

5/206.35 PEN REGISTER & TITLE III

The department realizes that information received from pen registers, wire intercepts and other telecommunications-based technology resources is beneficial to criminal investigations. It is the policy of this department to provide a controlled system for ensuring legal compliance to existing state and federal laws, as well as to establish guidelines for maintaining fiscal responsibility regarding the cost required to implement and provision these investigative tools.

DEFINITIONS

Pen Register	<p>A device or process that records or decodes dialing, routing, addressing, or signaling information transmitted by an instrument or facility from which a wire or electronic communication is transmitted, and shall not include the contents of any communication.</p> <p>In much simpler terms, a pen register has historically provided all outgoing numbers dialed by target phone. A Pen Register cannot contain the contents of any wire or electronic communications.</p> <p>Signed pen register orders provide authorization for a 60-day period. A pen register is further defined in 18 Code of Federal Regulations (CFR) 3127.</p>
Emergency Pen Register	<p>The implementation of a pen register where an emergency situation exists; under this situation the required review by an authorized district/state/federal attorney and judge are delayed by up to 48 hours. Authorization requirements are codified under 18 CFR 3125.</p>
Trap and Trace	<p>A device or process which captures the incoming electronic or other impulses which identify the originating number or other dialing, routing, addressing, and signaling information reasonably likely to identify the source of a wire or electronic communication, provided, however, that such information shall not include the contents of any communication.</p> <p>In much simpler terms, a trap and trace has historically provided all incoming numbers dialed to a target phone. A trap and trace cannot contain the contents of any wire or electronic communications.</p> <p>A trap and trace device is further defined in 18 CFR 3127.</p>
Wire Communication	<p>Any communication 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 as a common carrier in providing or operating such facilities for the transmission of intrastate, interstate or foreign communications.</p> <p>Wire communication is further defined in NRS 179.455 and 18 CFR 2510.</p>
Electronic Communication	<p>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 that affects interstate or foreign commerce, but does not include: 1) any wire or oral communication; 2) any communication made through a tone-only paging device; 3) any communication from a tracking device; or 4) electronic funds transfer information stored by a financial institution in a communications system used for the electronic storage and transfer of funds.</p> <p>Electronic communication is further defined in 18 CFR 2510.</p>
Oral Communication	<p>Any verbal message uttered by a person exhibiting an expectation that such communication is not subject to interception, under circumstances justifying such expectation. Oral communication is further defined in NRS 179.455 & 18 CFR 2510.</p>
Interception	<p>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 or of any sending or receiving equipment.</p>

	Oral communication is further defined in NRS 179.430 & 18 CFR 2510.
E911 Location	Technology utilized by telecommunications companies to approximate the general location of a cell phone when a caller dials 9-1-1. E911 Location requirements are regulated by the Federal Communications Commission (FCC). Applicable laws can be found in 47 CFR 20.18.
“Ping”	Non-technology term commonly used when referring to obtaining the general location of a cellular telephone. Not all telecommunication carriers are capable of providing this information. All requests to obtain “real-time” cellular location information will be made pursuant to 18 CFR 3121 – 3127.
CALEA	Communications Assistance for Law Enforcement Act This act was enacted to preserve the ability of law enforcement officials to conduct electronic surveillance effectively and efficiently despite the deployment of new digital technologies and wireless services that have altered the character of electronic surveillance. CALEA requires telecommunications carriers to modify their equipment, facilities, and services, wherever reasonably achievable, to ensure that they are able to comply with authorized electronic surveillance actions.

GENERAL

The Technical and Surveillance Section (TASS) is tasked with receiving and provisioning all pen register, trap/trace and wiretap requests authorized by Nevada District Court orders. All requests pertaining to criminal matters being co-investigated with another Federal agency, including Task Force Officers (TFOs) will be handled through the respective federal partner and in accordance with their policies and federal laws.

TASS will maintain software and equipment required to provision electronic surveillance investigations.

