

Article 16.

Electronic Surveillance.

**§ 15A-286. Definitions.**

As used in this Article, unless the context requires otherwise:

- (1) "Aggrieved person" means a person who was a party to any intercepted wire, oral, or electronic communication or a person against whom the interception was directed.
- (2) "Attorney General" means the Attorney General of the State of North Carolina, unless otherwise specified.
- (3) "Aural transfer" means a transfer containing the human voice at any point between and including the point of origin and the point of reception.
- (4) "Chapter 119 of the United States Code" means Chapter 119 of Part I of Title 18, United States Code, being Public Law 90-351, the Omnibus Crime Control and Safe Streets Act of 1968, as amended by the Electronic Communications Privacy Act of 1986.
- (5) "Communications common carrier" shall have the same meaning which is given the term "common carrier" by section 153(h) of Title 47 of the United States Code.
- (6) "Contents" when used with respect to any wire, oral, or electronic communication means and includes any information concerning the substance, purport, or meaning of that communication.
- (7) "Electronic, mechanical, or other device" means any device or apparatus which can be used to intercept a wire, oral, or electronic communication other than:
  - a. Any telephone or telegraph instrument, equipment, or facility, or any component thereof:
    1. Furnished to the subscriber or user by a provider of wire or 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 furnished by the subscriber or user for connection to the facilities of such service and used in the ordinary course of its business; or
    2. Being used by a provider of wire or electronic communication service in the ordinary course of its business or by an investigative or law enforcement officer in the ordinary course of the officer's duties.
  - b. A hearing aid or similar device being used to correct subnormal hearing to not better than normal.
- (8) "Electronic communication" means any transfer of signs, signals, writing, images, sounds, data, or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photoelectronic, or photooptical system that affects interstate or foreign commerce but does not include:
  - a. Any wire or oral communication;
  - b. Any communication made through a tone-only paging device; or
  - c. Any communication from a tracking device (as defined in section 3117 of Title 18 of the United States Code).

- (9) "Electronic communication service" means any service which provides to users thereof the ability to send or receive wire or electronic communications.
- (10) "Electronic communication system" means any wire, radio, electronic, magnetic, photooptical, or photoelectronic facilities for the transmission of electronic communications, and any computer facilities or related electronic equipment for the storage of such communications.
- (11) "Electronic surveillance" means the interception of wire, oral, or electronic communications as provided by this Article.
- (12) "Electronic storage" means:
  - a. Any temporary, intermediate storage of a wire or electronic communication incidental to the electronic transmission thereof; and
  - b. Any storage of such communication by an electronic communication service for the purposes of backup protection of the communication.
- (13) "Intercept" means the aural or other acquisition of the contents of any wire, oral, or electronic communication through the use of any electronic, mechanical, or other device.
- (14) "Investigative or law enforcement officer" means any officer of the State of North Carolina or any political subdivision thereof, who is empowered by the laws of this State to conduct investigations of or to make arrests for offenses enumerated in G.S. 15A-290, and any attorney authorized by the laws of this State to prosecute or participate in the prosecution of those offenses, including the Attorney General of North Carolina.
- (15) "Judge" means any judge of the trial divisions of the General Court of Justice.
- (16) "Judicial review panel" means a three-judge body, composed of such judges as may be assigned by the Chief Justice of the Supreme Court of North Carolina, which shall review applications for electronic surveillance orders and may issue orders valid throughout the State authorizing such surveillance as provided by this Article, and which shall submit a report of its decision to the Chief Justice.
- (17) "Oral communication" means any oral communication uttered by a person exhibiting an expectation that such communication is not subject to interception under circumstances justifying such expectation, but the term does not include any electronic communication.
- (18) "Person" means any employee or agent of the United States or any state or any political subdivision thereof, and any individual, partnership, association, joint stock company, trust, or corporation.
- (19) "Readily accessible to the general public" means, with respect to a radio communication, that the communication is not:
  - a. Scrambled or encrypted;
  - b. Transmitted using modulation techniques whose essential parameters have been withheld from the public with the intention of preserving the privacy of the communication;
  - c. Carried on a subcarrier or other signal subsidiary to a radio transmission;
  - d. Transmitted over a communications system provided by a common carrier, unless the communication is a tone-only paging system communication; or

- e. Transmitted on frequencies allocated under Part 25, Subpart D, E, or F or Part 94 of the Rules of the Federal Communications Commission as provided by 18 U.S.C. § 2510(16)(E).
- (20) "User" means any person or entity who:
- a. Uses an electronic communications service; and
  - b. Is duly authorized by the provider of the service to engage in the use.
- (21) "Wire communication" means any 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 in providing or operating such facilities for the transmission of interstate or foreign communications or communications affecting interstate or foreign commerce and the term includes any electronic storage of such communication. (1995, c. 407, s. 1; 1997-435, s. 1.)