

TITLE 18
CRIMES AND PUNISHMENTS

CHAPTER 67
COMMUNICATIONS SECURITY

18-6701. DEFINITIONS. Definitions as used in this chapter:

(1) "Wire communication" means any aural transfer made in whole or in part through the use of facilities for the transmission of communications by the aid of wire, cable, or other like connection between the point of origin and the point of reception (including the use of such connection in a switching station), furnished or operated by any person engaged in providing or operating such facilities for the transmission of intrastate, interstate or foreign communications.

(2) "Oral communication" means any oral communication uttered by a person exhibiting an expectation that such communication is not subject to interception under circumstances justifying such expectation but such term does not include any electronic communication.

(3) "Intercept" means the aural or other acquisition of the contents of any wire, electronic or oral communication through the use of any electronic, mechanical, or other device.

(4) "Electronic, mechanical, or other device" means any device or apparatus which can be used to intercept a wire, electronic or oral communication other than:

(a) Any telephone or telegraph instrument, equipment or facility or any component thereof:

(i) Furnished to the subscriber or user by a provider of wire or electronic communication service in the ordinary course of its business and being used by the subscriber or user in the ordinary course of its business or furnished by such subscriber or user for connection to the facilities of such service and used in the ordinary course of its business; or

(ii) Being used by a provider of wire or electronic communication service in the ordinary course of its business, or by an investigative or law enforcement officer in the ordinary course of his duties;

(b) A hearing aid or similar device being used to correct subnormal hearing to not better than normal;

(5) "Person" means any employee or agent of the state or political subdivision thereof and any individual, partnership, association, joint stock company, trust, cooperative, or corporation.

(6) "Investigative or law enforcement officer" means any officer of the state of Idaho who is empowered by law to conduct investigations of, or to make arrests for, offenses enumerated in this chapter and any attorney authorized by law to prosecute or participate in the prosecution of such offenses.

(7) "Contents" when used with respect to any wire, electronic or oral communication includes any information concerning the identity of the parties to such communication or the existence, substance, purport, or meaning of that communication.

(8) "Judge of competent jurisdiction" means a justice of the supreme court or a judge of a district court.

(9) "Aggrieved person" means a person who was a party to any illegally intercepted wire, electronic or oral communication or a person against whom the interception was illegally directed.

(10) "Electronic communication" means any transfer of signs, signals, writing, images, sounds, data or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photoelectronic or photooptical system, but does not include:

- (a) Any wire or oral communication;
- (b) Any communication made through a tone-only paging device;
- (c) Any communication from a tracking device, as defined in 18 U.S.C. section 3117; or
- (d) Electronic fund transfer information stored by a financial institution in a communications system used for the electronic storage and transfer of funds.

(11) "User" means any person or entity who:

- (a) Uses an electronic communication service; and
- (b) Is authorized by the provider of such service to engage in such use.

(12) "Electronic communications system" means any wire, radio, electromagnetic, photoelectronic or photooptical facilities for the transmission of electronic communications, and any computer facilities or related electronic equipment for the electronic storage of such communications.

(13) "Electronic communication service" means any service that provides to the users thereof the ability to send or receive wire or electronic communications.

(14) "Readily accessible to the general public" means, with respect to a radio communication, that such communication is not:

- (a) Scrambled or encrypted;
- (b) Transmitted using modulation techniques, the essential parameters of which have been withheld from the public with the intention of preserving the privacy of such communication;
- (c) Carried on a subcarrier or other signal subsidiary to a radio transmission;
- (d) Transmitted over a communication system provided by a common carrier, unless the communication is a tone-only paging system communication; or
- (e) Transmitted on frequencies set forth in 18 U.S.C. section 2510(16)(E).

(15) "Electronic storage" means:

- (a) Any temporary, intermediate storage of a wire or electronic communication incidental to the electronic transmission thereof; and
- (b) Any storage of such communication by an electronic communication service for purposes of backup protection of such communication.

(16) "Aural transfer" means a transfer containing the human voice at any point between and including the point of origin and the point of reception.

[18-6701, added 1980, ch. 326, sec. 2, p. 833; am. 2002, ch. 223, sec. 1, p. 632.]

18-6702. INTERCEPTION AND DISCLOSURE OF WIRE, ELECTRONIC OR ORAL COMMUNICATIONS PROHIBITED. (1) Except as otherwise specifically provided in this chapter, any person shall be guilty of a felony and is punishable by imprisonment in the state prison for a term not to exceed five (5) years or by a fine not to exceed five thousand dollars (\$5,000), or by both fine and imprisonment if that person:

(a) Willfully intercepts, endeavors to intercept, or procures any other person to intercept or endeavor to intercept any wire, electronic or oral communication; or

(b) Willfully uses, endeavors to use, or procures any other person to use or endeavor to use any electronic, mechanical, or other device to intercept any oral communication when:

1. Such device is affixed to, or otherwise transmits a signal through, a wire, cable, or other like connection used in wire communication; or

2. Such device transmits communications by radio or interferes with the transmission of such communication; or

(c) Willfully discloses, or endeavors to disclose, to any other person the contents of any wire, electronic or oral communication, knowing or having reason to know that the information was obtained through the interception of a wire, electronic or oral communication in violation of this subsection; or

(d) Willfully uses, or endeavors to use, the contents of any wire, electronic or oral communication, knowing or having reason to know that the information was obtained through the interception of a wire, electronic or oral communication in violation of this subsection; or

(e) Intentionally discloses or endeavors to disclose to any other person the contents of any wire, electronic or oral communication, intercepted by means authorized by subsection (2) (b), (c), (f) or (g) of this section or by section [18-6708](#), Idaho Code, if that person:

(i) Knows or has reason to know that the information was obtained through the interception of such communication in connection with a criminal investigation; and

(ii) Has obtained or received the information in connection with a criminal investigation with the intent to improperly obstruct, impede or interfere with a duly authorized criminal investigation.

