

SENATE BILL NO. 453

2/19 Introduced
2/20 Referred to Judiciary
2/22 Hearing
2/23 Committee Report-Bill pass As Amended
2/26 2nd Reading Pass As Amended
2/27 3rd Reading Pass

Transmitted to House

3/06 Referred to Judiciary
3/21 Hearing
Died in Committee

1 *Senate* BILL NO. *453*
 2 INTRODUCED BY *Van Valkenburg / Mezger*
 3

4 A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE FOR AND
 5 REGULATE THE INTERCEPTION OF WIRE OR ORAL COMMUNICATIONS
 6 DURING TERRORIST INCIDENTS AND WHEN ONE OR MORE PERSONS HAVE
 7 TAKEN ONE OR MORE HOSTAGES OR HAVE BARRICADED THEMSELVES IN
 8 ANY PLACE FOR ANY PURPOSE."
 9

10 WHEREAS, there is an increasing number of incidents in
 11 which a person or persons engage in terrorist acts, take
 12 hostages, or barricade themselves in a home, business,
 13 government building, or other place; and

14 WHEREAS, these situations are extremely threatening to
 15 persons and property; and

16 WHEREAS, these situations pose unique and extremely
 17 difficult problems to law enforcement personnel, compounded
 18 by the need to act swiftly and with all available
 19 information; and

20 WHEREAS, the ability to monitor communications between
 21 the person or persons creating the situation and other
 22 persons is often crucial to a satisfactory termination of
 23 the incident; and

24 WHEREAS, the interception and monitoring of wire or
 25 oral communications is the subject of federal statutes,

1 codified at 18 U.S.C.A. 2510-2520, that extensively regulate
 2 the matter and have preempted this field of law so that
 3 states must follow the federal statutes and may enact more
 4 restrictive law but not less restrictive law.

5 THEREFORE, The Legislature of the State of Montana
 6 finds it appropriate to pass a law modeled on the federal
 7 statutes and addressing these situations and the problems
 8 arising from them.
 9

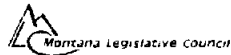
10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

11 Section 1. Definitions. In [this act], the following
 12 definitions apply:

13 (1) "Aggrieved person" means a person who was a party
 14 to any illegally intercepted wire or oral communication or a
 15 person against whom the interception was illegally directed.

16 (2) "Communications common carrier" means a person
 17 engaged as a common carrier for hire in intrastate,
 18 interstate, or international communication by wire or radio
 19 or by satellite, fiber optics, or any other energy-based
 20 communications transmission system.

21 (3) "Contents", when used with respect to a wire or
 22 oral communication, includes any information concerning the
 23 identity of the parties to the communication or the
 24 existence, substance, purport, or meaning of the
 25 communication.



1 (4) "Electronic, mechanical, or other device" means a
2 device or apparatus that can be used to intercept a wire or
3 oral communication other than:

4 (a) a telephone or telegraph instrument, equipment, or
5 facility or a component thereof furnished to a subscriber or
6 user by a communications common carrier in the ordinary
7 course of its business or being used by a communications
8 common carrier in the ordinary course of its business or by
9 an investigative or law enforcement officer in the ordinary
10 course of his duties; or

11 (b) a hearing aid or similar device used to correct
12 subnormal hearing to not better than normal.

13 (5) "Intercept" or "interception" means the aural
14 acquisition of the contents of a wire or oral communication
15 through the use of any electronic, mechanical, or other
16 device.

17 (6) "Investigative or law enforcement officer" means
18 an officer of the state of Montana empowered by law to
19 conduct investigations of, or to make arrests for, offenses
20 enumerated in [this act] and an attorney authorized by law
21 to prosecute or participate in the prosecution of such
22 offenses.

23 (7) "Judge" means a judge of a district court.

24 (8) "Oral communication" means an oral communication
25 uttered by a person under circumstances justifying an

1 expectation that the communication is not subject to
2 interception.

3 (9) "Person" means an employee or agent of the state
4 or a political subdivision of the state and an individual,
5 partnership, association, joint stock company, trust,
6 cooperative, or corporation.

7 (10) "Wire communication" means a communication made in
8 whole or in part through the use of facilities for the
9 transmission of communications by the aid of wire, cable, or
10 other like connection between the point of origin and the
11 point of reception, furnished or operated by a person
12 engaged as a common carrier in providing or operating such
13 facilities for the transmission of intrastate, interstate,
14 or foreign communications.

15 Section 2. Interception and disclosure of wire or oral
16 communications prohibited -- penalty. (1) Except as
17 otherwise specifically provided in [this act], it is
18 unlawful for any person to:

19 (a) willfully intercept, endeavor to intercept, or
20 procure any other person to intercept or endeavor to
21 intercept a wire or oral communication;

22 (b) willfully use, endeavor to use, or procure any
23 other person to use or endeavor to use any electronic,
24 mechanical, or other device to intercept an oral
25 communication when:

1 (i) the device is affixed to or otherwise transmits a
2 signal through a wire, cable, or other like connection used
3 in a wire communication; or

4 (ii) the device transmits communications by radio or
5 interferes with the transmission of the communication;

6 (c) willfully disclose or endeavor to disclose to any
7 other person the contents of a wire or oral communication,
8 knowing or having reason to know that the information was
9 obtained through the interception of a wire or oral
10 communication in violation of this subsection (1);

11 (d) willfully use or endeavor to use the contents of a
12 wire or oral communication, knowing or having reason to know
13 that the information was obtained through the interception
14 of a wire or oral communication in violation of this
15 subsection (1); or

16 (e) intercept a communication for the purpose of
17 committing a criminal act.

18 (2) A person violating the provisions of subsection
19 (1) is punishable by imprisonment in the state prison for a
20 term not to exceed 5 years or a fine not to exceed \$5,000,
21 or both.

22 (3) It is lawful:

23 (a) for an operator of a switchboard or an officer,
24 employee, or agent of a communications common carrier whose
25 facilities are used in the transmission of a wire

1 communication to intercept, disclose, or use a communication
2 in the normal course of his employment while engaged in an
3 activity necessarily incident to the rendition of his
4 service or to the protection of the rights or property of
5 the carrier of the communication; however, the
6 communications common carrier may not utilize service
7 observing or random monitoring except for mechanical or
8 service quality control checks;

9 (b) for an officer, employee, or agent of the federal
10 communications commission, in the normal course of his
11 employment and in discharge of the monitoring
12 responsibilities exercised by the commission in the
13 enforcement of chapter 5 of Title 47, U.S.C., to intercept a
14 wire communication or oral communication transmitted by
15 radio or to disclose or use the information thereby
16 obtained;

17 (c) for a law enforcement officer or a person acting
18 under the direction of a law enforcement officer to
19 intercept a wire or oral communication if he is a party to
20 the communication or one of the parties to the communication
21 has given prior consent to the interception;

22 (d) for an investigative or law enforcement officer to
23 intercept a wire or oral communication if one of the parties
24 to the communication has given prior consent to the
25 interception;

1 (e) for an employee of a telephone company to
 2 intercept a wire communication for the sole purpose of
 3 tracing the origin of the communication if the interception
 4 is requested by an appropriate law enforcement agency or the
 5 recipient of the communication and the recipient alleges
 6 that the communication is obscene, harassing, or threatening
 7 in nature; and

8 (f) for an employee of a law enforcement agency, fire
 9 department, or ambulance service, while acting in the scope
 10 of his employment and while a party to the communication, to
 11 intercept and record incoming wire communications.

12 Section 3. Manufacture, distribution, possession, and
 13 sale of wire or oral communications intercepting devices
 14 prohibited -- penalty. (1) Except as otherwise specifically
 15 provided in [this act], it is unlawful for a person to
 16 purposely:

17 (a) send through the mail or send or carry an
 18 electronic, mechanical, or other device, knowing or having
 19 reason to know that its design renders it primarily useful
 20 for the illegal interception of wire or oral communications;
 21 or

22 (b) manufacture, assemble, possess, or sell an
 23 electronic, mechanical, or other device, knowing or having
 24 reason to know that its design renders it primarily useful
 25 for the illegal interception of wire or oral communications.

1 (2) A person violating subsection (1) is punishable by
 2 imprisonment in the state prison for a term not to exceed 5
 3 years or a fine not to exceed \$5,000, or both.

