

House _____ Amendment NO. _____

Offered By

1 AMEND House Committee Substitute for House Bill Nos. 919 & 1081, Page 1, Section 105.1675,
2 Line 8, by inserting after all of said section and line the following:

3
4 "542.400. As used in sections 542.400 to 542.422, the following words and phrases mean:

5 (1) "Aggrieved person", a person who was a party to any intercepted wire or electronic
6 communication or a person against whom the interception was directed;

7 (2) "Communication common carrier", an individual or corporation undertaking to transport
8 messages for compensation;

9 (3) "Contents", when used with respect to any wire or electronic communication, includes
10 any information concerning the identity of the parties, the substance, purport, or meaning of that
11 communication;

12 (4) "Court of competent jurisdiction", any circuit court having general criminal jurisdiction
13 within the territorial jurisdiction where the communication is to be intercepted including any circuit
14 judge specially assigned by the supreme court of Missouri pursuant to section 542.404;

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

18 (a) Any wire or oral communication;

19 (b) Any communication made through a tone-only paging device;

20 (c) Any communication from an electronic tracking device under section 565.260; or

21 (d) Electronic funds transfer information stored by a financial institution in a
22 communication system used for the electronic storage and transfer of funds;

23 (6) "Electronic, mechanical, or other device", any device or apparatus which can be used to
24 intercept a wire or electronic communication other than:

25 (a) Any telephone or telegraph instrument, equipment or facility, or any component thereof,
26 owned by the user or furnished to the subscriber or user by a communications common carrier in the
27 ordinary course of its business and being used by the subscriber or user in the ordinary course of its
28 business or being used by a communications common carrier in the ordinary course of its business
29 or by an investigative office or law enforcement officer in the ordinary course of his duties; or

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

3 ~~[(6)]~~ (7) "Intercept", the aural acquisition of the contents of any wire or electronic
4 communication through the use of any electronic or mechanical device, including but not limited to
5 interception by one spouse of another spouse;

6 ~~[(7)]~~ (8) "Investigative officer" or "law enforcement officer or agency", any officer or
7 agency of this state or a political subdivision of this state, who is empowered by law to conduct
8 investigations of or to make arrests for offenses enumerated in sections 542.400 to 542.422, and any
9 attorney authorized by law to prosecute or participate in the prosecution of such offenses;

10 ~~[(8)]~~ (9) "Oral communication", any communication uttered by a person exhibiting an
11 expectation that such communication is not subject to interception under circumstances justifying
12 such expectation;

13 ~~[(9)]~~ (10) "Person", any employee, or agent of this state or political subdivision of this state,
14 and any individual, partnership, association, joint stock company, trust, or corporation;

15 ~~[(10)]~~ (11) "Prosecuting attorney", the elected prosecuting attorney of the county or the
16 circuit attorney of any city not contained within a county;

17 ~~[(11)]~~ (12) "State", the state of Missouri and political subdivisions of the state;

18 ~~[(12)]~~ (13) "Wire communication", any communication made in whole or in part through the
19 use of facilities for the transmission of communications by the aid of wire, cable, or other like
20 connection between the point of origin and the point of reception including the use of such
21 connection in a switching station furnished or operated by any person engaged as a common carrier
22 in providing or operating such facilities for the transmission of local, state or interstate
23 communications.

24 542.402. 1. Except as otherwise specifically provided in sections 542.400 to 542.422, a
25 person is guilty of a class E felony and upon conviction shall be punished as provided by law, if
26 such person:

27 (1) Knowingly, with the intent to disclose or use, intercepts, endeavors to intercept, or
28 procures any other person to intercept or endeavor to intercept, any wire or electronic
29 communication;

30 (2) Knowingly, with the intent to disclose or use, uses, endeavors to use, or procures any
31 other person to use or endeavor to use any electronic, mechanical, or other device to intercept any
32 oral communication when such device transmits communications by radio or interferes with the
33 transmission of such communication; provided, however, that nothing in sections 542.400 to
34 542.422 shall be construed to prohibit the use by law enforcement officers of body cameras,
35 microphones, and transmitters in undercover investigations for the acquisition of evidence ~~[and]~~, or
36 for the protection of law enforcement officers and others working under their direction in such
37 investigations;

