

**Superseded 5/7/2025**

**77-23a-3 Definitions.**

As used in this chapter:

- (1) "Aggrieved person" means a person who was a party to any intercepted wire, electronic, or oral communication, or a person against whom the interception was directed.
- (2) "Aural transfer" means any transfer containing the human voice at any point between and including the point of origin and the point of reception.
- (3) "Communications common carrier" means any person engaged as a common carrier for hire in intrastate, interstate, or foreign communication by wire or radio, including a provider of electronic communication service. However, a person engaged in radio broadcasting is not, when that person is so engaged, a communications common carrier.
- (4) "Contents" when used with respect to any wire, electronic, or oral communication includes any information concerning the substance, purport, or meaning of that communication.
- (5) "Electronic communication" means any transfer of signs, signals, writings, images, sounds, data, or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photoelectronic, or photo-optical system, but does not include:
  - (a) the radio portion of a cordless telephone communication that is transmitted between the cordless telephone handset and the base unit;
  - (b) any wire or oral communications;
  - (c) any communication made through a tone-only paging device; or
  - (d) any communication from an electronic or mechanical device that permits the tracking of the movement of a person or object.
- (6) "Electronic communications service" means any service that provides for users the ability to send or receive wire or electronic communications.
- (7) "Electronic communications system" means any wire, radio, electromagnetic, photoelectronic, or photo-optical facilities for the transmission of electronic communications, and any computer facilities or related electronic equipment for the electronic storage of the communication.
- (8) "Electronic, mechanical, or other device" means any device or apparatus that may be used to intercept a wire, electronic, or oral communication other than:
  - (a) any telephone or telegraph instrument, equipment or facility, or a component of any of them:
    - (i) furnished by the provider of wire or electronic communications service or by the subscriber or user, and being used by the subscriber or user in the ordinary course of its business; or
    - (ii) being used by a provider of wire or electronic communications service in the ordinary course of its business, or by an investigative or law enforcement officer in the ordinary course of his duties; or
  - (b) a hearing aid or similar device being used to correct subnormal hearing to not better than normal.
- (9) "Electronic storage" means:
  - (a) any temporary intermediate storage of a wire or electronic communication incident to the electronic transmission of it; and
  - (b) any storage of the communication by an electronic communications service for the purposes of backup protection of the communication.
- (10) "Intercept" means the acquisition of the contents of any wire, electronic, or oral communication through the use of any electronic, mechanical, or other device.
- (11) "Investigative or law enforcement officer" means any officer of the state or of a political subdivision, who by law may conduct investigations of or make arrests for offenses enumerated in this chapter, or any federal officer as defined in Section 53-13-106, and any attorney authorized by law to prosecute or participate in the prosecution of these offenses.

- (12) "Judge of competent jurisdiction" means a judge of a district court of the state.
- (13) "Oral communication" means any oral communication uttered by a person exhibiting an expectation that the communication is not subject to interception, under circumstances justifying that expectation, but does not include any electronic communication.
- (14) "Pen register" means a device that records or decodes electronic or other impulses that identify the numbers dialed or otherwise transmitted on the telephone line to which the device is attached. "Pen register" does not include any device used by a provider or customer of a wire or electronic communication service for billing or recording as an incident to billing, for communications services provided by the provider, or any device used by a provider or customer of a wire communications service for cost accounting or other like purposes in the ordinary course of its business.
- (15) "Person" means any employee or agent of the state or a political subdivision, and any individual, partnership, association, joint stock company, trust, or corporation.
- (16) "Readily accessible to the general public" means, regarding a radio communication, that the communication is not:
  - (a) scrambled or encrypted;
  - (b) transmitted using modulation techniques with essential parameters that have been withheld from the public with the intention of preserving the privacy of the communication;
  - (c) carried on a subcarrier or 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 of Part 74, or Part 94, Rules of the Federal Communications Commission unless, in the case of a communication transmitted on a frequency allocated under Part 74 that is not exclusively allocated to broadcast auxiliary services, the communication is a two-way voice communication by radio.
- (17) "Trap and trace device" means a device, process, or procedure that captures the incoming electronic or other impulses that identify the originating number of an instrument or device from which a wire or electronic communication is transmitted.
- (18) "User" means any person or entity who:
  - (a) uses an electronic communications service; and
  - (b) is authorized by the provider of the service to engage in the use.
- (19)
  - (a) "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 the connection in a switching station, furnished or operated by any person engaged as a common carrier in providing or operating these facilities for the transmission of intrastate, interstate, or foreign communications.
  - (b) "Wire communication" includes the electronic storage of the communication, but does not include the radio portion of a cordless telephone communication that is transmitted between the cordless telephone handset and the base unit.