4 (3) It is lawful for a communications common carrier
 5 or an officer, agent, or employee of, or a person under
 6 contract with, a communications common carrier, in the
 7 normal course of the communications common carrier's
 8 business, or an officer, agent, or employee of, or a person
 9 under contract with, bidding upon contracts with, or in the
 10 course of doing business with the United States, a state, or
 11 a political subdivision thereof, in the normal course of the
 12 activities of the United States, a state, or a political
 13 subdivision of a state, to send through the mail, send or
 14 carry in interstate or foreign commerce, or manufacture,
 15 assemble, possess, or sell any electronic, mechanical, or
 16 other device, knowing or having reason to know that its
 17 design renders it primarily useful for the surreptitious
 18 interception of wire or oral communication.

19 Section 4. Confiscation of wire or oral communications
 20 intercepting devices. An electronic, mechanical, or other
 21 device used, sent, carried, manufactured, assembled,
 22 possessed, or sold in violation of [this act] may be seized
 23 and forfeited to the state.

24 Section 5. Prohibition of use as evidence of
 25 intercepted wire or oral communications. If a wire or oral

1 communication has been intercepted, no part of its contents
 2 and no evidence derived from it may be received in evidence
 3 in a trial, hearing, or other proceeding in or before a
 4 court, grand jury, department, officer, agency, regulatory
 5 body, legislative committee, or other authority of the state
 6 or a political subdivision of the state if the disclosure
 7 would violate [this act].

8 Section 6. Authorization for interception of wire or
 9 oral communications. The state attorney general or a county
 10 attorney may authorize an application to a judge for an
 11 order authorizing or approving the interception of wire or
 12 oral communications and may apply to the judge for, and the
 13 judge may grant in conformity with 18 U.S.C. 2518 and [this
 14 act], an order authorizing or approving the interception of
 15 wire or oral communications by investigative or law
 16 enforcement officers having responsibility for the
 17 investigation of the offense as to which the application is
 18 made if such interception may provide or has provided
 19 evidence of the commission of an offense punishable by
 20 imprisonment in the state prison for more than 1 year by:

- 21 (1) one or more terrorists engaged in a terrorist
 22 incident;
 23 (2) one or more persons who have taken a hostage or
 24 hostages; or
 25 (3) one or more persons who have barricaded themselves

1 in any place for any purpose.

2 Section 7. Authorization for disclosure and use of
 3 intercepted wire or oral communications. (1) An
 4 investigative or law enforcement officer who, by any means
 5 authorized by [this act], has obtained knowledge of the
 6 contents of a wire or oral communication or evidence derived
 7 from it may disclose the contents to another investigative
 8 or law enforcement officer to the extent that disclosure is
 9 appropriate to the proper performance of the official duties
 10 of the officer making or receiving the disclosure.

11 (2) An investigative or law enforcement officer who,
 12 by any means authorized by [this act], has obtained
 13 knowledge of the contents of a wire or oral communication or
 14 evidence derived from it may use the contents to the extent
 15 that the use is appropriate to the proper performance of his
 16 official duties.

17 (3) A person who has received, by any means authorized
 18 by [this act], information concerning a wire or oral
 19 communication or evidence derived from it intercepted in
 20 accordance with [this act] may disclose the contents of the
 21 communication or evidence while giving testimony under oath
 22 or affirmation in a criminal proceeding in a court of this
 23 state, the United States, any other state, or any political
 24 subdivision of a state.

25 (4) An otherwise privileged wire or oral communication

1 intercepted in accordance with or in violation of [this act]
2 does not lose its privileged character.

3 (5) If an investigative or law enforcement officer
4 intercepting wire or oral communications in the manner
5 authorized in [this act] intercepts wire or oral
6 communications relating to offenses other than those
7 specified in the order of authorization, the contents of the
8 communications and evidence derived from them may be
9 disclosed or used as provided in subsections (1) through
10 (3).

11 Section 8. Application for order authorizing
12 interception of wire or oral communications. (1) An
13 application for an order authorizing the interception of a
14 wire or oral communication must be in writing, upon oath or
15 affirmation, to a judge and state the applicant's authority
16 to make the application. It must include the following:

17 (a) the identity of the investigative or law
18 enforcement officer making the application and the officer
19 authorizing the application;

20 (b) a complete statement of the facts and
21 circumstances relied upon by the applicant to justify his
22 belief that an order should be issued, including:

23 (i) details as to the particular offense that has
24 been, is being, or is about to be committed;

25 (ii) a particular description of the nature and

1 location of the facilities where the communication is to be
2 intercepted;

3 (iii) a particular description of the type of
4 communications sought to be intercepted;

5 (iv) the identity of the person, if known, committing
6 the offense and whose communications are to be intercepted;

7 (c) a full and complete statement as to whether or not
8 other investigative procedures have been tried and failed,
9 why they reasonably appear to be unlikely to succeed if
10 tried, or if they reasonably appear to be too dangerous;

11 (d) a statement of the period of time for which the
12 interception is required to be maintained. If the nature of
13 the investigation is such that the authorization for
14 interception should not automatically terminate when the
15 described type of communication has been obtained, a
16 particular description of facts establishing probable cause
17 to believe that additional communications of the same type
18 will occur thereafter must be included in the application.

19 (e) a full and complete statement of the facts
20 concerning all previous applications known to the individual
21 authorizing and making the present application, made to a
22 judge for authorization to intercept wire or oral
23 communications involving any of the persons, facilities, or
24 places specified in the present application, and the action
25 taken by the judge on each prior application; and

1 (f) if the application is for the extension of an
2 order, a statement setting forth the results thus far
3 obtained from the interception, or a reasonable explanation
4 of the failure to obtain results.

5 (2) The judge may require the applicant to furnish
6 additional testimony or documentary evidence in support of
7 the application.

8 Section 9. When order authorizing interception may be
9 issued -- required contents. (1) Upon application under
10 [section 8], the judge may enter an ex parte order, as
11 requested or as modified, authorizing the interception of
12 wire or oral communications within the state of Montana if
13 the judge determines on the basis of the facts submitted by
14 the applicant that:

15 (a) there is probable cause to believe that an
16 individual is committing, has committed, or is about to
17 commit an offense referred to in [section 6];

18 (b) there is probable cause to believe that
19 communications concerning that offense will be obtained
20 through the interception;

21 (c) normal investigative procedures have been tried
22 and have failed or reasonably appear to be unlikely to
23 succeed if tried or to be too dangerous;

24 (d) there is probable cause to believe that the
25 facilities where the wire or oral communications are to be

1 intercepted are being used or are about to be used in
2 connection with the commission of an offense described in
3 subsection (1)(a) or are leased to, listed in the name of,
4 or commonly used by an individual described in subsection
5 (1)(a).

6 (2) Each order authorizing the interception of a wire
7 or oral communication must specify:

8 (a) the identity of the person, if known, whose
9 communications are to be intercepted;

10 (b) the nature and location of the communications
11 facilities where authority to intercept is granted;

12 (c) a particular description of the type of
13 communication sought to be intercepted and a statement of
14 the particular offense to which it relates;

15 (d) the identity of the agency authorized to intercept
16 the communications and of the person making the application;
17 and

18 (e) the period of time during which the interception
19 is authorized, including a statement as to whether or not
20 the interception automatically terminates when the described
21 communication has been obtained.

22 Section 10. Required assistance from communications
23 common carrier and others. An order authorizing the
24 interception of a wire or oral communication must, upon
25 request of the applicant, direct that a communications

1 common carrier, landlord, custodian, or other person
 2 immediately furnish to the applicant all information,
 3 facilities, and technical assistance necessary to accomplish
 4 the interception unobtrusively and with a minimum of
 5 interference with the services that the communications
 6 common carrier, landlord, custodian, or person is providing
 7 to the person whose communications are to be intercepted. A
 8 communications common carrier, landlord, custodian, or other
 9 person furnishing the facilities or technical assistance may
 10 be compensated therefor by the applicant at the prevailing
 11 rate.

12 Section 11. Time limitation on order. (1) An order
 13 entered under [section 9] may not authorize the interception
 14 of a wire or oral communication for a period longer than
 15 necessary to achieve the objective of the authorization, and
 16 in no event longer than 30 days. Extensions of an order may
 17 be granted upon application for an extension made in
 18 accordance with [section 8(1)] and upon the judge's making
 19 the findings required by [section 9(1)]. An extension may
 20 apply only for a period the authorizing judge considers
 21 necessary to achieve the purposes for which the extension is
 22 granted, and in no event longer than 30 days.