38 (3) Knowingly discloses, or endeavors to disclose, to any other person the contents of any
39 wire, electronic, or oral communication, when he knows or has reason to know that the information

1 was obtained through the interception of a wire, electronic, or oral communication in violation of
 2 this subsection, except as provided in sections 542.200 to 542.422; or

3 (4) Knowingly uses, or endeavors to use, the contents of any wire, electronic, oral
 4 communication, when he knows or has reason to know that the information was obtained through
 5 the interception of a wire, electronic, or oral communication in violation of this subsection, except
 6 as provided in sections 542.400 to 542.422.

7 2. It is not unlawful under the provisions of sections 542.400 to 542.422:

8 (1) For an operator of a switchboard, or an officer, employee, or agent of any
 9 communication common carrier, whose facilities are used in the transmission of a wire or electronic
 10 communication, to intercept, disclose, or use that communication in the normal course of his or her
 11 employment while engaged in any activity which is a necessary incident to the rendition of his or
 12 her service or to the protection of the rights or property of the carrier of such communication,
 13 however, communication common carriers shall not utilize service observing or random monitoring
 14 except for mechanical or service quality control checks;

15 (2) For a person acting under law to intercept a wire, electronic, or oral communication,
 16 where such person is a party to the communication and the other party has consented or where ~~[one]~~
 17 all of the parties to the communication ~~[has]~~ have given prior consent to such interception;

18 (3) For a person acting under law to intercept a wire, electronic, or oral communication if
 19 such person is a peace officer and the peace officer has obtained the communication in response to
 20 an emergency hostage situation;

21 ~~[(3)]~~ (4) For a person not acting under law to intercept a wire, electronic, or oral
 22 communication where such person is a party to the communication and the other party has
 23 consented or where ~~[one]~~ all of the parties to the communication ~~[has]~~ have given prior consent to
 24 such interception unless such communication is intercepted for the purpose of committing any
 25 criminal or tortious act; or

26 (5) For a person not acting under law to intercept a wire, electronic, or oral communication
 27 if:

28 (a) There is no expectation of privacy;

29 (b) The communication occurs within a government proceeding that is open to the public;

30 (c) The communication is recorded to obtain evidence of a crime or unethical conduct;

31 (d) One party to the communication has consented to recording the communication, and the
 32 recording contains any admission of the commission of a criminal offense, or contains material
 33 evidence relevant to the commission of a criminal offense;

34 (e) The person is a victim, as defined under section 575.010, and the victim records the
 35 communication made to the victim by his or her perpetrator;

36 (f) The person is a party to the communication and records the communication to obtain a
 37 statement by another party that the other party intends to commit, is committing, or has committed
 38 an unlawful act;

1 (g) The communication is to report an emergency including, but not limited to, a fire,
2 medical emergency, crime, or disaster;

3 (h) The communication conveys a threat to commit a criminal offense including, but not
4 limited to, a threat of extortion, blackmail, bodily harm, or other unlawful request or demand;

5 (i) The communication is made by a hostage holder;

6 (j) The communication constitutes harassment under section 565.090 or 565.091; or

7 (k) The communication constitutes stalking under section 565.225 or 565.227.

8 542.404. 1. The elected prosecuting attorney of the county with the written authorization of
9 the attorney general of the state of Missouri may make application for an order authorizing the
10 interception of a wire or electronic communication. The supreme court of Missouri, upon notice
11 that the attorney general of the state of Missouri has authorized application for an interception of a
12 wire or electronic communication, shall appoint a circuit court from a circuit other than the circuit
13 where the application originates to approve or deny the application and to issue any necessary
14 orders. Such court may grant, in conformity with sections 542.400 to 542.422, an order authorizing
15 the interception of wire or electronic communications by the law enforcement agency having
16 responsibility for the investigation of the offense if there is probable cause to believe that the
17 interception may provide evidence of a felony which involves the manufacture or distribution of a
18 controlled substance, as the term is defined by section 195.016, or the felony of murder, arson, or
19 kidnapping, or a terrorist threat as defined in section 574.115, or any conspiracy to commit any of
20 the foregoing.

