apparatus primarily designed or used for the  
12 nonconsensual interception of wire or electronic  
13 communications.

14 (8) INTERCEPT. The aural or other acquisition of the  
15 contents of a wire or electronic communication through the use  
16 of an electronic, mechanical, or other device.

17 (9) INVESTIGATIVE OFFICER. A special agent of the  
18 agency, a special agent with the Attorney General's office, or  
19 any other law enforcement officer designated by the secretary  
20 of the agency that meet guidelines established by the  
21 secretary, who has successfully completed a training course on  
22 the legal and technical aspects of the interception and use of  
23 wire or electronic communications, which has been approved by  
24 the Attorney General.

25 (10) JUDGE OF COMPETENT JURISDICTION. A circuit  
26 court judge in the county where the intercept is expected to  
27 take place or where the interception takes place.

1                   (11) PROSECUTOR. A district attorney or his or her  
2                   designee.

3                   (12) SECRETARY. The Secretary of the Alabama State  
4                   Law Enforcement Agency or his or her designee.

5                   (13) WIRE COMMUNICATION. A communication made in  
6                   whole or in part through the use of facilities for the  
7                   transmission of communications by the aid of wire, cable, or  
8                   other like connection between the point of origin and the  
9                   point of reception furnished or operated by a person engaged  
10                  as a common carrier in providing or operating the facilities  
11                  for the transmission of communications.

12                  §20-2A-2.

13                  (a) No individual or other agency, other than the  
14                  Alabama State Law Enforcement Agency, may own or possess an  
15                  electronic, mechanical, or other device as defined in Section  
16                  20-2A-1.

17                  (b) Only investigative officers, as defined in  
18                  Section 1, may install, operate, or monitor an electronic,  
19                  mechanical, or other device.

20                  (c) Any law enforcement officer may assist in the  
21                  operation and monitoring of an interception of a wire or  
22                  electronic communication as long as an investigative officer  
23                  is present at all times.

24                  (d) The Alabama State Law Enforcement Agency shall  
25                  perform audits on the electronic, mechanical, or other  
26                  devices.

1           ~~(d)~~ (e) The secretary may approve the use of an  
2       electronic, mechanical, or other device that is being used by  
3       a federal agency, as long as the approval is made in writing  
4       and attached to the original affidavit.

5           §20-2A-3.

6           Orders authorizing, approving, or extending the  
7       interception of wire or electronic communications may be  
8       granted, subject to this chapter when the intercept may  
9       provide or has provided evidence a person is committing, has  
10      committed, or is about to commit a felony drug offense  
11      included in Article 5, commencing with Section 13A-12-201, of  
12      Chapter 12, of Title 13A.

13          §20-2A-4.

14          (a) (1) An investigative officer may submit a written  
15      request to the secretary requesting the secretary apply for an  
16      intercept order. If the secretary approves the request, the  
17      secretary may submit a written request to the Attorney General  
18      requesting the Attorney General apply for an intercept order  
19      to a judge of competent jurisdiction. The written request  
20      shall be on a form approved by the Attorney General and shall  
21      include an affidavit.

22          (2) The affidavit shall include all of the  
23      following:

24              a. The identity of the investigating officer making  
25      the application.

1           b. A statement of the facts and circumstances relied  
2 upon by the applicant to justify the belief that an order  
3 should be issued, including all of the following:

4           1. Details of the specific offense that has been  
5 committed, is being committed, or will be committed.

6           2. A particular description of the nature and  
7 location of the communications facilities from which, or the  
8 place where, the communication is to be intercepted.

9           3. A particular description of the type of  
10 communication sought to be intercepted.

11           4. The identity of the person, if known, whose  
12 communications are to be intercepted.

13           c. A statement that other investigative procedures  
14 have been tried and failed, reasonably appear to be unlikely  
15 to succeed if tried, or are too dangerous to be tried.

16           d. A statement of the period of time the intercept  
17 is required to be maintained, including a statement of whether  
18 the intercept will automatically terminate when the described  
19 communication is first obtained. If the authorization for the  
20 intercept does not automatically terminate when the described  
21 type of communication is obtained, facts that establish  
22 probable cause to believe additional communications of the  
23 same type will occur.

24           e. A statement of the facts concerning all previous  
25 applications, known to the applicant, made to any judge for  
26 approval of an intercept involving the same person,

1 facilities, or places specified in the application and the  
2 action taken by the judge, if known.