23 (2) An order or extension must state that the
 24 authorization to intercept must be executed as soon as
 25 practicable, that the interception must be conducted in such

1 a way as to minimize the interception of communications not
 2 otherwise subject to interception under [this act], and that
 3 the order or extension terminates upon attainment of the
 4 authorized objective, or in any event after 30 days.

5 Section 12. Required reports. An order authorizing
 6 interception under [this act] may require that reports be
 7 made to the judge who issued the order, showing what
 8 progress has been made toward achievement of the authorized
 9 objective and the need for continued interception. The
 10 reports must be made at such intervals as the judge may
 11 require.

12 Section 13. When recording of intercepted
 13 communication required. (1) The contents of a wire or oral
 14 communication intercepted by any means authorized by [this
 15 act] must, if possible, be recorded on tape, wire, or other
 16 comparable device and in a manner that protects the
 17 recording from editing or other alterations. Upon the
 18 expiration of the period of the order or extensions, the
 19 recordings must immediately be made available to the judge
 20 who issued the order and be sealed under his direction.
 21 Custody of the recordings must be wherever the judge orders.
 22 The recordings may not be destroyed except upon an order of
 23 the issuing or denying judge and must be kept for 10 years.
 24 Duplicate recordings may be made for investigative use or
 25 disclosure under [section 7(1) and (2)]. The presence of the

1 seal required by subsection (2) of this section or a
2 satisfactory explanation of its absence is a prerequisite to
3 the use or disclosure of the contents of a wire or oral
4 communication or evidence derived from it under [section
5 7(3)].

6 (2) An application or order under [this act] must be
7 sealed by the judge. Custody of applications and orders
8 shall be wherever the judge directs. An application or order
9 may be disclosed only upon a showing of good cause before a
10 judge, may not be destroyed except on the order of the
11 issuing or denying judge, and must be kept for 10 years.

12 Section 14. Disclosure of interception. (1) Within a
13 reasonable time, but not later than 90 days, after the
14 filing of an application for an order of authorization which
15 is denied or the termination of the period of an order or
16 its extensions, the issuing or denying judge shall cause to
17 be served on the persons named in the order or application
18 and such other parties to intercepted communications as the
19 judge may determine in the interest of justice an inventory
20 which must include notice of:

- 21 (a) the entry of the order or the application;
22 (b) the date of the entry and the period of authorized
23 interception, or the denial of the application; and
24 (c) whether, during the period, wire or oral
25 communications were or were not intercepted.

1 (2) Upon the filing of a motion, the judge may make
2 available to a notified person or his counsel for inspection
3 such portions of the intercepted communications,
4 applications, and orders as the judge determines to be in
5 the interest of justice.

6 (3) On an ex parte showing of good cause to a judge,
7 service of the inventory required by subsection (1) may be
8 postponed.

9 Section 15. When intercepted communication admissible
10 in evidence. (1) The contents of an intercepted wire or oral
11 communication or evidence derived from it may not be
12 received in evidence or otherwise disclosed in a trial,
13 hearing, or other proceeding in a federal or state court
14 unless each party, not less than 10 days before the trial,
15 hearing, or proceeding, has been furnished with a copy of
16 the court order and accompanying application under which the
17 interception was authorized. This 10-day period may be
18 waived by the judge if he finds that it was not possible to
19 furnish the party with the above information 10 days before
20 the trial, hearing, or proceeding and that the party will
21 not be prejudiced by the delay in receiving the information.

22 (2) An aggrieved person in a trial, hearing, or
23 proceeding in or before a judge, department, officer,
24 agency, regulatory body, or other authority of the United
25 States, a state, or a political subdivision of a state, may

1 move to suppress the contents of an intercepted wire or oral
2 communication or evidence derived from it on the grounds
3 that:

- 4 (a) the communication was unlawfully intercepted;
5 (b) the order of authorization under which it was
6 intercepted is insufficient on its face; or
7 (c) the interception was not in conformity with the
8 order of authorization.

9 (3) The motion to suppress must be made before the
10 trial, hearing, or proceeding, pursuant to 46-13-302 or the
11 hearing rules of the respective body, as applicable.

12 (4) In addition to any other right to appeal, the
13 state of Montana may appeal an order granting a motion to
14 suppress made under subsection (2). The appeal must be made
15 within 30 days after the date the order was entered.

16 Section 16. Violations punishable as contempt. Any
17 violation of [sections B through 15] may be punished as a
18 contempt by the issuing or denying judge.

19 Section 17. Recovery of civil damages authorized. (1)
20 A person whose wire or oral communication is intercepted,
21 disclosed, or used in violation of [this act] has a civil
22 cause of action against a person who intercepts, discloses,
23 uses, or procures another person to intercept, disclose, or
24 use the communication and is entitled to recover:

- 25 (a) actual damages, but not less than liquidated

1 damages computed at the rate of \$100 a day for each day or
2 violation or \$1,000, whichever is higher;

3 (b) punitive damages; and

4 (c) a reasonable attorney fee and other litigation
5 costs reasonably incurred.

6 (2) A good faith reliance on a court order or
7 legislative authorization constitutes a complete defense to
8 any civil or criminal action under [this act].

9 Section 18. Severability. If a part of this act is
10 invalid, all valid parts that are severable from the invalid
11 part remain in effect. If a part of this act is invalid in
12 one or more of its applications, the part remains in effect
13 in all valid applications that are severable from the
14 invalid applications.

-End-

APPROVED BY COMMITTEE
ON JUDICIARY

1 SENATE BILL NO. 453

2 INTRODUCED BY VAN VALKENBURG, MAZUREK

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE FOR AND
5 REGULATE THE INTERCEPTION OF WIRE OR ORAL COMMUNICATIONS
6 DURING TERRORIST INCIDENTS AND WHEN ONE OR MORE PERSONS HAVE
7 TAKEN ONE OR MORE HOSTAGES OR HAVE BARRICADED THEMSELVES IN
8 ANY PLACE FOR ANY PURPOSE."

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10 WHEREAS, there is an increasing number of incidents in
11 which a person or persons engage in terrorist acts, take
12 hostages, or barricade themselves in a home, business,
13 government building, or other place; and

14 WHEREAS, these situations are extremely threatening to
15 persons and property; and

16 WHEREAS, these situations pose unique and extremely
17 difficult problems to law enforcement personnel, compounded
18 by the need to act swiftly and with all available
19 information; and

20 WHEREAS, the ability to monitor communications between
21 the person or persons creating the situation and other
22 persons is often crucial to a satisfactory termination of
23 the incident; and

24 WHEREAS, the interception and monitoring of wire or
25 oral communications is the subject of federal statutes,

1 codified at 18 U.S.C.A. 2510-2520, that extensively regulate
2 the matter and have preempted this field of law so that
3 states must follow the federal statutes and may enact more
4 restrictive law but not less restrictive law.

5 THEREFORE, The Legislature of the State of Montana
6 finds it appropriate to pass a law modeled on the federal
7 statutes and addressing these situations and the problems
8 arising from them.

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14 to any illegally intercepted wire or oral communication or a
15 person against whom the interception was illegally directed.

16 (2) "Communications common carrier" means a person
17 engaged as a common carrier for hire in intrastate,
18 interstate, or international communication by wire or radio
19 or by satellite, fiber optics, or any other energy-based
20 communications transmission system.

21 (3) "Contents", when used with respect to a wire or
22 oral communication, includes any information concerning the
23 identity of the parties to the communication or the
24 existence, substance, purport, or meaning of the
25 communication.

1 (4) "Electronic, mechanical, or other device" means a
2 device or apparatus that can be used to intercept a wire or
3 oral communication other than:

4 (a) a telephone or telegraph instrument, equipment, or
5 facility or a component thereof furnished to a subscriber or
6 user by a communications common carrier in the ordinary
7 course of its business or being used by a communications
8 common carrier in the ordinary course of its business or by
9 an investigative or law enforcement officer in the ordinary
10 course of his duties; or

11 (b) a hearing aid or similar device used to correct
12 subnormal hearing to not better than normal.

