



Ohio Revised Code

Section 2933.53 Application for interception warrant.

Effective: December 2, 1996

Legislation: House Bill 670 - 121st General Assembly

(A) The prosecuting attorney of the county in which an interception is to take place or in which an interception device is to be installed, or an assistant to the prosecuting attorney of that county who is specifically designated by the prosecuting attorney to exercise authority under this section, may authorize an application for an interception warrant to a judge of the court of common pleas of the county in which the interception is to take place or in which the interception device is to be installed. If the prosecuting attorney of a county in which an interception is to take place or in which an interception device is to be installed is the subject of an investigation, a special prosecutor appointed by a judge of the court of common pleas of the county served by the prosecuting attorney, without the knowledge of the prosecuting attorney, may apply the procedures of this section. If the subject of an investigation is employed in the office of the prosecuting attorney of the county in which an interception is to take place or in which an interception device is to be installed or the prosecuting attorney of that county believes that the subject has a conflict of interest, the approval of the prosecuting attorney shall be obtained before a special prosecutor is appointed to authorize the application for an interception warrant.

(B) Each application for an interception warrant shall be made in writing upon oath or affirmation to a judge of the court of common pleas of the county in which the interception is to take place or in which the interception device is to be installed, by a person who has received training that satisfies the minimum standards established by the attorney general and the Ohio peace officer training commission under section 2933.64 of the Revised Code. Each application shall contain all of the following:

(1) The name and office of the applicant and the name and office of the prosecuting attorney or assistant prosecuting attorney authorizing the application;

(2) The identity of the investigative officers or law enforcement agency that will intercept the wire, oral, or electronic communications;



(3) A full and complete statement of the objective in seeking the warrant, and a full and complete statement of the facts and circumstances relied on by the applicant to justify the belief that the warrant should be issued, including, but not limited to the following:

(a) The details regarding the designated offense that has been, is being, or is about to be committed;

(b) The identity of the person, if known, who has committed, is committing, or is about to commit the designated offense and whose communications are to be intercepted and the location at which the communications are sought to be intercepted;

(c) Except as provided in division (G)(1) of this section, a particular description of the nature and location of the facilities from which, or the place at which, the communication is to be intercepted;

(d) A particular description of the type of communication sought to be intercepted, and the basis for believing that evidence relating to a designated offense will be obtained through the interception.

(4) A statement as to whether the applicant, or the prosecuting attorney or assistant prosecuting attorney authorizing the application for an interception warrant, knows or has reason to know that the communications sought to be intercepted are privileged under section 2317.02 of the Revised Code, the nature of any privilege that exists, and the basis of the knowledge of the applicant or authorizing prosecuting attorney or assistant prosecuting attorney of the privileged nature of the communications;

(5) A statement of the use to which the contents of an intercepted wire, oral, or electronic communication, or the evidence derived from the communication, will be put;

(6) A statement of the period of time for which the interception is required to be maintained, and, if the nature of the investigation requires that the authorization for interception not be terminated automatically when the described type of communication first has been intercepted, a particular description of the facts establishing probable cause to believe that additional communications of the same type will occur after the first intercepted communication;

(7) A full and complete statement indicating whether other investigative procedures have been tried



and have failed to produce the required evidence or indicating the reason that other investigative procedures reasonably appear to be unlikely to succeed if tried or to be too dangerous to employ in order to obtain evidence;

(8) A full and complete statement of the particular facts concerning all previous applications known to the applicant or the prosecuting attorney or assistant prosecuting attorney authorizing the application for the interception warrant, that have been made to a judge for authorization to intercept wire, oral, or electronic communications involving any of the persons, facilities, or places specified in the application, and the action of the judge with respect to each previous application;

(9) Unless the attorney general is a subject of the investigation, a written statement, signed by the attorney general or an assistant attorney general designated by the attorney general, that the attorney general or assistant attorney general has reviewed the application and either agrees or disagrees with the submission of the application to a judge of the court of common pleas of the county in which the interception is to take place or in which the interception device is to be installed. A disagreement by the attorney general or assistant attorney general does not preclude the making or consideration of an application that otherwise complies with divisions (B)(1) to (8) of this section.