(2) (a) It is lawful under this chapter for an operator of a switchboard, or an officer, employee, or agent of a provider of wire or electronic communication service whose facilities are used in the transmission of a wire or electronic communication to intercept, disclose, or use that communication in the normal course of his employment while engaged in any activity which is a necessary incident to the rendition of his service or to the protection of the rights or property of the provider of that service, except that a provider of wire communication service to the public shall not utilize service observing or random monitoring except for mechanical or service quality control checks.

(b) It is lawful under this chapter for an officer, employee, or agent of the federal communications commission, in the normal course of his employment and in discharge of the monitoring responsibilities exercised by the commission in the enforcement of 47 U.S.C. ch. 5, to intercept a wire, electronic or oral communication transmitted by radio or to disclose or use the information thereby obtained.

(c) It is lawful under this chapter for a law enforcement officer or a person acting under the direction of a law enforcement officer to intercept a wire, electronic or oral communication when such person is a party to the communication or one (1) of the parties to the communication has given prior consent to such interception.

(d) It is lawful under this chapter for a person to intercept a wire, electronic or oral communication when one (1) of the parties to the communication has given prior consent to such interception.

(e) It is unlawful to intercept any communication for the purpose of committing any criminal act.

(f) It is lawful under this chapter for an employee of a telephone company to intercept a wire communication for the sole purpose of tracing the origin of such communication when the interception is requested by an appropriate law enforcement agency or the recipient of the communication and the recipient alleges that the communication is obscene, harassing, or threatening in nature.

(g) It is lawful under this chapter for an employee of a law enforcement agency, fire department or ambulance service, while acting in the scope of his employment, and while a party to the communication, to intercept and record incoming wire or electronic communications.

(h) It shall not be unlawful under this chapter for any person:

(i) To intercept or access an electronic communication made through an electronic communication system that is configured so that such electronic communication is readily accessible to the general public;

(ii) To intercept any radio communication that is transmitted:

(A) By any station for the use of the general public, or that relates to ships, aircraft, vehicles or persons in distress;

(B) By any governmental, law enforcement, civil defense, private land mobile or public safety communications system, including police and fire, readily accessible to the public;

(C) By a station operating on an authorized frequency within the bands allocated to the amateur, citizens band or general mobile radio services; or

(D) By any marine or aeronautical communication system;

(iii) To engage in any conduct that:

(A) Is prohibited by 47 U.S.C. section 553 (federal communications act of 1934); or

(B) Is excepted from the application of 47 U.S.C. section 605 (federal communications act of 1934);

(iv) To intercept any wire or electronic communication, the transmission of which is causing harmful interference to any lawfully operating station or consumer electronic equipment to the extent it is necessary to identify the source of such interference; or

(v) For other users of the same frequency to intercept any radio communication, if such communication is not scrambled or encrypted, made through a system that utilizes frequencies monitored by individuals engaged in the provision or the use of such system.

(i) It shall be lawful under this chapter for a provider of electronic communication service to record the fact that a wire or electronic communication was initiated or completed in order to protect such provider, another provider furnishing service toward the completion of the wire or electronic communication or a user of that service from the fraudulent, unlawful or abusive use of such service.

(3) (a) Except as provided in subsection (3)(b) of this section, a person or entity providing an electronic communication service to the

public shall not intentionally divulge the contents of any communication other than to such person or entity or an agent thereof while in transmission on that service, to any person or entity other than an addressee or intended recipient of such communication or an agent of such addressee or intended recipient.

(b) A person or entity providing electronic communication service to the public may divulge the contents of any such communication:

- (i) As otherwise authorized in section [18-6707](#), Idaho Code, or subsection (2) (a) of this section;
- (ii) With the lawful consent of the originator or any addressee or intended recipient of such communication;
- (iii) To a person employed or authorized, or whose facilities are used, to forward such communication to its destination; or
- (iv) If such contents were inadvertently obtained by the service provider and appear to pertain to the commission of a crime, if such divulgence is made to a law enforcement agency.

[18-6702, added 1980, ch. 326, sec. 2, p. 834; am. 2002, ch. 223, sec. 2, p. 634; am. 2004, ch. 303, sec. 1, p. 849.]

18-6703. MANUFACTURE, DISTRIBUTION, POSSESSION, AND ADVERTISING OF WIRE, ELECTRONIC OR ORAL COMMUNICATION INTERCEPTING DEVICES PROHIBITED. (1) Except as otherwise specifically provided in this chapter any person who willfully:

(a) Sends through the mail or sends or carries any electronic, mechanical, or other device, with the intention of rendering it primarily useful for the purpose of the illegal interception of wire, electronic or oral communications as specifically defined by this chapter; or

(b) Manufactures, assembles, possesses, or sells any electronic, mechanical, or other device with the intention of rendering it primarily useful for the purpose of the illegal interception of wire, electronic or oral communications as specifically defined by this chapter, shall be guilty of a felony and is punishable by imprisonment in the state penitentiary for a term of five (5) years or by a fine of five thousand dollars (\$5,000), or by both such fine and imprisonment.

(2) It is lawful under this section for:

(a) A provider of wire or electronic communication service or an officer, agent, or employee of, or a person under contract with, such a provider, in the normal course of business; or

(b) An officer, agent, or employee of, or a person under contract with, bidding upon contracts with, or in the course of doing business with, the United States, a state, or a political subdivision thereof, in the normal course of the activities of the United States, a state, or a political subdivision thereof, to send through the mail, send or carry in interstate or foreign commerce, or manufacture, assemble, possess, or sell any electronic, mechanical, or other device, knowing or having reason to know that the design of such device renders it primarily useful for the purpose of the surreptitious interception of wire, electronic or oral communication.

(3) It shall not be unlawful under this section to advertise for sale a device described in subsection (1) of this section if the advertisement is mailed, sent or carried solely to a domestic provider of wire or electronic communication service or to an agency of the United States, any state, or a political subdivision thereof that is duly authorized to use such device.

[18-6703, added 1980, ch. 326, sec. 2, p. 835; am. 2002, ch. 223, sec. 3, p. 637.]