3 f. If the application is for the extension of an  
4 order, a statement explaining the results obtained from the  
5 intercept or a reasonable explanation of the failure to obtain  
6 required results.

7 (b) The Attorney General shall review the request  
8 and decide whether it is appropriate to submit an application  
9 to a judge of competent jurisdiction for an intercept order.

10 (1) If the Attorney General decides to submit an  
11 application, he or she shall notify the secretary or the  
12 investigative officer.

13 (2) If the Attorney General declines to submit an  
14 application, he or she shall send the secretary or the  
15 investigative officer a notice of declination within 10 days.

16 §20-2A-5.

17 (a) Upon receiving an application from the Attorney  
18 General for an intercept order, a judge of competent  
19 jurisdiction may enter an ex parte intercept order as  
20 requested or as modified, authorizing an intercept within the  
21 territorial jurisdiction of the court where the judge is  
22 sitting pursuant to subsection (g), if the judge determines  
23 all of the following:

24 (1) There is probable cause to believe that an  
25 individual is committing, has committed, or is about to commit  
26 a felony drug offense included in Article 5, commencing with  
27 Section 13A-12-201, of Chapter 12, of Title 13A.

1           (2) There is probable cause to believe that specific  
2 communications concerning that offense will be obtained  
3 through the intercept.

4           (3) Normal investigative procedures have been tried  
5 and have failed, reasonably appear to be unlikely to succeed  
6 if tried, or are too dangerous to be tried.

7           (4) There is probable cause to believe that the  
8 facilities from which, or the place where, the wire or  
9 electronic communications are to be intercepted are being  
10 used, or are about to be used, in connection with the  
11 commission of the offense, or are leased to, listed in the  
12 name of, or commonly used by the individual described in the  
13 application.

14           (b) Each intercept order authorizing or approving  
15 the interception of a wire or electronic communication shall  
16 specify all of the following:

17           (1) The identity of the individual, if known, whose  
18 communications are to be intercepted.

19           (2) The nature and location of the communications  
20 facilities which, or the place where, authority to intercept  
21 is granted, and the means by which the intercept may be made.

22           (3) A description of the type of communication  
23 sought to be intercepted and a statement of the particular  
24 offense to which it relates.

25           (4) The identity of the agency authorized to  
26 intercept the communications and the person requesting the  
27 application.

1           (5) The period of time the intercept is authorized,  
2 including a statement of whether the intercept automatically  
3 terminates when the described communication is first obtained.

4           (c) The intercept order authorizing the intercept  
5 shall, upon request of the applicant, direct that a  
6 communication common carrier, custodian, or other person  
7 furnish the applicant all information, facilities, and  
8 technical assistance necessary to accomplish the intercept  
9 unobtrusively and with a minimum of interference with the  
10 services that the carrier, custodian, or other person is  
11 providing the person whose communications are to be  
12 intercepted. Any communication common carrier, custodian, or  
13 other person furnishing facilities or technical assistance  
14 shall be compensated by the applicant for reasonable expenses  
15 incurred in providing facilities or assistance at the  
16 prevailing rates.

17           (d) (1) An intercept order entered pursuant to this  
18 chapter may not authorize the interception of a wire or  
19 electronic communication for any period longer than is  
20 necessary to achieve the objective of the authorization, and  
21 in no event for more than 30 days. The 30-day period begins  
22 either when the investigative officer first begins to conduct  
23 an intercept under the intercept order, or 10 days after the  
24 order is entered, whichever is sooner.

25           (2) The issuing judge may grant extensions of an  
26 intercept order, but only upon an application for an extension  
27 made in accordance with this chapter. The period of extension

1 may not be for any period longer than the authorizing judge  
2 deems necessary to achieve the purposes for which it is  
3 granted, and in no event may the extension be for more than 30  
4 days. To be valid, each order and extension of an order shall  
5 provide that the authorization to intercept be executed as  
6 soon as practicable, be conducted in a way that minimizes the  
7 interception of communications not otherwise subject to  
8 interception under this article, and terminate upon obtaining  
9 the authorized objective or within 30 days, whichever occurs  
10 sooner.

11 (e) Whenever an order authorizing an intercept is  
12 entered pursuant to this chapter, the order may require  
13 reports to the judge who issued the order showing what  
14 progress has been made toward achievement of the authorized  
15 objective and the need for continued interception. Reports  
16 shall be made at any interval required by the judge.