13 (5) "Intercept" or "interception" means the aural
14 acquisition of the contents of a wire or oral communication
15 through the use of any electronic, mechanical, or other
16 device.

17 (6) "Investigative or law enforcement officer" means
18 an officer of the state of Montana empowered by law to
19 conduct investigations of, or to make arrests for, offenses
20 enumerated in [this act] and an attorney authorized by law
21 to prosecute or participate in the prosecution of such
22 offenses.

23 (7) "Judge" means a judge of a district court.

24 (8) "Oral communication" means an oral communication
25 uttered by a person under circumstances justifying an

1 expectation that the communication is not subject to
2 interception.

3 (9) "Person" means an employee or agent of the state
4 or a political subdivision of the state and an individual,
5 partnership, association, joint stock company, trust,
6 cooperative, or corporation.

7 (10) "Wire communication" means a communication made in
8 whole or in part through the use of facilities for the
9 transmission of communications by the aid of wire, cable, or
10 other like connection between the point of origin and the
11 point of reception, furnished or operated by a person
12 engaged as a common carrier in providing or operating such
13 facilities for the transmission of intrastate, interstate,
14 or foreign communications.

15 Section 2. Interception and disclosure of wire or oral
16 communications prohibited -- penalty. (1) Except as
17 otherwise specifically provided in [this act], it is
18 unlawful for any person to:

19 (a) willfully PURPOSELY intercept, endeavor to
20 intercept, or procure any other person to intercept or
21 endeavor to intercept a wire or oral communication;

22 (b) willfully PURPOSELY use, endeavor to use, or
23 procure any other person to use or endeavor to use any
24 electronic, mechanical, or other device to intercept an oral
25 communication when:

1 (i) the device is affixed to or otherwise transmits a
2 signal through a wire, cable, or other like connection used
3 in a wire communication; or

4 (ii) the device transmits communications by radio or
5 interferes with the transmission of the communication;

6 (c) willfully PURPOSELY disclose or endeavor to
7 disclose to any other person the contents of a wire or oral
8 communication, knowing or having reason to know that the
9 information was obtained through the interception of a wire
10 or oral communication in violation of this subsection (1);

11 (d) willfully PURPOSELY use or endeavor to use the
12 contents of a wire or oral communication, knowing or having
13 reason to know that the information was obtained through the
14 interception of a wire or oral communication in violation of
15 this subsection (1); or

16 (e) intercept a communication for the purpose of
17 committing a criminal act.

18 (2) A person violating the provisions of subsection
19 (1) is punishable by imprisonment in the state prison for a
20 term not to exceed 5 years or a fine not to exceed \$5,000,
21 or both.

22 (3) It is lawful:

23 (a) for an operator of a switchboard or an officer,
24 employee, or agent of a communications common carrier whose
25 facilities are used in the transmission of a wire

1 communication to intercept, disclose, or use a communication
2 in the normal course of his employment while engaged in an
3 activity necessarily incident to the rendition of his
4 service or to the protection of the rights or property of
5 the carrier of the communication; however, the
6 communications common carrier may not utilize service
7 observing or random monitoring except for mechanical or
8 service quality control checks;

9 (b) for an officer, employee, or agent of the federal
10 communications commission, in the normal course of his
11 employment and in discharge of the monitoring
12 responsibilities exercised by the commission in the
13 enforcement of chapter 5 of Title 47, U.S.C., to intercept a
14 wire communication or oral communication transmitted by
15 radio or to disclose or use the information thereby
16 obtained;

17 (c) for a law enforcement officer or a person acting
18 under the direction of a law enforcement officer to
19 intercept a wire or oral communication if he is a party to
20 the communication or one of the parties to the communication
21 has given prior consent to the interception;

22 (d) for an investigative or law enforcement officer to
23 intercept a wire or oral communication if one of the parties
24 to the communication has given prior consent to the
25 interception;

1 (e) for an employee of a telephone company to
 2 intercept a wire communication for the sole purpose of
 3 tracing the origin of the communication if the interception
 4 is requested by an appropriate law enforcement agency or the
 5 recipient of the communication and the recipient alleges
 6 that the communication is obscene, harassing, or threatening
 7 in nature; and

8 (f) for an employee of a law enforcement agency, fire
 9 department, or ambulance service, while acting in the scope
 10 of his employment and while a party to the communication, to
 11 intercept and record incoming wire communications.

12 Section 3. Manufacture, distribution, possession, and
 13 sale of wire or oral communications intercepting devices
 14 prohibited -- penalty. (1) Except as otherwise specifically
 15 provided in [this act], it is unlawful for a person to
 16 purposely:

17 (a) send through the mail or send or carry an
 18 electronic, mechanical, or other device, knowing or having
 19 reason to know that its design renders it primarily useful
 20 for the illegal interception of wire or oral communications;
 21 or

22 (b) manufacture, assemble, possess, or sell an
 23 electronic, mechanical, or other device, knowing or having
 24 reason to know that its design renders it primarily useful
 25 for the illegal interception of wire or oral communications.

1 (2) A person violating subsection (1) is punishable by
 2 imprisonment in the state prison for a term not to exceed 5
 3 years or a fine not to exceed \$5,000, or both.

4 (3) It is lawful for a communications common carrier
 5 or an officer, agent, or employee of, or a person under
 6 contract with, a communications common carrier, in the
 7 normal course of the communications common carrier's
 8 business, or an officer, agent, or employee of, or a person
 9 under contract with, bidding upon contracts with, or in the
 10 course of doing business with the United States, a state, or
 11 a political subdivision thereof, in the normal course of the
 12 activities of the United States, a state, or a political
 13 subdivision of a state, to send through the mail, send or
 14 carry in interstate or foreign commerce, or manufacture,
 15 assemble, possess, or sell any electronic, mechanical, or
 16 other device, knowing or having reason to know that its
 17 design renders it primarily useful for the surreptitious
 18 interception of wire or oral communication.

19 Section 4. Confiscation of wire or oral communications
 20 intercepting devices. An electronic, mechanical, or other
 21 device used, sent, carried, manufactured, assembled,
 22 possessed, or sold in violation of [this act] may be seized
 23 and forfeited to the state.

24 Section 5. Prohibition of use as evidence of
 25 intercepted wire or oral communications. If a wire or oral

1 communication has been intercepted, no part of its contents
 2 and no evidence derived from it may be received in evidence
 3 in a trial, hearing, or other proceeding in or before a
 4 court, grand jury, department, officer, agency, regulatory
 5 body, legislative committee, or other authority of the state
 6 or a political subdivision of the state if the disclosure
 7 would violate [this act].

8 Section 6. Authorization for interception of wire or
 9 oral communications. The state attorney general or a county
 10 attorney may authorize an application to a judge for an
 11 order authorizing or approving the interception of wire or
 12 oral communications and may apply to the judge for, and the
 13 judge may grant in conformity with 18 U.S.C. 2518 and [this
 14 act], an order authorizing or approving the interception of
 15 wire or oral communications by investigative or law
 16 enforcement officers having responsibility for the
 17 investigation of the offense as to which the application is
 18 made if such interception may provide or has provided
 19 evidence of the commission of an offense punishable by
 20 imprisonment in the state prison for more than 1 year by:

- 21 (1) one or more terrorists engaged in a terrorist
 22 incident;
 23 (2) one or more persons who have taken a hostage or
 24 hostages; or
 25 (3) one or more persons who have barricaded themselves

1 in any place for any purpose.

2 Section 7. Authorization for disclosure and use of
 3 intercepted wire or oral communications. (1) An
 4 investigative or law enforcement officer who, by any means
 5 authorized by [this act], has obtained knowledge of the
 6 contents of a wire or oral communication or evidence derived
 7 from it may disclose the contents to another investigative
 8 or law enforcement officer to the extent that disclosure is
 9 appropriate to the proper performance of the official duties
 10 of the officer making or receiving the disclosure.

11 (2) An investigative or law enforcement officer who,
 12 by any means authorized by [this act], has obtained
 13 knowledge of the contents of a wire or oral communication or
 14 evidence derived from it may use the contents to the extent
 15 that the use is appropriate to the proper performance of his
 16 official duties.