21 2. Any order entered pursuant to the provisions of sections 542.400 to 542.422 shall require
22 live monitoring by appropriate law enforcement personnel of the interception of any wire or
23 electronic communication.

24 542.406. 1. Any investigative officer or law enforcement officer who, by any means
25 authorized by sections 542.400 to 542.422, has lawfully obtained knowledge of the contents of any
26 wire or electronic communication, or evidence derived therefrom, may disclose such contents to
27 another investigative officer or law enforcement officer to the extent that such disclosure is
28 necessary to the proper performance of the official duties of the officer making or receiving the
29 disclosure for investigative purposes only.

30 2. Any investigative officer or law enforcement officer who, by any means authorized by
31 sections 542.400 to 542.422, has lawfully obtained knowledge of the contents of any wire,
32 electronic, or oral communication, or evidence derived therefrom, may use such contents to the
33 extent such use is necessary to the proper performance of his official duties.

34 3. Any person who has received, by any means authorized by sections 542.400 to 542.422,
35 any information concerning a wire or electronic communication, or evidence derived therefrom,
36 intercepted in accordance with the provisions of sections 542.400 to 542.422 shall disclose the
37 contents of that communication or such derivative evidence while giving testimony under oath or
38 affirmation in any criminal proceeding, including deposition in any court or in any grand jury
39 proceeding, subject to the rules of evidence.

1 4. No otherwise privileged wire or electronic communication intercepted in accordance
2 with, or in violation of, the provisions of sections 542.400 to 542.422 shall lose its privileged
3 character and shall be suppressed upon motion.

4 542.408. 1. Each application for an order authorizing or approving the interception of a
5 wire or electronic communication shall be made in writing and shall be submitted to the attorney
6 general for his review and approval. If the attorney general approves the application, he shall join
7 such application, which shall be submitted upon oath or affirmation to a court of competent
8 jurisdiction and shall state the applicant's authority to make such application. Each application shall
9 include the following information:

10 (1) The identity of the prosecuting attorney making the application together with the
11 identities of the law enforcement agency or agencies that are to conduct the interception;

12 (2) A full and complete statement of the facts and circumstances relied upon by the
13 applicant to justify his belief that an order should be issued, including:

14 (a) Details as to the particular offense that has been, is being, or is about to be committed;

15 (b) A particular description of the nature and location of the facilities from which or the
16 place where the communication is to be intercepted;

17 (c) A particular description of the type of communications sought to be intercepted; and

18 (d) The identity of the person and employment, if known, committing the offense and whose
19 communications are to be intercepted;

20 (e) That the application is sought solely for detection of the crimes enumerated in section
21 542.404;

22 (3) A full and complete statement as to whether other investigative procedures have been
23 tried and failed, or why they reasonably appear to be unlikely to succeed if tried, or to be too
24 dangerous;

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

30 (5) A full and complete statement of the facts concerning all previous applications known or
31 available to the individual authorizing and making the application, made to any court for
32 authorization to intercept, or for approval of interceptions of, wire or electronic communications
33 involving any of the same persons, facilities or places specified in the application, and the action
34 taken by the court on each such application;

35 (6) Where the application is for the extension of an order, a statement setting forth the
36 results thus far obtained from the interception, or an explanation of the failure to obtain such results;
37 and

38 (7) A statement that adequate resources are available to perform the interception and the
39 estimated number of persons required to accomplish the interception.

1 2. The court may require the applicant to furnish additional testimony or documentary
2 evidence in support of the application.