18-6704. CONFISCATION OF WIRE, ELECTRONIC OR ORAL COMMUNICATION INTERCEPTING DEVICES. Any electronic, mechanical, or other device used, sent, carried, manufactured, assembled, possessed, or sold in violation of this chapter may be seized and forfeited to the state.

[18-6704, added 1980, ch. 326, sec. 2, p. 836; am. 2002, ch. 223, sec. 4, p. 637.]

18-6705. PROHIBITION OF USE AS EVIDENCE OF INTERCEPTED WIRE, ELECTRONIC OR ORAL COMMUNICATIONS. Whenever any wire, electronic or oral communication has been intercepted, no part of the contents of such communication and no evidence derived therefrom may be received in evidence in any trial, hearing, or other proceeding in or before any court, grand jury, department, officer, agency, regulatory body, legislative committee, or other authority of the state, or a political subdivision thereof, if the disclosure of that information would be in violation of this chapter.

[18-6705, added 1980, ch. 326, sec. 2, p. 836; am. 2002, ch. 223, sec. 5, p. 637.]

18-6706. AUTHORIZATION FOR INTERCEPTION OF WIRE, ELECTRONIC OR ORAL COMMUNICATIONS. The prosecuting attorney of any county is authorized to make application to a judge of competent jurisdiction for an order authorizing or approving the interception of wire, electronic or oral communications and may apply to such judge for, and such judge may grant in conformity with section 2518 of chapter 119, [title 18](#) U.S.C.A., and in conformity with the provisions of this chapter, an order authorizing or approving the interception of wire, electronic or oral communications by investigative or law enforcement officers having responsibility for the investigation of the offense as to which the application is made, when such interception may provide or has provided evidence of the commission of the offense of murder, kidnapping, gambling, robbery, bribery, extortion, or dealing in narcotic drugs, marijuana or other dangerous drugs, or other crime dangerous to life, limb, or property, and punishable by imprisonment for more than one (1) year, or any conspiracy to commit any of the foregoing offenses.

[18-6706, added 1980, ch. 326, sec. 2, p. 836; am. 2002, ch. 223, sec. 6, p. 638; am. 2020, ch. 82, sec. 11, p. 185.]

18-6707. AUTHORIZATION FOR DISCLOSURE AND USE OF INTERCEPTED WIRE, ELECTRONIC OR ORAL COMMUNICATIONS. (1) Any investigative or law enforcement officer who, by any means authorized by this chapter, has obtained knowledge of the contents of any wire, electronic or oral communication, or evidence derived therefrom, may disclose such contents to another investigative or law enforcement officer to the extent that such disclosure is appropriate to the proper performance of the official duties of the officer making or receiving the disclosure.

(2) Any investigative or law enforcement officer who, by any means authorized by this chapter, has obtained knowledge of the contents of any wire, electronic or oral communication or evidence derived therefrom may use such

contents to the extent such use is appropriate to the proper performance of his official duties.

(3) Any person who has received, by any means authorized by this chapter, any information concerning a wire, electronic or oral communication, or evidence derived therefrom intercepted in accordance with the provisions of this chapter may disclose the contents of that communication or such derivative evidence while giving testimony under oath or affirmation in any criminal proceeding in any court of this state, of the United States or of any state or in any political subdivision thereof.

(4) No otherwise privileged wire, electronic or oral communication intercepted in accordance with, or in violation of, the provisions of this chapter shall lose its privileged character.

(5) When an investigative or law enforcement officer, while engaged in intercepting wire, electronic or oral communications in the manner authorized herein, intercepts wire, electronic or oral communications relating to offenses other than those specified in the order of authorization, the contents thereof, and evidence derived therefrom, may be disclosed or used as provided in subsections (1), (2) and (3) of this section.

[18-6707, added 1980, ch. 326, sec. 2, p. 837; am. 2002, ch. 223, sec. 7, p. 638.]

18-6708. PROCEDURE FOR INTERCEPTION OF WIRE, ELECTRONIC OR ORAL COMMUNICATIONS. (1) Each application for an order authorizing the interception of a wire, electronic or oral communication shall be made in writing upon oath or affirmation or by means of an oral affidavit as provided for in the Idaho Rules of Criminal Practice & Procedure to a judge of competent jurisdiction and shall state the applicant's authority to make such application. Each application shall include the following information:

(a) The identity of the individual authorized to make application for said order pursuant to section [18-6706](#), Idaho Code;

(b) A full and complete statement of the facts and circumstances relied upon by the applicant, to justify his belief that an order should be issued including (i) details as to the particular offense that has been, is being, or is about to be committed, (ii) except as provided in subsection (11) of this section, a particular description of the nature and location of the facilities from which or the place where the communication is to be intercepted, (iii) a particular description of the type of communications sought to be intercepted, (iv) the identity of the person, if known, committing the offense and whose communications are to be intercepted;

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

(d) A statement of the period of time for which the interception is required to be maintained. If the nature of the investigation is such that the authorization for interception should not automatically terminate when the described type of communication has been first obtained, a particular description of facts establishing probable cause to believe that additional communications of the same type will occur thereafter;

(e) A full and complete statement of the facts concerning all previous applications known to the individual making the applications, made to any judge for authorization to intercept wire, electronic or oral communications involving any of the same persons, facilities or places

specified in the application, and the action taken by the judge on each such application; and

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

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

(3) Upon such application the judge may enter an ex parte order, as requested or as modified, authorizing interception of wire, electronic or oral communications within the state of Idaho if the judge determines on the basis of the facts submitted by the applicant that:

(a) There is probable cause for belief that an individual is committing, has committed, or is about to commit a particular offense enumerated in section [18-6706](#), Idaho Code;

(b) There is probable cause for belief that particular communications concerning that offense will be obtained through such interception;

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

(d) Except as provided in subsection (11) of this section, there is probable cause for belief that the facilities from which, or the place where, the wire, electronic or oral communications are to be intercepted are being used, or are about to be used, in connection with the commission of such offense, or are leased to, listed in the name of, or commonly used by such person.