17 (3) A person who has received, by any means authorized
 18 by [this act], information concerning a wire or oral
 19 communication or evidence derived from it intercepted in
 20 accordance with [this act] may disclose the contents of the
 21 communication or evidence while giving testimony under oath
 22 or affirmation in a criminal proceeding in a court of this
 23 state, the United States, any other state, or any political
 24 subdivision of a state.

25 (4) An otherwise privileged wire or oral communication

1 intercepted in accordance with or in violation of [this act]
2 does not lose its privileged character.

3 (5) If an investigative or law enforcement officer
4 intercepting wire or oral communications in the manner
5 authorized in [this act] intercepts wire or oral
6 communications relating to offenses other than those
7 specified in the order of authorization, the contents of the
8 communications and evidence derived from them may be
9 disclosed or used as provided in subsections (1) through
10 (3).

11 Section 8. Application for order authorizing
12 interception of wire or oral communications. (1) An
13 application for an order authorizing the interception of a
14 wire or oral communication must be in writing, upon oath or
15 affirmation, to a judge and state the applicant's authority
16 to make the application. It must include the following:

17 (a) the identity of the investigative or law
18 enforcement officer making the application and the officer
19 authorizing the application;

20 (b) a complete statement of the facts and
21 circumstances relied upon by the applicant to justify his
22 belief that an order should be issued, including:

23 (i) details as to the particular offense that has
24 been, is being, or is about to be committed;

25 (ii) a particular description of the nature and

1 location of the facilities where the communication is to be
2 intercepted;

3 (iii) a particular description of the type of
4 communications sought to be intercepted;

5 (iv) the identity of the person, if known, committing
6 the offense and whose communications are to be intercepted;

7 (c) a full and complete statement as to whether or not
8 other investigative procedures have been tried and failed,
9 why they reasonably appear to be unlikely to succeed if
10 tried, or if they reasonably appear to be too dangerous;

11 (d) a statement of the period of time for which the
12 interception is required to be maintained. If the nature of
13 the investigation is such that the authorization for
14 interception should not automatically terminate when the
15 described type of communication has been obtained, a
16 particular description of facts establishing probable cause
17 to believe that additional communications of the same type
18 will occur thereafter must be included in the application.

19 (e) a full and complete statement of the facts
20 concerning all previous applications known to the individual
21 authorizing and making the present application, made to a
22 judge for authorization to intercept wire or oral
23 communications involving any of the persons, facilities, or
24 places specified in the present application, and the action
25 taken by the judge on each prior application; and

1 (f) if the application is for the extension of an
2 order, a statement setting forth the results thus far
3 obtained from the interception, or a reasonable explanation
4 of the failure to obtain results.

5 (2) The judge may require the applicant to furnish
6 additional testimony or documentary evidence in support of
7 the application.

8 Section 9. When order authorizing interception may be
9 issued -- required contents. (1) Upon application under
10 [section 8], the judge may enter an ex parte order, as
11 requested or as modified, authorizing the interception of
12 wire or oral communications within the state of Montana if
13 the judge determines on the basis of the facts submitted by
14 the applicant that:

15 (a) there is probable cause to believe that an
16 individual is committing, has committed, or is about to
17 commit an offense referred to in [section 6];

18 (b) there is probable cause to believe that
19 communications concerning that offense will be obtained
20 through the interception;

21 (c) normal investigative procedures have been tried
22 and have failed or reasonably appear to be unlikely to
23 succeed if tried or to be too dangerous;

24 (d) there is probable cause to believe that the
25 facilities where the wire or oral communications are to be

1 intercepted are being used or are about to be used in
2 connection with the commission of an offense described in
3 subsection (1)(a) or are leased to, listed in the name of,
4 or commonly used by an individual described in subsection
5 (1)(a).

6 (2) Each order authorizing the interception of a wire
7 or oral communication must specify:

8 (a) the identity of the person, if known, whose
9 communications are to be intercepted;

10 (b) the nature and location of the communications
11 facilities where authority to intercept is granted;

12 (c) a particular description of the type of
13 communication sought to be intercepted and a statement of
14 the particular offense to which it relates;

15 (d) the identity of the agency authorized to intercept
16 the communications and of the person making the application;
17 and

18 (e) the period of time during which the interception
19 is authorized, including a statement as to whether or not
20 the interception automatically terminates when the described
21 communication has been obtained.

22 Section 10. Required assistance from communications
23 common carrier and others. An order authorizing the
24 interception of a wire or oral communication must, upon
25 request of the applicant, direct that a communications

1 common carrier, landlord, custodian, or other person
 2 immediately furnish to the applicant all information,
 3 facilities, and technical assistance necessary to accomplish
 4 the interception unobtrusively and with a minimum of
 5 interference with the services that the communications
 6 common carrier, landlord, custodian, or person is providing
 7 to the person whose communications are to be intercepted. A
 8 communications common carrier, landlord, custodian, or other
 9 person furnishing the facilities or technical assistance may
 10 be compensated therefor by the applicant at the prevailing
 11 rate.

12 Section 11. Time limitation on order. (1) An order
 13 entered under [section 9] may not authorize the interception
 14 of a wire or oral communication for a period longer than
 15 necessary to achieve the objective of the authorization, and
 16 in no event longer than 30 days. Extensions of an order may
 17 be granted upon application for an extension made in
 18 accordance with [section 8(1)] and upon the judge's making
 19 the findings required by [section 9(1)]. An extension may
 20 apply only for a period the authorizing judge considers
 21 necessary to achieve the purposes for which the extension is
 22 granted, and in no event longer than 30 days.

23 (2) An order or extension must state that the
 24 authorization to intercept must be executed as soon as
 25 practicable, that the interception must be conducted in such

1 a way as to minimize the interception of communications not
 2 otherwise subject to interception under [this act], and that
 3 the order or extension terminates upon attainment of the
 4 authorized objective, or in any event after 30 days.

5 Section 12. Required reports. An order authorizing
 6 interception under [this act] may require that reports be
 7 made to the judge who issued the order, showing what
 8 progress has been made toward achievement of the authorized
 9 objective and the need for continued interception. The
 10 reports must be made at such intervals as the judge may
 11 require.

12 Section 13. When recording of intercepted
 13 communication required. (1) The contents of a wire or oral
 14 communication intercepted by any means authorized by [this
 15 act] must, if possible, be recorded on tape, wire, or other
 16 comparable device and in a manner that protects the
 17 recording from editing or other alterations. Upon the
 18 expiration of the period of the order or extensions, the
 19 recordings must immediately be made available to the judge
 20 who issued the order and be sealed under his direction.
 21 Custody of the recordings must be wherever the judge orders.
 22 The recordings may not be destroyed except upon an order of
 23 the issuing or denying judge and must be kept for 10 years.
 24 Duplicate recordings may be made for investigative use or
 25 disclosure under [section 7(1) and (2)]. The presence of the

1 seal required by subsection (2) of this section or a
 2 satisfactory explanation of its absence is a prerequisite to
 3 the use or disclosure of the contents of a wire or oral
 4 communication or evidence derived from it under [section
 5 7(3)].

6 (2) An application or order under [this act] must be
 7 sealed by the judge. Custody of applications and orders
 8 shall be wherever the judge directs. An application or order
 9 may be disclosed only upon a showing of good cause before a
 10 judge, may not be destroyed except on the order of the
 11 issuing or denying judge, and must be kept for 10 years.

12 Section 14. Disclosure of interception. (1) Within a
 13 reasonable time, but not later than 90 days, after the
 14 filing of an application for an order of authorization which
 15 is denied or the termination of the period of an order or
 16 its extensions, the issuing or denying judge shall cause to
 17 be served on the persons named in the order or application
 18 and such other parties to intercepted communications as the
 19 judge may determine in the interest of justice an inventory
 20 which must include notice of:

- 21 (a) the entry of the order or the application;
- 22 (b) the date of the entry and the period of authorized
- 23 interception, or the denial of the application; and
- 24 (c) whether, during the period, wire or oral
- 25 communications were or were not intercepted.

1 (2) Upon the filing of a motion, the judge may make
 2 available to a notified person or his counsel for inspection
 3 such portions of the intercepted communications,
 4 applications, and orders as the judge determines to be in
 5 the interest of justice.

6 (3) On an ex parte showing of good cause to a judge,
 7 service of the inventory required by subsection (1) may be
 8 postponed.