17 (f) A judge who issues an order authorizing the  
18 interception of a wire or electronic communication may not  
19 hear a criminal prosecution in which evidence derived from the  
20 interception may be used or in which the order may be an  
21 issue.

22 (g) For jurisdictional purposes, the territorial  
23 jurisdiction pursuant to subsection (a) includes both the  
24 location of the device and the original listening post. A  
25 judge in either jurisdiction has the authority to issue an  
26 intercept order.

27 §20-2A-6.

1           (a) The contents of a wire or electronic  
2 communication intercepted by means authorized by this chapter  
3 shall be recorded on tape, wire, or other comparable device,  
4 to the extent practicable. The recording of the contents of a  
5 wire or electronic communication under this section shall be  
6 performed in a way that protects the recording from editing or  
7 other alterations.

8           (b) Immediately following the expiration of an  
9 intercept order, or all extensions, if any, the recordings  
10 shall be made available to the judge issuing the order and  
11 shall be sealed. Custody of the recordings shall be wherever  
12 the judge orders. The recordings may not be destroyed until at  
13 least 10 years after the date of expiration on the order and  
14 the last extension, if any. A recording may be destroyed only  
15 by order of the judge who authorized the interception, or his  
16 or her successor.

17           (c) Duplicate recordings may be made for use or  
18 disclosure pursuant to Section 20-2A-8 for investigative  
19 purposes. One copy shall remain in the custody of the judge  
20 and one copy shall be given to the entity that executed the  
21 intercept order.

22           (d) The presence of a seal as required in subsection  
23 (b), or a satisfactory explanation of its absence, shall be a  
24 prerequisite for the use or disclosure of the contents of any  
25 wire or electronic communication or any evidence derived from  
26 the communication under Section 20-2A-8.

1           (e) A violation of this section shall be punished as  
2 contempt of court.

3           §20-2A-7.

4           (a) The judge of competent jurisdiction shall seal  
5 each application made, and order granted, under this chapter.  
6 Custody of the applications and orders shall be wherever the  
7 judge orders. An application or order may be disclosed only  
8 upon a showing of good cause before a judge of competent  
9 jurisdiction. An application or order may not be destroyed  
10 until at least 10 years after the date it was sealed. An  
11 application or order may be destroyed only by order of the  
12 judge who authorized the interception, or his or her  
13 successor.

14           (b) A violation of this section shall be punished as  
15 contempt of court.

16           §20-2A-8.

17           (a) Within a reasonable time, but not later than 90  
18 days after the date an application for an order is denied or  
19 after the date an order, or the last extension, if any,  
20 expires, the judge who granted or denied the application shall  
21 serve an inventory on the persons named in the order or the  
22 application or any other parties to the intercepted  
23 communications deemed appropriate by the issuing judge, if  
24 any. The inventory shall include a notice of all of the  
25 following:

- 26           (1) The entry of the order or the application.

1           (2) The date of the entry and the period of  
2 authorized interception or the date of denial of the  
3 application.

4           (3) Whether wire or electronic communications were  
5 intercepted during the authorized period.

6           (b) Upon a motion, the judge may make available for  
7 inspection to any person or persons whose communications have  
8 been intercepted, or their counsel, any portion of an  
9 intercepted communication, application, or order the judge  
10 determines is in the interest of justice to disclose to that  
11 person.

12           (c) Upon an ex parte showing of good cause to the  
13 judge, the serving of the inventory required by this section  
14 may be postponed, but evidence derived from an order under  
15 this chapter may not be disclosed in any trial until after the  
16 inventory has been served.

17           §20-2A-9.

18           (a) The contents of an intercepted wire or  
19 electronic communication, or evidence derived from the  
20 communication, may not be entered in evidence or otherwise  
21 disclosed in a trial, hearing, or other proceeding in a  
22 federal or state court unless each party has been furnished a  
23 copy of the court order and application under which the  
24 intercept was authorized or approved, at least 10 days before  
25 the date of the trial, hearing, or other proceeding. The  
26 10-day period may be waived by the judge if he or she finds it  
27 is not possible to furnish the party with the information 10

1 days before the trial, hearing, or proceeding and that the  
2 party will not be prejudiced by the delay in receiving the  
3 information.

4 (b) An aggrieved person charged with an offense in a  
5 trial, hearing, or proceeding in or before a court,  
6 department, officer, agency, regulatory body, or other  
7 authority of the United States or of this state or a political  
8 subdivision of this state, may move to suppress the contents  
9 of an intercepted wire or electronic communication or evidence  
10 derived from the communication on any of the following  
11 grounds:

12 (1) The communication was unlawfully intercepted.