(4) Each order authorizing the interception of any wire, electronic or oral communication shall specify:

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

(b) The nature and location of the communications facilities as to which, or the place where, authority to intercept is granted;

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

(d) The identity of the agency authorized to intercept the communications, and of the person making the application; and

(e) The period of time during which such interception is authorized, including a statement as to whether or not the interception shall automatically terminate when the described communication has been first obtained.

(5) An order authorizing the interception of a wire, electronic or oral communication shall, upon request of the applicant, direct that a provider of wire or electronic communication service, landlord, custodian, or other person shall furnish the applicant forthwith all information, facilities and technical assistance necessary to accomplish the interception unobtrusively and with a minimum of interference with the services that such service provider, landlord, custodian or person is providing the person whose communications are to be intercepted. Any provider of wire or electronic communication service, landlord, custodian or other person furnishing such facilities or technical assistance shall be compensated therefor by the applicant for reasonable expenses incurred in providing such facilities or assistance.

(6) No order entered under this section may authorize the interception of any wire, electronic or oral communication for any period longer than is necessary to achieve the objective of the authorization, nor in any event longer than thirty (30) days. Such thirty (30) day period begins on the earlier of the day on which the investigative or law enforcement officer begins to conduct an interception under the order or ten (10) days after the order is entered. Extensions of an order may be granted, but only upon application for an extension made in accordance with subsection (1) of this section and the court making the findings required by subsection (3) of this section. The periods of extension shall be no longer than the authorizing court deems necessary to achieve the purposes for which it was granted and in no event for longer than thirty (30) days for each extension. Every order and extension thereof shall contain a provision that the authorization to intercept shall be executed as soon as practicable, shall be conducted in such a way as to minimize the interception of communications not otherwise subject to interception under this chapter, and must terminate upon attainment of the authorized objective, or in any event in thirty (30) days. In the event the intercepted communication is in a code or foreign language and an expert in that foreign language or code is not reasonably available during the interception period, minimization may be accomplished as soon as practicable after such interception. An interception under this chapter may be conducted in whole or in part by government personnel or by an individual operating under a contract with federal, state or local government and acting under the supervision of an investigative or law enforcement officer authorized to conduct the interception.

(7) Whenever an order authorizing interception is entered pursuant to this chapter, the order may require reports to be made to the judge who issued the order showing what progress has been made toward achievement of the authorized objective and the need for continued interception. Such reports shall be made at such intervals as the judge may require.

(8) (a) The contents of any wire, electronic or oral communication intercepted by any means authorized by this chapter shall, if possible, be recorded on tape or wire or other comparable device. The recording of the contents of any wire, electronic or oral communication under this subsection shall be done in such way as will protect the recording from editing or other alterations. Immediately upon the expiration of the period of the order, or extensions thereof, such recordings shall be made available to the judge issuing such order and sealed under his directions. Custody of the recordings shall be wherever the judge orders. They shall not be destroyed except upon an order of the issuing or denying court and in any event shall be kept for ten (10) years. Duplicate recordings may be made for use or disclosure pursuant to the provisions of subsections (1) and (2) of section [18-6707](#), Idaho Code, for investigations. The presence of the seal provided for by this subsection, or a satisfactory explanation for the absence thereof, shall be a prerequisite for the use or disclosure of the contents of any wire, electronic or oral communication or evidence derived therefrom under subsection (3) of section [18-6707](#), Idaho Code.

(b) Applications made and orders granted under this chapter shall be sealed by the judge. Custody of the applications and orders shall be wherever the judge directs. Such applications and orders shall be disclosed only upon a showing of good cause before a judge of competent ju-

jurisdiction and shall not be destroyed except on order of the issuing or denying judge and in any event shall be kept for ten (10) years.

(c) Any violation of the provisions of this subsection may be punished as contempt of the issuing or denying judge.

(d) Within a reasonable time but not later than ninety (90) days after the filing of an application for an order of approval under this section which is denied or the termination of the period of an order or extensions thereof, the issuing or denying judge shall cause to be served, on the persons named in the order or the application, and such other parties to intercepted communications as the judge may determine in his discretion that is in the interest of justice, an inventory which shall include notice of:

- (1) The fact of the entry of the order or the application;
- (2) The date of the entry and the period of authorized, approved or disapproved interception, or the denial of the application; and
- (3) The fact that during the period wire, electronic or oral communications were or were not intercepted.

The judge, upon the filing of a motion, may in his discretion make available to such person or his counsel for inspection such portions of the intercepted communications, applications and orders as the judge determines to be in the interest of justice. On an ex parte showing of good cause to a judge of competent jurisdiction the serving of the inventory required by this subsection may be postponed.

(9) The contents of any intercepted wire, electronic or oral communication or evidence derived therefrom shall not be received in evidence or otherwise disclosed in any trial, hearing, or other proceeding in a federal or state court unless each party, not less than ten (10) days before the trial, hearing, or proceeding has been furnished with a copy of the court order and accompanying application under which the interception was authorized. This ten (10) day period may be waived by the court if it finds that it was not possible to furnish the party with the above information ten (10) days before the trial, hearing, or proceeding and that the party will not be prejudiced by the delay in receiving such information.

(10) (a) Any aggrieved person in any trial, hearing, or proceeding in or before any court, department, officer, agency, regulatory body, or other authority of the United States, a state, or a political subdivision thereof, may move to suppress the contents of any intercepted wire, electronic or oral communication, or evidence derived therefrom, on the grounds that:

1. The communication was unlawfully intercepted;
2. The order of authorization under which it was intercepted is insufficient on its face; or
3. The interception was not made in conformity with the order of authorization.

Such motion shall be made before the trial, hearing, or proceeding, pursuant to the Idaho rules of criminal or civil procedure or the hearing rules of the respective body, as applicable.

(b) In addition to any other right to appeal, the state of Idaho shall have the right to appeal from an order granting a motion to suppress made under paragraph (a) of this subsection. Such appeal shall be taken within thirty (30) days after the date the order was entered.