9 Section 15. When intercepted communication admissible
 10 in evidence. (1) The contents of an intercepted wire or oral
 11 communication or evidence derived from it may not be
 12 received in evidence or otherwise disclosed in a trial,
 13 hearing, or other proceeding in a federal or state court
 14 unless each party, not less than 10 days before the trial,
 15 hearing, or proceeding, has been furnished with a copy of
 16 the court order and accompanying application under which the
 17 interception was authorized. This 10-day period may be
 18 waived by the judge if he finds that it was not possible to
 19 furnish the party with the above information 10 days before
 20 the trial, hearing, or proceeding and that the party will
 21 not be prejudiced by the delay in receiving the information.

22 (2) An aggrieved person in a trial, hearing, or
 23 proceeding in or before a judge, department, officer,
 24 agency, regulatory body, or other authority of the United
 25 States, a state, or a political subdivision of a state, may

1 move to suppress the contents of an intercepted wire or oral
2 communication or evidence derived from it on the grounds
3 that:

- 4 (a) the communication was unlawfully intercepted;
5 (b) the order of authorization under which it was
6 intercepted is insufficient on its face; or
7 (c) the interception was not in conformity with the
8 order of authorization.

9 (3) The motion to suppress must be made before the
10 trial, hearing, or proceeding, pursuant to 46-13-302 or the
11 hearing rules of the respective body, as applicable.

12 (4) In addition to any other right to appeal, the
13 state of Montana may appeal an order granting a motion to
14 suppress made under subsection (2). The appeal must be made
15 within 30 days after the date the order was entered.

16 Section 16. Violations punishable as contempt. Any
17 violation of [sections 8 through 15] may be punished as a
18 contempt by the issuing or denying judge.

19 Section 17. Recovery of civil damages authorized. (1)
20 A person whose wire or oral communication is intercepted,
21 disclosed, or used in violation of [this act] has a civil
22 cause of action against a person who intercepts, discloses,
23 uses, or procures another person to intercept, disclose, or
24 use the communication and is entitled to recover:

- 25 (a) actual damages, but not less than liquidated

1 damages computed at the rate of \$100 a day for each day or
2 violation or \$1,000, whichever is higher;

- 3 (b) punitive damages; and
4 (c) a reasonable attorney fee and other litigation
5 costs reasonably incurred.

6 (2) A good faith reliance on a court order or
7 legislative authorization constitutes a complete defense to
8 any civil or criminal action under [this act].

9 Section 18. Severability. If a part of this act is
10 invalid, all valid parts that are severable from the invalid
11 part remain in effect. If a part of this act is invalid in
12 one or more of its applications, the part remains in effect
13 in all valid applications that are severable from the
14 invalid applications.

-End-

1 SENATE BILL NO. 453

2 INTRODUCED BY VAN VALKENBURG, MAZUREK

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE FOR AND
5 REGULATE THE INTERCEPTION OF WIRE OR ORAL COMMUNICATIONS
6 DURING TERRORIST INCIDENTS AND WHEN ONE OR MORE PERSONS HAVE
7 TAKEN ONE OR MORE HOSTAGES OR HAVE BARRICADED THEMSELVES IN
8 ANY PLACE FOR ANY PURPOSE."

9
10 WHEREAS, there is an increasing number of incidents in
11 which a person or persons engage in terrorist acts, take
12 hostages, or barricade themselves in a home, business,
13 government building, or other place; and

14 WHEREAS, these situations are extremely threatening to
15 persons and property; and

16 WHEREAS, these situations pose unique and extremely
17 difficult problems to law enforcement personnel, compounded
18 by the need to act swiftly and with all available
19 information; and

20 WHEREAS, the ability to monitor communications between
21 the person or persons creating the situation and other
22 persons is often crucial to a satisfactory termination of
23 the incident; and

24 WHEREAS, the interception and monitoring of wire or
25 oral communications is the subject of federal statutes,

1 codified at 18 U.S.C.A. 2510-2520, that extensively regulate
2 the matter and have preempted this field of law so that
3 states must follow the federal statutes and may enact more
4 restrictive law but not less restrictive law.

5 THEREFORE, The Legislature of the State of Montana
6 finds it appropriate to pass a law modeled on the federal
7 statutes and addressing these situations and the problems
8 arising from them.

9
10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

11 Section 1. Definitions. In [this act], the following
12 definitions apply:

13 (1) "Aggrieved person" means a person who was a party
14 to any illegally intercepted wire or oral communication or a
15 person against whom the interception was illegally directed.

16 (2) "Communications common carrier" means a person
17 engaged as a common carrier for hire in intrastate,
18 interstate, or international communication by wire or radio
19 or by satellite, fiber optics, or any other energy-based
20 communications transmission system.

21 (3) "Contents", when used with respect to a wire or
22 oral communication, includes any information concerning the
23 identity of the parties to the communication or the
24 existence, substance, purport, or meaning of the
25 communication.

THIRD READING

SB 453

1 (4) "Electronic, mechanical, or other device" means a
2 device or apparatus that can be used to intercept a wire or
3 oral communication other than:

4 (a) a telephone or telegraph instrument, equipment, or
5 facility or a component thereof furnished to a subscriber or
6 user by a communications common carrier in the ordinary
7 course of its business or being used by a communications
8 common carrier in the ordinary course of its business or by
9 an investigative or law enforcement officer in the ordinary
10 course of his duties; or

11 (b) a hearing aid or similar device used to correct
12 subnormal hearing to not better than normal.

13 (5) "Intercept" or "interception" means the aural
14 acquisition of the contents of a wire or oral communication
15 through the use of any electronic, mechanical, or other
16 device.

17 (6) "Investigative or law enforcement officer" means
18 an officer of the state of Montana empowered by law to
19 conduct investigations of, or to make arrests for, offenses
20 enumerated in [this act] and an attorney authorized by law
21 to prosecute or participate in the prosecution of such
22 offenses.

23 (7) "Judge" means a judge of a district court.

24 (8) "Oral communication" means an oral communication
25 uttered by a person under circumstances justifying an

1 expectation that the communication is not subject to
2 interception.

3 (9) "Person" means an employee or agent of the state
4 or a political subdivision of the state and an individual,
5 partnership, association, joint stock company, trust,
6 cooperative, or corporation.

7 (10) "Wire communication" means a communication made in
8 whole or in part through the use of facilities for the
9 transmission of communications by the aid of wire, cable, or
10 other like connection between the point of origin and the
11 point of reception, furnished or operated by a person
12 engaged as a common carrier in providing or operating such
13 facilities for the transmission of intrastate, interstate,
14 or foreign communications.

15 Section 2. Interception and disclosure of wire or oral
16 communications prohibited -- penalty. (1) Except as
17 otherwise specifically provided in [this act], it is
18 unlawful for any person to:

19 (a) willfully PURPOSELY intercept, endeavor to
20 intercept, or procure any other person to intercept or
21 endeavor to intercept a wire or oral communication;

22 (b) willfully PURPOSELY use, endeavor to use, or
23 procure any other person to use or endeavor to use any
24 electronic, mechanical, or other device to intercept an oral
25 communication when:

1 (i) the device is affixed to or otherwise transmits a
2 signal through a wire, cable, or other like connection used
3 in a wire communication; or

4 (ii) the device transmits communications by radio or
5 interferes with the transmission of the communication;

6 (c) willfully PURPOSELY disclose or endeavor to
7 disclose to any other person the contents of a wire or oral
8 communication, knowing or having reason to know that the
9 information was obtained through the interception of a wire
10 or oral communication in violation of this subsection (1);

11 (d) willfully PURPOSELY use or endeavor to use the
12 contents of a wire or oral communication, knowing or having
13 reason to know that the information was obtained through the
14 interception of a wire or oral communication in violation of
15 this subsection (1); or

16 (e) intercept a communication for the purpose of
17 committing a criminal act.

18 (2) A person violating the provisions of subsection
19 (1) is punishable by imprisonment in the state prison for a
20 term not to exceed 5 years or a fine not to exceed \$5,000,
21 or both.