3 3. Upon such application the court may enter an ex parte order, as requested or as modified,
4 authorizing or approving interception of wire or electronic communications within the territorial
5 jurisdiction of the court, if the court determines on the basis of the facts submitted by the applicant
6 that:

7 (1) Probable cause exists to believe that an individual is committing, has committed, or is
8 about to commit a particular offense enumerated in section 542.404;

9 (2) Probable cause exists to believe that particular communications concerning that offense
10 will be obtained through such interception;

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

13 (4) Probable cause exists to believe that the facilities from which, or the place where, the
14 wire or electronic communications are to be intercepted are being used, or are about to be used, in
15 connection with the commission of such offense, or are leased to, listed in the name of, or
16 commonly used by such person.

17 4. Each order authorizing or approving the interception of any wire or electronic
18 communication shall specify:

19 (1) The identity of the person and employment, if known, whose communications are to be
20 intercepted;

21 (2) The nature and location of the communication facilities as to which, or the place where,
22 authority to intercept is granted including whether the interception involves a cellular or other
23 wireless device;

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

26 (4) The identity of the agency authorized to intercept the communications, and of the person
27 authorizing the application;

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

31 5. No order entered under this section may authorize or approve the interception of any wire
32 or electronic communication for any period longer than is necessary to achieve the objective of the
33 authorization, nor in any event longer than thirty days. Extensions of an order may be granted, but
34 only upon application for an extension made in accordance with subsection 1 of this section and the
35 court making the findings required by subsection 3 of this section. The period of extension shall be
36 no longer than the court deems necessary to achieve the purposes for which it was granted and in no
37 event longer than thirty days. Every order and extension thereof shall contain a provision that the
38 authorization to intercept shall be executed as soon as practicable, shall be conducted in such a way
39 as to minimize the interception of communications not otherwise subject to interception under

1 sections 542.400 to 542.422, and shall terminate upon attainment of the authorized objective, or in
2 any event in thirty days.

3 6. Whenever an order authorizing interception is entered pursuant to the provisions of
4 sections 542.400 to 542.422, the order may require reports to be made to the court who issued the
5 order showing what progress has been made toward achievement of the authorized objective and the
6 need for continued interception. Such reports shall be made at such intervals as the court may
7 require, but in no case longer than thirty days.

8 7. Notwithstanding any other provisions of sections 542.400 to 542.422, any law
9 enforcement officer with the approval of the prosecuting attorney may request an order of an
10 appropriate court whenever reasonable grounds therefor exist to have a pen register placed in effect,
11 which pen register will only determine the phone number to which the call is placed.

12 8. Notwithstanding any other provision of law to the contrary, communication common
13 carriers, and their officers, employees and agents, may provide information, facilities or technical
14 assistance to persons authorized by law to intercept wire or electronic communications, if the
15 communication common carrier, its officers, employees or agents have been provided with a court
16 order directing such assistance signed by the authorizing court. The court order shall set forth the
17 period of time during which the provision of the information, facilities or technical assistance is
18 authorized and specifying the information, facilities, or technical assistance required. No cause of
19 action shall lie in any court against any communication common carrier, its officers, employees, and
20 agents for providing information, facilities or assistance in accordance with the terms of an order
21 under this subsection. Any communication common carrier furnishing such facilities or technical
22 assistance shall be compensated therefor by the prosecuting attorney at the prevailing rates.

23 542.410. 1. The contents of any wire communication intercepted by any means authorized
24 by sections 542.400 to 542.422 shall be recorded on tape or wire or other comparable device. The
25 recording of the contents of any wire, electronic, or oral communication as required by this section
26 shall be done in such way as will protect the recording from editing or other alterations.
27 Immediately upon the expiration of the period of the order, or extensions thereof, such recordings
28 shall be made available to the court issuing such order and shall be sealed under its directions.
29 Custody of the recordings shall be wherever the court orders. The recordings shall not be destroyed
30 except upon an order of the issuing court and in any event shall be kept for ten years. Duplicate
31 recordings shall be made for use for disclosure pursuant to the provisions of subsections 1 and 2 of
32 section 542.406 for investigations and discovery in accordance with applicable supreme court rules.
33 The presence of the seal provided for by subsection 2 of this section, or a satisfactory explanation
34 for the absence thereof, shall be a prerequisite for the use or disclosure of the contents of any wire or
35 electronic communication or evidence derived therefrom under the provisions of subsection 3 of
36 section 542.406.