(c) The remedies and sanctions described in this section with respect to the interception of electronic communications are the only judicial

remedies and sanctions for nonconstitutional violations of this chapter involving such communications.

(11) The requirements of subsections (1) (b) (ii) and (3) (d) of this section relating to the specification of the facilities from which, or the place where, the communication is to be intercepted do not apply if:

(a) In the case of an application with respect to the interception of an oral communication:

(i) The application contains a full and complete statement as to why such specification is not practical and identifies the person committing the offense and whose communications are to be intercepted; and

(ii) The judge finds that such specification is not practical; and

(b) In the case of an application with respect to a wire or electronic communication:

(i) The application identifies the person believed to be committing the offense and whose communications are to be intercepted and the applicant makes a showing that there is probable cause to believe that the person's actions could have the effect of thwarting interception from a specified facility;

(ii) The judge finds that such showing has been adequately made; and

(iii) The order authorizing or approving the interception is limited to interception only for such time as it is reasonable to presume that the person identified in the application is or was reasonably proximate to the instrument through which such communication will be or was transmitted.

(12) An interception of a communication under an order with respect to which the requirements of subsections (1) (b) (ii) and (3) (d) of this section do not apply by reason of subsection (11) (a) of this section shall not begin until the place where the communication is to be intercepted is ascertained by the person implementing the interception order. A provider of wire or electronic communications service that has received an order as provided for in subsection (11) (b) of this section may move the court to modify or quash the order on the ground that its assistance with respect to the interception cannot be performed in a timely or reasonable fashion. The court, upon notice to the state, shall decide such a motion expeditiously.

[18-6708, added 1980, ch. 326, sec. 2, p. 837; am. 2002, ch. 223, sec. 8, p. 639.]

18-6709. RECOVERY OF CIVIL DAMAGES AUTHORIZED. Any person whose wire, electronic or oral communication is intercepted, disclosed, or used in violation of this chapter shall have a civil cause of action against any person who intercepts, discloses, uses, or procures any other person to intercept, disclose, or use such communications, and shall be entitled to recover from any such person:

(a) Actual damages, but not less than liquidated damages computed at the rate of one hundred dollars (\$100) a day for each day of violation or one thousand dollars (\$1,000), whichever is higher;

(b) Punitive damages; and

(c) A reasonable attorney's fee and other litigation costs reasonably incurred.

A good faith reliance on a court order shall constitute a complete defense to any civil or criminal action under the laws of this state.

[18-6709, added 1980, ch. 326, sec. 2, p. 841; am. 2002, ch. 223, sec. 9, p. 643.]

18-6710. USE OF TELEPHONE TO ANNOY, TERRIFY, THREATEN, INTIMIDATE, HARASS OR OFFEND BY LEWD OR PROFANE LANGUAGE, REQUESTS, SUGGESTIONS OR PROPOSALS -- THREATS OF PHYSICAL HARM -- DISTURBING THE PEACE BY REPEATED CALLS -- PENALTIES. (1) Every person who, with intent to annoy, terrify, threaten, intimidate, harass or offend, telephones another and (a) addresses to or about such person any obscene, lewd or profane language, or makes any request, suggestion or proposal which is obscene, lewd, lascivious or indecent; or (b) addresses to such other person any threat to inflict injury or physical harm to the person or property of the person addressed or any member of his family, or any other person; or (c) by repeated anonymous or identified telephone calls whether or not conversation ensues, disturbs the peace or attempts to disturb the peace, quiet, or right of privacy of any person at the place where the telephone call or calls are received, is guilty of a misdemeanor and upon conviction thereof, shall be sentenced to a term of not to exceed one (1) year in the county jail. Upon a second or subsequent conviction, the defendant shall be guilty of a felony and shall be sentenced to a term of not to exceed five (5) years in the state penitentiary.

(2) The use of obscene, lewd or profane language or the making of a threat or obscene proposal, or the making of repeated anonymous telephone calls as set forth in this section may be prima facie evidence of intent to annoy, terrify, threaten, intimidate, harass or offend.

(3) For the purposes of this section, the term "telephone" shall mean any device which provides transmission of messages, signals, facsimiles, video images or other communication between persons who are physically separated from each other by means of telephone, telegraph, cable, wire or the projection of energy without physical connection.

[18-6710, added 1980, ch. 326, sec. 2, p. 841; am. 1994, ch. 167, sec. 5, p. 376.]

18-6711. USE OF TELEPHONE TO TERRIFY, INTIMIDATE, HARASS OR ANNOY BY FALSE STATEMENTS -- PENALTIES. (1) Every person who telephones another and knowingly makes any false statements concerning injury, death, disfigurement, indecent conduct or criminal conduct of the person telephoned or any member of his family, with intent to terrify, intimidate, harass or annoy the called person, is guilty of a misdemeanor. Upon a second or subsequent conviction of the violation of the provisions of this section, the defendant shall be guilty of a felony.

(2) The making of a false statement as herein set out may be prima facie evidence of intent to terrify, intimidate, harass or annoy.

(3) For the purposes of this section, the term "telephone" shall mean any device which provides transmission of messages, signals, facsimiles, video images or other communication between persons who are physically separated from each other by means of telephone, telegraph, cable, wire or the projection of energy without physical connection.

[18-6711, added 1980, ch. 326, sec. 2, p. 842; am. 1994, ch. 167, sec. 6, p. 376.]

18-6711A. FALSE ALARMS -- COMPLAINTS -- REPORTS -- PENALTIES -- CIVIL DAMAGES. (a) Any person calling the number "911" for the purpose of making

a false alarm or complaint and reporting false information which could or does result in the emergency response of any firefighting, police, medical or other emergency services shall be guilty of a misdemeanor and upon conviction thereof shall be sentenced to a fine of not to exceed one thousand dollars (\$1,000) or to a term of not to exceed one (1) year in the county jail, or to both such fine and imprisonment.