22 (3) It is lawful:

23 (a) for an operator of a switchboard or an officer,
24 employee, or agent of a communications common carrier whose
25 facilities are used in the transmission of a wire

1 communication to intercept, disclose, or use a communication
2 in the normal course of his employment while engaged in an
3 activity necessarily incident to the rendition of his
4 service or to the protection of the rights or property of
5 the carrier of the communication; however, the
6 communications common carrier may not utilize service
7 observing or random monitoring except for mechanical or
8 service quality control checks;

9 (b) for an officer, employee, or agent of the federal
10 communications commission, in the normal course of his
11 employment and in discharge of the monitoring
12 responsibilities exercised by the commission in the
13 enforcement of chapter 5 of Title 47, U.S.C., to intercept a
14 wire communication or oral communication transmitted by
15 radio or to disclose or use the information thereby
16 obtained;

17 ~~(c) for a law enforcement officer or a person acting~~
18 ~~under the direction of a law enforcement officer to~~
19 ~~intercept a wire or oral communication if he is a party to~~
20 ~~the communication or one of the parties to the communication~~
21 ~~has given prior consent to the interception;~~

22 ~~(d) for an investigative or law enforcement officer to~~
23 ~~intercept a wire or oral communication if one of the parties~~
24 ~~to the communication has given prior consent to the~~
25 ~~interception;~~

1 (c) for an employee of a telephone company to
 2 intercept a wire communication for the sole purpose of
 3 tracing the origin of the communication if the interception
 4 is requested by an appropriate law enforcement agency or the
 5 recipient of the communication and the recipient alleges
 6 that the communication is obscene, harassing, or threatening
 7 in nature; and

8 (d) for an employee of a law enforcement agency,
 9 fire department, or ambulance service, while acting in the
 10 scope of his employment and while a party to the
 11 communication, to intercept and record incoming wire
 12 communications.

13 Section 3. Manufacture, distribution, possession, and
 14 sale of wire or oral communications intercepting devices
 15 prohibited -- penalty. (1) Except as otherwise specifically
 16 provided in [this act], it is unlawful for a person to
 17 purposely:

18 (a) send through the mail or send or carry an
 19 electronic, mechanical, or other device, knowing or having
 20 reason to know that its design renders it primarily useful
 21 for the illegal interception of wire or oral communications;
 22 or

23 (b) manufacture, assemble, possess, or sell an
 24 electronic, mechanical, or other device, knowing or having
 25 reason to know that its design renders it primarily useful

1 for the illegal interception of wire or oral communications.

2 (2) A person violating subsection (1) is punishable by
 3 imprisonment in the state prison for a term not to exceed 5
 4 years or a fine not to exceed \$5,000, or both.

5 (3) It is lawful for a communications common carrier
 6 or an officer, agent, or employee of, or a person under
 7 contract with, a communications common carrier, in the
 8 normal course of the communications common carrier's
 9 business, or an officer, agent, or employee of, or a person
 10 under contract with, bidding upon contracts with, or in the
 11 course of doing business with the United States, a state, or
 12 a political subdivision thereof, in the normal course of the
 13 activities of the United States, a state, or a political
 14 subdivision of a state, to send through the mail, send or
 15 carry in interstate or foreign commerce, or manufacture,
 16 assemble, possess, or sell any electronic, mechanical, or
 17 other device, knowing or having reason to know that its
 18 design renders it primarily useful for the surreptitious
 19 interception of wire or oral communication.

20 Section 4. Confiscation of wire or oral communications
 21 intercepting devices. An electronic, mechanical, or other
 22 device used, sent, carried, manufactured, assembled,
 23 possessed, or sold in violation of [this act] may be seized
 24 and forfeited to the state.

25 Section 5. Prohibition of use as evidence of

1 intercepted wire or oral communications. If a wire or oral
 2 communication has been intercepted, no part of its contents
 3 and no evidence derived from it may be received in evidence
 4 in a trial, hearing, or other proceeding in or before a
 5 court, grand jury, department, officer, agency, regulatory
 6 body, legislative committee, or other authority of the state
 7 or a political subdivision of the state if the disclosure
 8 would violate [this act].

9 Section 6. Authorization for interception of wire or
 10 oral communications. The state attorney general or a county
 11 attorney may authorize an application to a judge for an
 12 order authorizing or approving the interception of wire or
 13 oral communications and may apply to the judge for, and the
 14 judge may grant in conformity with 18 U.S.C. 2518 and [this
 15 act], an order authorizing or approving the interception of
 16 wire or oral communications by investigative or law
 17 enforcement officers having responsibility for the
 18 investigation of the offense as to which the application is
 19 made if such interception may provide or has provided
 20 evidence of the commission of an offense punishable by
 21 imprisonment in the state prison for more than 1 year by:

22 (1) one or more terrorists engaged in a terrorist
 23 incident;

24 (2) one or more persons who have taken a hostage or
 25 hostages; or

1 (3) one or more persons who have barricaded themselves
 2 in any place for any purpose.

3 Section 7. Authorization for disclosure and use of
 4 intercepted wire or oral communications. (1) An
 5 investigative or law enforcement officer who, by any means
 6 authorized by [this act], has obtained knowledge of the
 7 contents of a wire or oral communication or evidence derived
 8 from it may disclose the contents to another investigative
 9 or law enforcement officer to the extent that disclosure is
 10 appropriate to the proper performance of the official duties
 11 of the officer making or receiving the disclosure.

12 (2) An investigative or law enforcement officer who,
 13 by any means authorized by [this act], has obtained
 14 knowledge of the contents of a wire or oral communication or
 15 evidence derived from it may use the contents to the extent
 16 that the use is appropriate to the proper performance of his
 17 official duties.

18 (3) A person who has received, by any means authorized
 19 by [this act], information concerning a wire or oral
 20 communication or evidence derived from it intercepted in
 21 accordance with [this act] may disclose the contents of the
 22 communication or evidence while giving testimony under oath
 23 or affirmation in a criminal proceeding in a court of this
 24 state, the United States, any other state, or any political
 25 subdivision of a state.

1 (4) An otherwise privileged wire or oral communication
2 intercepted in accordance with or in violation of [this act]
3 does not lose its privileged character.

4 (5) If an investigative or law enforcement officer
5 intercepting wire or oral communications in the manner
6 authorized in [this act] intercepts wire or oral
7 communications relating to offenses other than those
8 specified in the order of authorization, the contents of the
9 communications and evidence derived from them may be
10 disclosed or used as provided in subsections (1) through
11 (3).

12 Section 8. Application for order authorizing
13 interception of wire or oral communications. (1) An
14 application for an order authorizing the interception of a
15 wire or oral communication must be in writing, upon oath or
16 affirmation, to a judge and state the applicant's authority
17 to make the application. It must include the following:

18 (a) the identity of the investigative or law
19 enforcement officer making the application and the officer
20 authorizing the application;

21 (b) a complete statement of the facts and
22 circumstances relied upon by the applicant to justify his
23 belief that an order should be issued, including:

24 (i) details as to the particular offense that has
25 been, is being, or is about to be committed;

1 (ii) a particular description of the nature and
2 location of the facilities where the communication is to be
3 intercepted;

4 (iii) a particular description of the type of
5 communications sought to be intercepted;

6 (iv) the identity of the person, if known, committing
7 the offense and whose communications are to be intercepted;

8 (c) a full and complete statement as to whether or not
9 other investigative procedures have been tried and failed,
10 why they reasonably appear to be unlikely to succeed if
11 tried, or if they reasonably appear to be too dangerous;

12 (d) a statement of the period of time for which the
13 interception is required to be maintained. If the nature of
14 the investigation is such that the authorization for
15 interception should not automatically terminate when the
16 described type of communication has been obtained, a
17 particular description of facts establishing probable cause
18 to believe that additional communications of the same type
19 will occur thereafter must be included in the application.