(C) If an application for an interception warrant is for an extension of a warrant, the application shall include, in addition to the information and statements specified in division (B) of this section, a statement setting forth the results thus far obtained from the interceptions of wire, oral, or electronic communications, or a reasonable explanation of the failure to obtain results from the interceptions.

(D) An applicant may submit affidavits of persons other than the applicant in conjunction with the application if the affidavits support a fact or conclusion in the application. The accompanying affidavits shall be based on personal knowledge of the affiant or shall be based on information and belief and specify the source of the information and the reason for the belief. If the applicant or an affiant personally knows of the facts contained in the application or affidavit, the application or affidavit shall state the personal knowledge. If the application or affidavit states the facts based upon information and belief, the application or affidavit shall state that reliance upon information and belief and shall set forth fully the facts supporting the information and belief. If the facts contained in the application or affidavits are derived in whole or in part from the statement of a person other than the applicant or affiant, the application or affidavits shall disclose or describe the sources of the facts



and shall contain facts establishing the existence and reliability of the other person or the reliability of the information supplied by the other person. The application also shall state, so far as possible, the basis of the other person's knowledge or belief. If the application or affidavit relies on hearsay to support a fact alleged on information and belief, the application or affidavit shall contain the underlying facts that establish the basis for the conclusions of the source of the hearsay and the factual basis upon which the applicant or the affiant concludes that the source of the hearsay is credible or reliable.

(E) A judge of a court of common pleas to whom an application is made under this section may require the applicant to furnish additional sworn testimony or documentary evidence in support of the application. All sworn testimony furnished shall be recorded and transcribed and shall be made part of the application.

(F) An interception warrant is not required for any of the following:

(1) A pen register used in accordance with federal or state law;

(2) The interception of a wire, oral, or electronic communication by a law enforcement officer if the officer is a party to the communication or if one of the parties to the communication has given prior consent to the interception by the officer;

(3) The interception of a wire, oral, or electronic communication by a person who is not a law enforcement officer if the person is a party to the communication or if one of the parties to the communication has given the person prior consent to the interception, and if the communication is not intercepted for the purpose of committing a criminal offense or tortious act in violation of the laws or constitution of the United States or this state or for the purpose of committing another injurious act.

(4) A trap and trace device used in accordance with federal or state law.

(G)(1) The requirements of division (B)(3)(c) of this section and of division (A)(5) of section 2933.54 of the Revised Code that relate to the specification of facilities from which or the place at which the communication is to be intercepted do not apply if either of the following applies:



(a) In the case of an application with respect to the interception of an oral communication, the application contains a full and complete statement indicating the reason that the specification is not practical and identifies the person committing the designated offense and whose communications are to be intercepted, and the judge of a court of common pleas to whom the application is made finds that the specification is not practical.

(b) In the case of an application with respect to a wire or electronic communication, the application identifies the person believed to be committing the designated offense and whose communications are to be intercepted, the applicant makes a showing of purpose on the part of that person to thwart interception by changing facilities, and the judge of a court of common pleas to whom the application is made finds that that purpose adequately has been shown.

(2) An interception of a communication under an interception warrant with respect to which the requirements of division (B)(3)(c) of this section and division (A)(5) of section 2933.54 of the Revised Code do not apply, due to the application of division (G)(1) of this section, shall not begin until the facilities from which or the place at which the communication is to be intercepted is ascertained by the person implementing the interception warrant.

A provider of wire or electronic communication service that has received an interception warrant that does not specify the facilities from which or the place at which the communication is to be intercepted, due to the application of division (G)(1)(b) of this section, may file a motion with the court requesting the court to modify or quash the interception warrant on the ground that the provider's assistance with respect to the interception cannot be performed in a timely or reasonable manner. The court, upon notice to the applicant for the interception warrant, shall decide the motion expeditiously.