37 2. Applications made and orders granted under sections 542.400 to 542.422 shall be sealed
38 by the court. Custody of the applications and orders shall be wherever the court directs. Such
39 applications and orders shall be disclosed only upon a showing of good cause before a court of

1 competent jurisdiction and shall not be destroyed except on order of the issuing or denying court,
2 and in any event shall be kept for ten years.

3 3. Any violation of the provisions of this section shall be punishable as a class A
4 misdemeanor.

5 4. Within a reasonable time but not later than ninety days after the filing of an application
6 for an order of approval under the provisions of sections 542.400 to 542.422 or the termination of
7 the period of an order or extensions thereof, whichever is later, the issuing or denying court shall
8 cause to be served, on the persons named in the order or the application, and such other parties to
9 intercepted communications an inventory which shall include notice of:

- 10 (1) The fact of the entry of the order or the application;
11 (2) The date of the entry and the period of authorized, approved interception;
12 (3) The fact that during the period oral communications were or were not intercepted; and
13 (4) The nature of said conversations.
14

15 The court, upon the filing of a motion, shall make available to such person or his counsel for
16 inspection and copying such intercepted communications, applications and orders.

17 542.412. 1. The contents of any intercepted wire or electronic communications or evidence
18 derived therefrom shall not be received in evidence or otherwise disclosed in any trial, hearing, or
19 other proceeding in federal or state court nor in any administrative proceeding unless each party, in
20 compliance with supreme court rules relating to discovery in criminal cases, hearings and
21 proceedings, has been furnished with a copy of the court order and accompanying application under
22 which the interception was authorized or approved and a transcript of any intercepted wire or
23 electronic communication or evidence derived therefrom.

24 2. If the defense in its request designates material or information not in the possession or
25 control of the state, but which is, in fact, in the possession or control of other governmental
26 personnel, the state shall use diligence and make good faith efforts to cause such materials to be
27 made available to the defendant's counsel, and if the state's efforts are unsuccessful and such
28 material or other governmental personnel are subject to the jurisdiction of the court, the court, upon
29 request, shall issue suitable subpoenas or orders to cause such material or information to be made
30 available to the state for disclosure to the defense.

31 542.414. 1. Any aggrieved person in any trial, hearing, or proceeding in or before any
32 court, department, officer, agency, regulatory body, or other authority of the United States, the state,
33 or a political subdivision thereof, may move to suppress the contents of any intercepted wire or
34 electronic communication, or evidence derived therefrom, on the grounds that:

- 35 (1) The communication was unlawfully intercepted;
36 (2) The order of authorization or approval under which it was intercepted is insufficient on
37 its face;
38 (3) The interception was not made in conformity with the order of authorization or approval;
39 or

1 (4) The communication was intercepted in violation of the provisions of the Constitution of
2 the United States or the state of Missouri or in violation of a state statute.

3
4 Such motion shall be made before the trial, hearing, or proceeding unless there was no reasonable
5 opportunity to make such motion or the person was not aware of the existence of grounds for the
6 motion. If the motion is granted, the contents of the intercepted wire or electronic communication,
7 or evidence derived therefrom or the contents of any communication intercepted as a result of any
8 extension of the original order authorizing or approving the interception of wire or electronic
9 communication, and any evidence derived therefrom, shall be treated as having been obtained in
10 violation of sections 542.400 to 542.422.

11 2. In addition to any other right to appeal, the state shall have the right to appeal from an
12 order granting a motion to suppress made under subsection 1 of this section if the prosecuting
13 attorney shall certify to the court or other official granting such motion that the appeal be taken
14 within thirty days after the date the order was entered and shall be diligently prosecuted.