20 (e) a full and complete statement of the facts
21 concerning all previous applications known to the individual
22 authorizing and making the present application, made to a
23 judge for authorization to intercept wire or oral
24 communications involving any of the persons, facilities, or
25 places specified in the present application, and the action

1 taken by the judge on each prior application; and
 2 (f) if the application is for the extension of an
 3 order, a statement setting forth the results thus far
 4 obtained from the interception, or a reasonable explanation
 5 of the failure to obtain results.
 6 (2) The judge may require the applicant to furnish
 7 additional testimony or documentary evidence in support of
 8 the application.
 9 Section 9. When order authorizing interception may be
 10 issued -- required contents. (1) Upon application under
 11 [section 8], the judge may enter an ex parte order, as
 12 requested or as modified, authorizing the interception of
 13 wire or oral communications within the state of Montana if
 14 the judge determines on the basis of the facts submitted by
 15 the applicant that:
 16 (a) there is probable cause to believe that an
 17 individual is committing, has committed, or is about to
 18 commit an offense referred to in [section 6];
 19 (b) there is probable cause to believe that
 20 communications concerning that offense will be obtained
 21 through the interception;
 22 (c) normal investigative procedures have been tried
 23 and have failed or reasonably appear to be unlikely to
 24 succeed if tried or to be too dangerous;
 25 (d) there is probable cause to believe that the

1 facilities where the wire or oral communications are to be
 2 intercepted are being used or are about to be used in
 3 connection with the commission of an offense described in
 4 subsection (1)(a) or are leased to, listed in the name of,
 5 or commonly used by an individual described in subsection
 6 (1)(a).
 7 (2) Each order authorizing the interception of a wire
 8 or oral communication must specify:
 9 (a) the identity of the person, if known, whose
 10 communications are to be intercepted;
 11 (b) the nature and location of the communications
 12 facilities where authority to intercept is granted;
 13 (c) a particular description of the type of
 14 communication sought to be intercepted and a statement of
 15 the particular offense to which it relates;
 16 (d) the identity of the agency authorized to intercept
 17 the communications and of the person making the application;
 18 and
 19 (e) the period of time during which the interception
 20 is authorized, including a statement as to whether or not
 21 the interception automatically terminates when the described
 22 communication has been obtained.
 23 Section 10. Required assistance from communications
 24 common carrier and others. An order authorizing the
 25 interception of a wire or oral communication must, upon

1 request of the applicant, direct that a communications
 2 common carrier, landlord, custodian, or other person
 3 immediately furnish to the applicant all information,
 4 facilities, and technical assistance necessary to accomplish
 5 the interception unobtrusively and with a minimum of
 6 interference with the services that the communications
 7 common carrier, landlord, custodian, or person is providing
 8 to the person whose communications are to be intercepted. A
 9 communications common carrier, landlord, custodian, or other
 10 person furnishing the facilities or technical assistance may
 11 be compensated therefor by the applicant at the prevailing
 12 rate.

13 Section 11. Time limitation on order. (1) An order
 14 entered under [section 9] may not authorize the interception
 15 of a wire or oral communication for a period longer than
 16 necessary to achieve the objective of the authorization, and
 17 in no event longer than 30 days. Extensions of an order may
 18 be granted upon application for an extension made in
 19 accordance with [section 8(1)] and upon the judge's making
 20 the findings required by [section 9(1)]. An extension may
 21 apply only for a period the authorizing judge considers
 22 necessary to achieve the purposes for which the extension is
 23 granted, and in no event longer than 30 days.

24 (2) An order or extension must state that the
 25 authorization to intercept must be executed as soon as

1 practicable, that the interception must be conducted in such
 2 a way as to minimize the interception of communications not
 3 otherwise subject to interception under [this act], and that
 4 the order or extension terminates upon attainment of the
 5 authorized objective, or in any event after 30 days.

6 Section 12. Required reports. An order authorizing
 7 interception under [this act] may require that reports be
 8 made to the judge who issued the order, showing what
 9 progress has been made toward achievement of the authorized
 10 objective and the need for continued interception. The
 11 reports must be made at such intervals as the judge may
 12 require.

13 Section 13. When recording of intercepted
 14 communication required. (1) The contents of a wire or oral
 15 communication intercepted by any means authorized by [this
 16 act] must, if possible, be recorded on tape, wire, or other
 17 comparable device and in a manner that protects the
 18 recording from editing or other alterations. Upon the
 19 expiration of the period of the order or extensions, the
 20 recordings must immediately be made available to the judge
 21 who issued the order and be sealed under his direction.
 22 Custody of the recordings must be wherever the judge orders.
 23 The recordings may not be destroyed except upon an order of
 24 the issuing or denying judge and must be kept for 10 years.
 25 Duplicate recordings may be made for investigative use or

1 disclosure under [section 7(1) and (2)]. The presence of the
 2 seal required by subsection (2) of this section or a
 3 satisfactory explanation of its absence is a prerequisite to
 4 the use or disclosure of the contents of a wire or oral
 5 communication or evidence derived from it under [section
 6 7(3)].

7 (2) An application or order under [this act] must be
 8 sealed by the judge. Custody of applications and orders
 9 shall be wherever the judge directs. An application or order
 10 may be disclosed only upon a showing of good cause before a
 11 judge, may not be destroyed except on the order of the
 12 issuing or denying judge, and must be kept for 10 years.

13 Section 14. Disclosure of interception. (1) Within a
 14 reasonable time, but not later than 90 days, after the
 15 filing of an application for an order of authorization which
 16 is denied or the termination of the period of an order or
 17 its extensions, the issuing or denying judge shall cause to
 18 be served on the persons named in the order or application
 19 and such other parties to intercepted communications as the
 20 judge may determine in the interest of justice an inventory
 21 which must include notice of:

- 22 (a) the entry of the order or the application;
 23 (b) the date of the entry and the period of authorized
 24 interception, or the denial of the application; and
 25 (c) whether, during the period, wire or oral

1 communications were or were not intercepted.

2 (2) Upon the filing of a motion, the judge may make
 3 available to a notified person or his counsel for inspection
 4 such portions of the intercepted communications,
 5 applications, and orders as the judge determines to be in
 6 the interest of justice.

7 (3) On an ex parte showing of good cause to a judge,
 8 service of the inventory required by subsection (1) may be
 9 postponed.

10 Section 15. When intercepted communication admissible
 11 in evidence. (1) The contents of an intercepted wire or oral
 12 communication or evidence derived from it may not be
 13 received in evidence or otherwise disclosed in a trial,
 14 hearing, or other proceeding in a federal or state court
 15 unless each party, not less than 10 days before the trial,
 16 hearing, or proceeding, has been furnished with a copy of
 17 the court order and accompanying application under which the
 18 interception was authorized. This 10-day period may be
 19 waived by the judge if he finds that it was not possible to
 20 furnish the party with the above information 10 days before
 21 the trial, hearing, or proceeding and that the party will
 22 not be prejudiced by the delay in receiving the information.

23 (2) An aggrieved person in a trial, hearing, or
 24 proceeding in or before a judge, department, officer,
 25 agency, regulatory body, or other authority of the United

1 States, a state, or a political subdivision of a state, may
 2 move to suppress the contents of an intercepted wire or oral
 3 communication or evidence derived from it on the grounds
 4 that:

- 5 (a) the communication was unlawfully intercepted;
- 6 (b) the order of authorization under which it was
 7 intercepted is insufficient on its face; or
- 8 (c) the interception was not in conformity with the
 9 order of authorization.

10 (3) The motion to suppress must be made before the
 11 trial, hearing, or proceeding, pursuant to 46-13-302 or the
 12 hearing rules of the respective body, as applicable.

13 (4) In addition to any other right to appeal, the
 14 state of Montana may appeal an order granting a motion to
 15 suppress made under subsection (2). The appeal must be made
 16 within 30 days after the date the order was entered.

17 Section 16. Violations punishable as contempt. Any
 18 violation of [sections 8 through 15] may be punished as a
 19 contempt by the issuing or denying judge.

20 Section 17. Recovery of civil damages authorized. (1)
 21 A person whose wire or oral communication is intercepted,
 22 disclosed, or used in violation of [this act] has a civil
 23 cause of action against a person who intercepts, discloses,
 24 uses, or procures another person to intercept, disclose, or
 25 use the communication and is entitled to recover:

1 (a) actual damages, but not less than liquidated
 2 damages computed at the rate of \$100 a day for each day or
 3 violation or \$1,000, whichever is higher;

4 (b) punitive damages; and

5 (c) a reasonable attorney fee and other litigation
 6 costs reasonably incurred.

7 (2) A good faith reliance on a court order or
 8 legislative authorization constitutes a complete defense to
 9 any civil or criminal action under [this act].

10 Section 18. Severability. If a part of this act is
 11 invalid, all valid parts that are severable from the invalid
 12 part remain in effect. If a part of this act is invalid in
 13 one or more of its applications, the part remains in effect
 14 in all valid applications that are severable from the
 15 invalid applications.

-End-