(b) In addition to the criminal penalties for violation of the provisions of this section, civil damages may be recovered from the person so convicted in an amount of three (3) times the amount necessary to compensate or reimburse the complainant for costs incurred, losses sustained or other damages suffered in receiving, acting upon or responding to the false alarm, complaint or report. If the person so convicted is under the age of eighteen (18) years of age, the parent having legal custody of the minor may be jointly and severally liable with the minor for such civil damages as are imposed. Recovery from the parents shall not be limited by any other provision of law which limits the liability of a parent for the tortious or criminal conduct of a minor. A parent not having legal custody of the minor shall not be liable for civil damages imposed hereunder.

[18-6711A, added 1990, ch. 133, sec. 1, p. 306; am. 2005, ch. 359, sec. 10, p. 1136; am. 2012, ch. 257, sec. 3, p. 709.]

18-6712. PLACE OF OFFENSE. Any offense committed by use of a telephone as provided by this chapter may be deemed to have been committed at either the place at which the telephone call or calls were made or at the place where the telephone call or calls were received.

[18-6712, added 1980, ch. 326, sec. 2, p. 842.]

18-6713. THEFT OF TELECOMMUNICATION SERVICES. (1) As used in this section:

(a) "Clone cellular telephone" or "counterfeit cellular telephone" is a cellular telephone whose electronic serial number has been altered from the electronic serial number that was programmed in the telephone by the manufacturer by someone other than the manufacturer.

(b) "Cloning paraphernalia" means materials that, when possessed in combination, are capable of creating a cloned cellular telephone. These materials include: scanners to intercept the electronic serial number and mobile identification number, cellular telephones, cables, EPROM chips, EPROM burners, software for programming the cloned phone with a false electronic serial number and mobile identification number combination, a computer containing such software and lists of electronic serial number and mobile identification number combinations.

(c) "Electronic serial number" means the unique number that was programmed into a cellular telephone by its manufacturer which is transmitted by the cellular phone and used by cellular telephone providers to validate radio transmissions to the system as having been made by an authorized device.

(d) "EPROM" or "erasable programmable read-only memory" means an integrated circuit memory that can be programmed from an external source and erased, for reprogramming, by exposure to ultraviolet light.

(e) "Illegal telecommunications equipment" means any instrument, apparatus, equipment, or device which is designed or adapted, and otherwise used or intended to be used for the theft of any telecommunication

service or for concealing from any supplier of telecommunication service or lawful authority the existence, place of origin, use or destination of any telecommunication.

(f) "Intercept" means to electronically capture, record, reveal or otherwise access the signals emitted or received during the operation of a cellular telephone without the consent of the sender or receiver of the signals, by means of any instrument, device or equipment.

(g) "Mobile identification number" means the cellular telephone number assigned to the cellular telephone by the cellular telephone carrier.

(h) "Possess" means to have physical possession or otherwise to exercise dominion or control over tangible property.

(i) "Telecommunication service" means a service which, in exchange for a pecuniary consideration, provides or offers to provide transmission of messages, signals, facsimiles, video images or other communication between persons who are physically separated from each other by means of telephone, telegraph, cable, wire, or the projection of energy without physical connection.

(2) It is unlawful intentionally to:

(a) Make illegal telecommunications equipment; or

(b) Sell, give, or furnish to another or advertise or offer for sale illegal telecommunications equipment; or

(c) Sell, give, or furnish to another or advertise or offer for sale any plans or instructions for making, assembling, or using illegal telecommunications equipment; or

(d) Use or possess illegal telecommunications equipment.

(3) It is unlawful intentionally to:

(a) Make clone cellular telephones; or

(b) Sell, give or furnish to another or advertise or offer for sale clone cellular telephones; or

(c) Sell, give or furnish to another or advertise or offer for sale any plans or instructions for making, assembling, or using clone cellular telephones; or

(d) Use or possess illegal cloning paraphernalia; or

(e) Use a clone cellular telephone or counterfeit telephone to facilitate the commission of a felony.

(4) It is theft of telecommunications services to use, receive, or control telecommunications services without paying the pecuniary consideration regularly charged by the supplier of the telecommunication services used, received or controlled.

(a) Actual knowledge by the supplier of the telecommunication services that a person is or has been using, receiving or controlling the services shall not be a defense to the crime of theft of telecommunication services.

(5) A person who violates the provisions of subsection (2) (d) of this section commits a crime and shall be punished as follows:

(a) The first conviction shall be a misdemeanor, which shall be punished by a fine not to exceed one thousand dollars (\$1,000) or by imprisonment in the county jail for a term not to exceed six (6) months, or by both such fine and imprisonment.

(b) Conviction of a second or subsequent violation shall be punished by a fine not to exceed one thousand dollars (\$1,000) or by imprisonment in the county jail for a term not to exceed one (1) year, or by both such fine and imprisonment.

(6) A person who violates the provisions of either subsection (2) (a), (b) or (c) of this section commits a misdemeanor and shall be punished by a fine not to exceed one thousand dollars (\$1,000), or by imprisonment in the county jail for a term not to exceed one (1) year, or by both such fine and imprisonment.

(7) A person who violates the provisions of subsection (3) of this section commits a felony.

(8) In a prosecution for violation of the provisions of subsection (2), (3) or (4) of this section, the element of intent may be established by proof that the defendant obtained such services by any of the following means:

(a) By use of a code, prearranged scheme, or other similar stratagem or device whereby said person, in effect, sends or receives information;

(b) Without the consent of the supplier of the telecommunication services, the installation, connection, or alteration of any equipment, cable, wire, antenna or facilities capable of either physically, inductively, acoustically, or electronically enabling a person to use, receive or control telecommunication services without paying the regular pecuniary charge;

(c) By any other trick, stratagem, impersonation, false pretense, false representation, false statement, contrivance, device, or means; or

(d) By making, assembling, or possessing any instrument, apparatus, equipment, or device or the plans or instructions for the making or assembling of any instrument, apparatus, equipment, or device which is designed, adapted, or otherwise used or intended to be used to avoid the lawful charge, in whole or in part, for any telecommunications service by concealing the use, existence, place of origin, or destination of any telecommunications.