13 (2) The order authorizing the interception is  
14 insufficient on its face.

15 (3) The interception was not made in conformity with  
16 the order.

17 (c) The motion to suppress shall be made before the  
18 trial, hearing, or proceeding, unless there was no opportunity  
19 to make the motion before the trial, hearing, or proceeding,  
20 or the person was not aware of the grounds of the motion  
21 before the trial, hearing, or proceeding. The hearing on the  
22 motion shall be held in camera upon the written request of the  
23 aggrieved person. If the motion is granted, the contents of  
24 the intercepted wire or electronic communication, and evidence  
25 derived from the communication, shall be treated as  
26 inadmissible evidence. The judge, on the filing of the motion  
27 by the aggrieved person, shall make available for inspection

1 to the aggrieved person, or his or her counsel, any portion of  
2 the intercepted communication, or evidence derived from the  
3 communication, that the judge determines is in the interest of  
4 justice to make available.

5 §20-2A-10.

6 (a) Any law enforcement officer who obtains, by any  
7 means authorized by this chapter, knowledge of the contents of  
8 a wire or electronic communication, or evidence derived from  
9 the communication, may disclose the contents, or evidence  
10 derived, to another law enforcement officer if the disclosure  
11 is appropriate to the proper performance of the official  
12 duties of the officer making or receiving the disclosure.

13 (b) Any law enforcement officer who obtains, by any  
14 means authorized by this chapter, knowledge of the contents of  
15 a wire or electronic communication, or evidence derived from  
16 the communication, may use the contents, or evidence derived,  
17 if the use is appropriate to the proper performance of the  
18 official duties of the officer.

19 (c) Any individual who receives, by any means  
20 authorized by this chapter, information concerning a wire or  
21 electronic communication, or evidence derived from the  
22 communication, may disclose the contents of the communication,  
23 or evidence derived from the communication, while giving  
24 testimony in any proceeding held under the authority of the  
25 United States, this state, or a political subdivision of this  
26 state.

1 (d) No privileged wire or electronic communication  
2 intercepted in according with, or in violation of, this  
3 chapter shall lose its privileged character.

4 (e) When an investigative officer, while engaged in  
5 intercepting wire or electronic communications in a manner  
6 authorized by the chapter, intercepts communications relating  
7 to an offense other than those specified in the intercept  
8 order, the contents of, and evidence derived from the  
9 communication, may be disclosed or used as provided by  
10 subsection (a) and (b). The contents of, and any evidence  
11 derived from the communication may be used under subsection  
12 (c) when a judge of competent jurisdiction finds, on a  
13 subsequent application, that the contents were otherwise  
14 intercepted in accordance with the provision of this Chapter.  
15 The subsequent application shall be made as soon as  
16 practicable.

17 §20-2A-11.

18 (a) In January of each year, any judge who has  
19 issued an order, or an extension of an order, pursuant to  
20 Section 20-2A-5 that expired during the preceding year, or who  
21 has denied approval of an intercept order during the preceding  
22 year, shall report to the Administrative Office of the United  
23 States Courts all of the following:

24 (1) The fact that an order or extension was sought.

25 (2) The kind of order or extension sought.

26 (3) The fact that the order or extension was granted  
27 as applied for, was modified, or was denied.

1           (4) The period of intercepts authorized by the order  
2 and the number and duration of any extensions of the order.

3           (5) The offense specified in the order, application,  
4 or extension.

5           (6) The identity of the officer making the request  
6 and the individual authorizing the application.

7           (7) The nature of the facilities or the place where  
8 communications were to be intercepted.

9           (b) In March of each year, the Attorney General  
10 shall report to the Administrative Office of the United States  
11 Courts the following information for the preceding calendar  
12 year:

13           (1) The information required by subsection (a) with  
14 respect to each application for an order or extension made.

15           (2) A general description of the intercepts made  
16 under each order or extension, including the approximate  
17 nature and frequency of incriminating communications  
18 intercepted, the approximate nature and frequency of other  
19 communications intercepted, the approximate number of persons  
20 whose communications were intercepted, and the approximate  
21 nature, amount, and cost of the manpower and other resources  
22 used in the interceptions.

23           (3) The number of arrests resulting from  
24 interceptions made under each order or extension and the  
25 offenses for which arrests were made.

26           (4) The number of trials resulting from intercepts.

1           (5) The number of motions to suppress made with  
2       respect to intercepts and the number granted or denied.