PROCEDURE

INSTALLATION OF A NON-EMERGENCY PEN REGISTER

Primary Investigator

1. Determines a pen register will be beneficial to an open criminal investigation. (Only investigative detectives and/or Problem Solving Unit (PSU) officers receiving authorization to assume primary responsibility of a criminal investigation will be allowed to utilize/submit a pen register.) Factors determining the need for a pen register include:
 - a. Need for analysis of outgoing and incoming telephone numbers regarding a landline/cellular/internet phone line utilized by a target of the investigation.
 - b. Need for analysis of cellular tower information regarding a cellular phone utilized by a target of the investigation.
 - c. Need for analysis of approximate location information on a cellular phone utilized by a target of the investigation.
2. Utilizes an Administrative Subpoena to request the following information from the telecommunications company that provides service for the target phone line:
 - a. Subscriber information including personal identifiers;
 - b. Subscriber address (if available);
3. Utilizes the appropriate pen register template relevant to the request:
 - a. For requests involving only the analysis of telephone numbers, complete LVMPD 434 (Pen Register Order). This request is based on relevance to a criminal investigation.
 - b. For requests involving the analysis of telephone numbers and/or information pertaining to cellular towers and approximate location information of a cellular telephone, complete LVMPD 435 (Precision Location Pen Register Order). This request is based on a probable cause standard.
4. Completes a Technical Services Request, LVMPD 273.

5. Forwards the completed Technical Services Request and all paperwork related to the pen register to the investigative sergeant.

Investigative Sergeant

6. Reviews the request for a pen register.
 - a. Determines the request pertains to an open criminal investigation.
 - b. Establishes the appropriate standard is used in the affidavit in relation to the type of pen register service requested (i.e., relevance to a criminal investigation versus probable cause).
 - c. Determines whether the pen register is needed to satisfy the needs of the investigation, or whether other investigative tools are available and should be pursued (in lieu of a pen register).
7. Consults the TASS Sergeant regarding any concerns or questions.
8. Approves or denies the request.
9. If approved, signs the Technical Services Request and forwards it and the pen register application and any related documents to the investigative lieutenant for review.

Investigative Lieutenant

10. Reviews the request for a pen register.
 - a. Confirms the request pertains to an open criminal investigation.
 - b. Confirms the appropriate standard (and corresponding template) was used.
11. Evaluates the anticipated investigative results of what the pen register will generate against the fiscal expenditure (i.e., cost) required to implement it.
 - a. Telecommunication companies are allowed to charge law enforcement for provisioning pen registers; there is no standard pricing structure between each company.
 - b. All department costs related to implementing State pen registers are incurred through the TASS budget; however, authority to approve these charges lies with the approving investigative lieutenant.
12. Coordinates with the TASS Lieutenant for any questions pertaining to expected cost and/or technical concerns.
13. Approves or denies the request.
14. If approving, signs the Technical Services Request.
15. Returns all related paperwork to the primary investigator for submittal to the Clark County District Attorney's Office.
16. Monitors the pen register investigation (once established) through the course of the authorized 60 days.
17. Advises the TASS Lieutenant when and if the order can or should be terminated early.
 - a. When investigative results are obtained before the pen register ends, terminating it early may result in reduced charges by the telecommunication company.

Primary Investigator

18. Provides the pen register application and signed affidavit to the Clark County District Attorney (or his designee) for review.
19. Makes recommended changes (if required), based on the review of the District Attorney.
20. Obtains signatures of the District Attorney (or designee) on the related pen register application.
21. Provides the pen register application and affidavit to a District Court Judge for review and authorization.
22. Provides an original signed copy of the pen register affidavit/declaration, application and order to TASS, along with the Technical Services Request.

TASS Lieutenant (or designee)

23. Reviews the pen register documents (i.e., affidavit, application, order and Technical Services Request) for correct template usage and authorizing signatures.
24. Ensures the information relevant to the pen register is logged to ensure telecommunication bills can be verified against the services requested.
25. Authorizes a TASS CALEA member to provision the pen register with the appropriate telecommunications company.

TASS CALEA Member

26. Completes a CALEA worksheet.
27. Faxes a copy of the pen register order and CALEA worksheet to the appropriate telecommunications company.
28. Establishes the pen register connections.
29. Ensures the effective dates for the 60 authorized days are documented and logged.
30. Maintains technical support for the established connection.