(9) The supplier of telecommunication services which is directly affected by the commission of any of the acts prohibited under subsections (2), (3) and (4) of this section shall, regardless of whether there was a criminal conviction, have a civil cause of action against the person who commits any of the prohibited acts. The prevailing party shall be awarded all reasonable costs of litigation including, but not limited to, attorney's fees and court costs. If the supplier prevails, he shall recover additionally:

(a) Actual damages; or

(b) Liquidated damages of ten dollars (\$10.00) per day for each day of the violation or five hundred dollars (\$500), whichever is greater; or

(c) If actual damages are greater than five hundred dollars (\$500), and, if proven, punitive damages.

(10) Nothing in this section shall be construed to make unlawful the interception or receipt by any person or the assisting, including the manufacture or sale, of such interception or receipt, of any satellite cable programs for private viewing as defined and specifically permitted under the "Cable Communications Policy Act of 1984."

[18-6713, added 1980, ch. 326, sec. 2, p. 842; am. 1985, ch. 32, sec. 1, p. 64; am. 1988, ch. 354, sec. 1, p. 1055; am. 1997, ch. 144, sec. 1, p. 417; am. 2005, ch. 359, sec. 11, p. 1137.]

18-6714. AIDING THE AVOIDANCE OF TELECOMMUNICATIONS CHARGES. (1) A person commits the offense of aiding the avoidance of telecommunications charges when he:

(a) Publishes the number or code of an existing, canceled, revoked, expired, or nonexistent credit card or the numbering or coding which is employed in the issuance of credit cards with the purpose that it will be used to avoid the payment of lawful telecommunications charges; or

(b) Publishes, advertises, sells, gives, or otherwise transfers to another plans or instructions for the making or assembling of any apparatus, instrument, equipment, or device described in section [18-6713](#), Idaho Code, with the purpose that such will be used or with the knowledge or reason to believe that such will be used to avoid the payment of lawful telecommunications charges.

(2) A person convicted of the offense of aiding the avoidance of telecommunications charges shall be punished according to the provisions of section [18-6713](#), Idaho Code.

(3) For the purposes of this section, the term "publish" means to communicate information to any one or more persons either orally; in person; by telephone, radio, or television; or in a writing of any kind.

[18-6714, added 1980, ch. 326, sec. 2, p. 843; am. 1997, ch. 144, sec. 2, p. 419.]

18-6715. FORGERY OF TELEGRAPHIC MESSAGES. Every person who knowingly and willfully sends by telegraph to any person a false or forged message purporting to be from such telegraph office, or from any other person, or who willfully delivers or causes to be delivered to any person any such message falsely purporting to have been received by telegraph, or who furnishes or conspires to furnish, or causes to be furnished to any agent, operator, or employee, to be sent by telegraph or to be delivered, any such message, knowing the same to be false or forged with the intent to deceive, injure, or defraud another, is punishable by imprisonment in the state prison for a term not to exceed five (5) years, or by a fine not to exceed five thousand dollars (\$5,000), or by both such fine and imprisonment.

[18-6715, added 1980, ch. 326, sec. 2, p. 843.]

18-6716. OPENING TELEGRAMS. Every person not connected with any telegraphic office who without the authority or consent of the person to whom the same may be directed, willfully opens any sealed envelope enclosing a telegraphic message and addressed to any other person, with the purpose of learning the contents of such message, or who fraudulently represents any other person, and thereby procures to be delivered to himself any telegraphic message addressed to such other person, with the intent to use, destroy or detain the same from the person or persons entitled to receive such message, is punishable as provided in section [18-6715](#), Idaho Code.

[18-6716, added 1980, ch. 326, sec. 2, p. 844.]

18-6717. REFUSAL TO SEND OR DELIVER TELEGRAPH MESSAGE. Every agent, operator or employee of any telegraph office who willfully refuses or neglects to send any message received at such office for transmission, or willfully postpones the same out of its order, or willfully refuses or neglects to deliver any message received by telegraph, is guilty of a misdemeanor. Nothing herein contained shall be construed to require any message to be received, transmitted or delivered unless the charges thereon have been paid or tendered.

[18-6717, added 1980, ch. 326, sec. 2, p. 844.]

18-6718. OPENING SEALED MAIL OR PACKAGES. (1) Every person who willfully opens or breaks the seal, or reads, or causes to be read, any sealed mail not addressed to such person without being authorized to do so either by the writer or by the person to whom it is addressed, and every person who, without the like authority, publishes any of the contents of such mail knowing the same to have been unlawfully opened, is guilty of a misdemeanor.

(2) For the purposes of this section, "mail" means any written communication or package that is designed to be carried by the United States postal service or any other federally regulated carrier of packages, parcels or letters.

[18-6718, added 1980, ch. 326, sec. 2, p. 844; am. 1994, ch. 167, sec. 7, p. 377.]

18-6719. DEFINITIONS FOR PEN REGISTERS AND TRAP AND TRACE DEVICES. (1) "Attorney general" means the attorney general of the state of Idaho;

(2) "Pen register" means a device which records or decodes electronic or other impulses which identify the numbers dialed or otherwise transmitted on the telephone line to which such device is attached, but such term 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 such provider or any device used by a provider or customer of a wire communication service for cost accounting or other like purposes in the ordinary course of its business;

(3) "Prosecuting attorney" means the prosecuting attorney of each county of the state of Idaho;

(4) "Trap and trace device" means a device which captures the incoming electronic or other impulses which identify the originating number of an instrument or device from which a wire or electronic communication was transmitted.

[18-6719, added 1987, ch. 215, sec. 1, p. 461.]

18-6720. GENERAL PROHIBITION ON PEN REGISTER AND TRAP AND TRACE DEVICE USE -- EXCEPTION. (1) Except as provided in section [18-6720](#) [this section], Idaho Code, no person may install or use a pen register or a trap and trace device without first obtaining a court order under section [18-6722](#), Idaho Code.