15 542.416. 1. Within thirty days after the expiration of an order or each extension thereof
16 entered pursuant to the provisions of section 542.408, the issuing court shall report to the state
17 courts administrator:

- 18 (1) The fact that an order or extension was applied for;
- 19 (2) The kind of order or extension applied for;
- 20 (3) The fact that the order or extension was granted as applied for, was modified, or was
21 denied;
- 22 (4) The period of interceptions authorized by the order, and the number and duration of any
23 extensions of the order;
- 24 (5) The offense specified in the order or application, or extension of an order;
- 25 (6) The identity of the applying investigative officer or law enforcement officer and agency
26 making the application and the person authorizing the application; and
- 27 (7) The nature of the facilities from which or the place where communications were to be
28 intercepted.

29 2. In January of each year, the principal prosecuting attorney for any political subdivision of
30 the state shall report to the state courts administrator:

- 31 (1) The information required by subdivisions (1) through (7) of subsection 1 of this section
32 with respect to each application for an order or extension made during the preceding calendar year;
- 33 (2) A general description of the interceptions made under such order or extension,
34 including:
 - 35 (a) The approximate nature and frequency of incriminating communications intercepted;
 - 36 (b) The approximate nature and frequency of other communications intercepted;
 - 37 (c) The approximate number of persons whose communications were intercepted; and
 - 38 (d) The approximate nature, amount, and cost of the manpower and other resources used in
39 the interceptions;

1 (3) The number of arrests resulting from interceptions made under such order or extension,
2 and the offenses for which arrests were made;

3 (4) The number of trials resulting from such interceptions;

4 (5) The number of motions to suppress made with respect to such interceptions, and the
5 number granted or denied;

6 (6) The number of convictions resulting from such interceptions and the offenses for which
7 the convictions were obtained and a general assessment of the importance of the interceptions; and

8 (7) The information required by subdivisions (2) through (6) of this subsection with respect
9 to orders or extensions obtained in the preceding calendar year.

10 3. In April of each year the state courts administrator shall transmit to the Missouri general
11 assembly a full and complete report concerning the number of applications for orders authorizing or
12 approving the interception of wire or electronic communications and the number of orders and
13 extensions granted or denied during the preceding calendar year. Such report shall include a
14 summary and analysis of the data required to be filed with the state courts administrator by
15 subsections 1 and 2 of this section. The state courts administrator may promulgate rules and
16 regulations dealing with the content and form of the reports required to be filed by subsections 1 and
17 2 of this section.

18 542.418. 1. The contents of any wire or electronic communication or evidence derived
19 therefrom shall not be received in evidence or otherwise disclosed in any civil or administrative
20 proceeding, except in civil actions brought pursuant to this section.

21 2. Any person whose wire or electronic communication is intercepted, disclosed, or used in
22 violation of sections 542.400 to 542.422 shall:

23 (1) Have a civil cause of action against any person who intercepts, discloses, or uses, or
24 procures any other person to intercept, disclose, or use such communications; and

25 (2) Be entitled to recover from any such person:

26 (a) Actual damages, but not less than liquidated damages computed at the rate of one
27 hundred dollars a day for each day of violation or ten thousand dollars whichever is greater;

28 (b) Punitive damages on a showing of a willful or intentional violation of sections 542.400
29 to 542.422; and

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

31 3. A good faith reliance on a court order or on the provisions of section 542.408 shall
32 constitute a prima facie defense to any civil or criminal action brought under sections 542.400 to
33 542.422.

34 4. Nothing contained in this section shall limit any cause of action available prior to August
35 28, 1989.

36 542.420. Whenever any wire or electronic communication has been intercepted, no part of
37 the contents of such communication and no evidence derived therefrom may be received in evidence
38 in any trial, hearing, or other proceeding in or before any court, grand jury, department, officer,
39 agency, regulatory body, legislative committee, or other authority of the United States, a state, or a

- 1 political subdivision thereof if the disclosure of that information would be in violation of sections
2 542.400 to 542.422.
- 3 542.527. Except if there is a reasonable expectation of privacy by a guest or invitee, it shall
4 not be a violation of law for a person to place any video or audio surveillance in the person's home
5 for security purposes."; and
6
- 7 Further amend said bill by amending the title, enacting clause, and intersectional references
8 accordingly.