31. Faxes necessary paperwork to appropriate analysts:
 - a. Intelligence analyst for pen registers submitted by Intelligence.
 - b. Fusion Center analysts for all other pen register requests.
32. Terminates the pen register upon the conclusion of 60 days, unless a renewal order is received.
33. Coordinates with primary investigator upon receipt of pen register notification.
34. Prepares analytical reports, as needed/requested, to the primary investigator.

Primary Investigator

35. Coordinates with analysts for required reports.
36. Coordinates with TASS regarding technical issues.
37. Advises TASS upon the ability to terminate the pen register prior to the conclusion of 60 days, if applicable.
38. Repeats the entire approval process for pen registers requiring renewal – additional 60- day order.
 - a. In the event a pen register is to be renewed, a signed original (by the reviewing Judge) should be provided to TASS at least one business day before the last authorized day of the original order. The telecommunication companies may charge a new activation fee if they do not receive the renewal order in time. Most of the telecommunication company offices are on the East Coast.
 - b. In the event the expiration date for an original order falls on a weekend or holiday, the primary investigator will provide the new order to TASS at least one business day prior to the weekend or holiday.

INSTALLATION OF AN EMERGENCY PEN REGISTER

18 CFR 3125 requires a special designation by the Clark County District Attorney to declare an emergency situation. The Clark County District Attorney has made the following designations:

- LVMPD Dispatch supervisors are authorized to declare an emergency, in accordance with 18 CFR 3125, for 9-1-1 disconnects only.
- TASS CALEA supervisors for all other emergency requests, pursuant to 18 CFR 3125.

For all criminal investigations where the possibility exists that an emergency pen register may be needed, the detective (or PSU officer) who will have primary investigative responsibility shall coordinate with his sergeant and lieutenant prior to contacting TASS.

The investigative lieutenant, or sergeant after receiving authorization from the investigative lieutenant, will then contact the on-call TASS supervisor and provide all relevant details.

The on-call TASS supervisor will then make the determination as to whether the emergency situation can be declared. If the TASS supervisor does not agree, the investigative detective/PSU officer will be asked to complete a pen register, obtain the required reviews and signatures, and submit to TASS for implementation. If the TASS supervisor agrees that an authorized emergency situation exists, the supervisor shall direct a TASS CALEA member to: complete the appropriate paperwork; fax all required documents to the telecommunications company; and then provision the pen register.

In the event an emergency pen register is installed, the primary investigator will be required to submit a signed original pen register affidavit, application and order (in accordance with the procedures promulgated under “Installation of a Non-Emergency Pen Register”), and a signed LVMPD 273 (Technical Services Request) within 48 hours. If the authorizing order is not received within 48 hours after implementing the emergency pen register, the TASS Lieutenant shall direct a TASS CALEA member to terminate the pen register connection.

In the event a primary investigator is refused a court order by a judge, after an emergency pen register has been implemented, he will notify the TASS Lieutenant immediately. The TASS Lieutenant will ensure the pen register connections are terminated. The primary investigator will submit a memo outlining all relevant details of the denial to the TASS Lieutenant; this shall occur within 24 hours of the court order denial.

VICTIM CONSENT TO RECEIVE CELLULAR LOCATION INFORMATION

18 USC 3121 allows law enforcement officials to receive some “pen register” data when a victim provides consent (e.g., cellular Ping).

TASS will coordinate with the telecommunication companies to obtain consent forms for companies allowing this process; these forms (if available) will be provided to investigative sections and PSU teams for use in criminal investigations.

Department members will not contact the telecommunication companies directly to ascertain whether they accept victim consent.

In the event a telecommunications company does provide a consent form, completed copies utilized during criminal investigations will be forwarded to TASS for retention.

INSTALLATION OF A WIRE INTERCEPT

Any request for a wire intercept will be made to, and approved by, the Bureau Commander responsible for the investigation. The investigative case agent, and supervisor, after receiving authorization from their Bureau Commander, shall contact the TASS section sergeant or lieutenant to coordinate the logistics of implementing the intercept.

Once the wire intercept is approved, the aforementioned steps listed for a non-emergency pen register will be adhered to by the investigator and his supervisors. The Technical Services Request (LVMPD 273) will include the request for wire intercept and must have the approving Bureau Commander's signature; this form should then be forwarded to TASS. (7/09)■