(2) The prohibition of subsection (1) of this section does not apply with respect to the use of a pen register or a trap and trace device by a provider of electronic or wire communication service:

(a) Relating to the operation, maintenance, and testing of a wire or electronic communication service or to the protection of the rights or property of such provider, or to the protection of users of that service from abuse of service or unlawful use of service; or

(b) To record the fact that a wire or electronic communication was initiated or completed in order to protect such provider, another provider furnishing service toward the completion of the wire communication, or a user of that service, from fraudulent, unlawful or abusive use of service; or

(c) Where the consent of the user of that service has been obtained.

(3) Whoever knowingly violates the provisions of subsection (1) of this section shall be guilty of a misdemeanor.

[18-6720, added 1987, ch. 215, sec. 2, p. 461.]

18-6721. APPLICATION FOR AN ORDER FOR A PEN REGISTER OR A TRAP AND TRACE DEVICE. (1) The prosecuting attorney or attorney general may make application for an order or an extension of an order under section [18-6722](#), Idaho Code, authorizing or approving the installation and use of a pen register or a trap and trace device under this chapter, in writing under oath or equivalent affirmation to the district court.

(2) An application under subsection (1) of this section shall include:

(a) The identity of the prosecuting attorney or attorney general making the application and the identity of the law enforcement agency conducting the investigation; and

(b) A certification by the applicant that the information likely to be obtained is relevant to an ongoing criminal investigation being conducted by that agency.

[18-6721, added 1987, ch. 215, sec. 3, p. 462.]

18-6722. ISSUANCE OF AN ORDER FOR A PEN REGISTER OR A TRAP AND TRACE DEVICE. (1) Upon an application made under section [18-6721](#), Idaho Code, the court shall enter an ex parte order authorizing the installation and use of a pen register or a trap and trace device within the jurisdiction of the court if the court finds that the prosecuting attorney, the attorney general, or the state law enforcement or investigative officer has certified to the court that the information likely to be obtained by such installation and use is relevant to an ongoing criminal investigation.

(2) An order issued under this section:

(a) Shall specify--

1. The identity, if known, of the person to whom is leased or in whose name is listed the telephone line to which the pen register or trap and trace device is to be attached;

2. The identity, if known, of the person who is the subject of the criminal investigation;

3. The number and, if known, physical location of the telephone line to which the pen register or trap and trace device is to be attached and, in the case of a trap and trace device, the geographic limits of the trap and trace order; and

4. A statement of the offense to which the information likely to be obtained by the pen register or trap and trace device relates; and

(b) Shall direct, upon the request of the applicant, the furnishing of information, facilities, and technical assistance necessary to accomplish the installation of the pen register or trap and trace device under section [18-6723](#), Idaho Code.

(3) An order issued under this section shall authorize the installation and use of a pen register or a trap and trace device for a period not to exceed sixty (60) days. Extensions of such an order may be granted, but only upon an application for an order under section [18-6721](#), Idaho Code, and upon the judicial finding required by subsection (1) of this section. The period of extension shall be for a period not to exceed sixty (60) days.

(4) An order authorizing or approving the installation and use of a pen register or a trap and trace device shall direct that:

- (a) The order be sealed until otherwise ordered by the court; and
- (b) The person owning or leasing the line to which the pen register or a trap and trace device is attached, or who has been ordered by the court to provide assistance to the applicant, not disclose the existence of the pen register or trap and trace device or the existence of the investigation to the listed subscriber, or to any other person, unless or until otherwise ordered by the court.

[18-6722, added 1987, ch. 215, sec. 4, p. 462.]

18-6723. ASSISTANCE IN INSTALLATION AND USE OF A PEN REGISTER OR A TRAP AND TRACE DEVICE. (1) Upon the request of the prosecuting attorney or attorney general, or an officer of a law enforcement agency authorized to install and use a pen register, a provider of wire or electronic communication service, landlord, custodian, or other person shall furnish the applicant, investigative or law enforcement officer forthwith all information, facilities, and technical assistance necessary to accomplish the installation of the pen register unobtrusively and with a minimum of interference with the services that the person so ordered by the court accords the party with respect to whom the installation and use is to take place, if such assistance is directed by a court order as provided in section [18-6722](#), Idaho Code.

(2) Upon the request of a prosecuting attorney or attorney general, or an officer of a law enforcement agency authorized to receive the results of a trap and trace device, a provider of a wire or electronic communication service, landlord, custodian, or other person shall install such device forthwith on the appropriate line and shall furnish such investigative or law enforcement officer all additional information, facilities and technical assistance including installation and operation of the device unobtrusively and with a minimum of interference with the services that the person so ordered by the court accords the party with respect to whom the installation and use is to take place, if such installation and assistance is directed by a court order as provided in section [18-6722](#) (2) (b), Idaho Code. Unless otherwise ordered by the court, the results of the trap and trace device shall be furnished to the officer of a law enforcement agency, designated in the court, at reasonable intervals during regular business hours for the duration of the order.

(3) A provider of a wire or electronic communication service, landlord, custodian, or other person who furnishes facilities or technical assistance pursuant to this section shall be reasonably compensated for such reasonable expenses incurred in providing such facilities and assistance.

(4) No cause of action shall lie in any court against any provider of a wire or electronic communication service, its officers, employees, agents, or other specified persons for providing information, facilities, or assistance in accordance with the terms of a court order under this chapter.

(5) A good faith reliance on a court order, a legislative authorization, or a statutory authorization is a complete defense against any civil or criminal action brought under this chapter or any other law.

[18-6723, added 1987, ch. 215, sec. 5, p. 463.]

18-6725. RULE FOR PRIOR INTERCEPTIONS. Any pen register or trap and trace device installed prior to the effective date of this act which would be valid and lawful without regard to the amendments made by sections [18-6719](#) and [18-6724](#), Idaho Code, shall be valid and lawful.

[18-6725, added 1987, ch. 215, sec. 7, p. 464.]