3           (6) The number of convictions resulting from  
4       intercepts, the offenses for which the convictions were  
5       obtained, and a general assessment of the importance of the  
6       intercepts.

7           (7) The information required by subdivisions (2)  
8       through (6) with respect to orders or extensions obtained.

9           (c) Any judge required to file a report with the  
10      Administrative Office of the United States Courts and the  
11      Attorney General shall forward a copy of the report to the  
12      secretary by March 15 of each year.

13          (d) On or before April 15th of each year, the  
14      secretary shall submit to the Alabama Administrative Office of  
15      Courts a report of all intercepts conducted pursuant to this  
16      chapter and terminated during the preceding calendar year.  
17      Such report shall include all of the following:

18          (1) All reports received by judges and the report  
19      received by the Attorney General, as required by this section.

20          (2) The number of agency personnel and other  
21      designated law enforcement authorized to possess, install, or  
22      operate electronic, mechanical, or other devices.

23          (3) The number of agency personnel and other  
24      designated law enforcement who participated or engaged in the  
25      seizure of intercepts pursuant to this chapter during the  
26      preceding calendar year.

1           (4) The total cost to the agency of all activities  
2 and procedures relating to the seizure of intercepts during  
3 the preceding calendar year, including costs of equipment,  
4 manpower, and expenses incurred as compensation for use of  
5 facilities or technical assistance provided by the agency.

6           §20-2A-12.

7           (a) An individual whose wire or electronic  
8 communication is intercepted, disclosed, or used in violation  
9 of this chapter shall have a civil cause of action against any  
10 individual who intercepts, discloses, or uses or procures  
11 another individual to intercept, disclose, or use the  
12 communication, and is entitled to recover from the individual  
13 or entity which engaged in the violation any of the following:

14               (1) Actual damages.

15               (2) Punitive damages.

16               (3) Reasonable attorney's fees and other litigation  
17 costs reasonably incurred.

18           (b) This section does not apply to any of the  
19 following persons if acting in a reasonable manner pursuant to  
20 this chapter:

21               (1) An operator of a switchboard, or an officer,  
22 employee, or agent of a communication common carrier whose  
23 facilities are used in the transmission of a wire  
24 communication, intercepts a communication, or who discloses or  
25 uses an intercepted communication in the normal course of  
26 employment while engaged in an activity that is a necessary

1 incident to the rendition of service or to the protection of  
2 the rights or property of the carrier of the communication.

3 (2) An officer, employee, or agent of a  
4 communication common carrier who employs or uses any equipment  
5 or device which may be attached to any telephonic equipment of  
6 any subscriber which permits the interception and recording of  
7 any telephonic communications solely for the purposes of  
8 business service improvements.

9 (3) An officer, employee, or agent of a  
10 communication common carrier who provides information,  
11 facilities or technical assistance to an investigative officer  
12 who is authorized as provided by this article to intercept a  
13 wire or electronic communication.

14 (4) An individual acting under authority of law who  
15 intercepts a wire or electronic communication if the  
16 individual is a party to the communication, or if one of the  
17 parties to the communication has given prior consent to the  
18 interception.

19 (5) An individual not acting under authority of law  
20 who intercepts a wire or electronic communication if the  
21 individual is a party to the communication, or if one of the  
22 parties to the communication has given prior consent to the  
23 interception unless the communication is intercepted for the  
24 purpose of committing any criminal or tortious act in  
25 violation of the Constitution or laws of the United States or  
26 of this state, or for the purpose of committing any other  
27 injurious act.

1 (c) A good faith reliance on a court order is a  
2 complete defense to any civil cause of action brought under  
3 this chapter.

4 §20-2A-13.

5 Any individual who knowingly and intentionally  
6 possesses, installs, operates, or monitors an electronic,  
7 mechanical, or other device in violation of this chapter shall  
8 be guilty of a Class C felony.

9 §20-2A-14.

10 This chapter does not apply to a person who is a  
11 subscriber to a telephone operated by a communication common  
12 carrier and who intercepts a communication on a telephone to  
13 which he or she subscribes. This chapter does not apply to  
14 persons who are members of the household of the subscriber who  
15 intercept communications on a telephone in the home of the  
16 subscriber.

17 §20-2A-15.

18 The secretary may issue an administrative subpoena  
19 to a communication common carrier or a provider of  
20 communication services to compel production of business  
21 records if the records requested satisfy ~~all~~ both of the  
22 following:

23 (1) ~~Relate to information concerning~~ Are local or  
24 long-distance toll records or subscriber information.

25 (2) Are material to an active investigation of a  
26 felony violation of the Alabama Uniform Controlled Substance

1 Act, as provided in Chapter 2, Title 20, being conducted by a  
2 special agent of the agency.

3 Section 3. Section 15-5-40, Code of Alabama 1975, is  
4 amended to read as follows:

5 "§15-5-40.

6 "(a) The definitions, prohibitions, authorizations,  
7 and procedures regarding access to stored wire and electronic  
8 communications and transactional records and the installation  
9 or use of pen registers or trap and trace devices shall be  
10 adopted and coextensive with the provisions of the federal law  
11 defined at Chapters 121 and 206 of Title 18, United States  
12 Code, Sections 2701-2712 and 3121-3127, and as those  
13 provisions may hereafter be amended.

14 "(b) Emergency pen registers and trap and trace  
15 devices may be installed pursuant to the provisions of the  
16 federal law defined in Title 18, United States Code, Section  
17 3125, as it may hereafter be amended, provided the  
18 investigative or law enforcement officer declaring the  
19 emergency has been specially authorized and designated in  
20 writing by the Attorney General, district attorney, or city  
21 attorney, if authorized to prosecute felony offenses, with  
22 prosecuting jurisdiction over the offense, investigation,  
23 defendant, or provider of wire or electronic communications  
24 service whose assistance is required.

25 "(c) An emergency declared or order issued under the  
26 combined authority of the provisions of federal law defined at  
27 Chapters 121 and 206 of Title 18, United States Code, Sections

1 2701-2712 and 3121-3127, may authorize disclosure of  
2 call-identifying addressing, routing, or signaling information  
3 that may disclose the physical location of the subscriber,  
4 customer, or user of a wire or electronic communications  
5 service.

6 "(d) An emergency may be declared in those  
7 situations involving the disappearance of an individual, the  
8 report of a runaway child, or report of a missing person for  
9 which no criminal charge may be readily apparent but where the  
10 individual may be in danger based on, but not limited to, the  
11 age, physical condition, or circumstances surrounding the  
12 disappearance of the individual. The situation will authorize  
13 the installation of pen registers and trap and trace devices  
14 and disclosure of call-identifying addressing, routing, or  
15 signaling information that may disclose the physical location  
16 of the subscriber, customer, or user of a wire or electronic  
17 communications service.

18 "(e) (1) Orders or search warrants, or both, issued  
19 pursuant to this section are expressly allowed to be  
20 prospective in nature and these orders or search warrants, or  
21 both, are allowed to be executed during the day and night.  
22 ~~Further,~~

23 "(2) An inventory of the information obtained  
24 pursuant to an order or search warrant issued pursuant to this  
25 section related to electronic storage media or the seizure or  
26 copying of electronically stored information may be limited to

1 describing the physical storage media that was seized or  
2 copied.

3 "(3) Within 10 days after the expiration of the  
4 order or search warrant issued pursuant to this section, law  
5 enforcement must return the order or search warrant to the  
6 judge designated in the order or search warrant, and, if  
7 unavailable, to another judge with jurisdiction.

8 "(4) The judge shall seal each order issued pursuant  
9 to this section. The contents of a motion, affidavit, or order  
10 may not be disclosed except in the course of a judicial  
11 proceeding. Any unauthorized disclosure of a sealed order,  
12 motion, or affidavit, with knowledge that the information has  
13 been sealed, shall be punishable as contempt of court."

14 Section 4. Although this bill would have as its  
15 purpose or effect the requirement of a new or increased  
16 expenditure of local funds, the bill is excluded from further  
17 requirements and application under Amendment 621, now  
18 appearing as Section 111.05 of the Official Recompilation of  
19 the Constitution of Alabama of 1901, as amended, because the  
20 bill defines a new crime or amends the definition of an  
21 existing crime.

22 Section 5. This act shall become effective on the  
23 first day of the third month following its passage and  
24 approval by the Governor, or its otherwise becoming law.

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House of Representatives

Read for the first time and re-  
ferred to the House of Representa-  
tives committee on Judiciary ..... 04-FEB-20  
  
Read for the second time and placed  
on the calendar 3 amendments ..... 20-FEB-20  
  
Read for the third time and passed  
as amended..... 03-MAR-20  
Yeas 89, Nays 5, Abstains 6

Jeff Woodard  
Clerk