WEST VIRGINIA CODE CHAPTER 62 ARTICLE 1A

WV Legislature

§62-1A-1. Search warrant -- Who may issue.

A search warrant authorized by this article may be issued by a judge of a court having jurisdiction to try criminal cases in the county, or by a justice of the county, or by the mayor or judge of the police court of the municipality, wherein the property sought is located.

WV Legislature

§62-1A-2. Same — Grounds for issuance; property defined.

(1) A warrant may be issued under this article to search for and seize any property

(a) Stolen, embezzled, or obtained by false pretenses;

(b) Designed or intended for use or which is or has been used as a means of committing a criminal offense; or

(c) Manufactured, sold, kept, concealed, possessed, controlled, or designed or intended for use or which is or has been used, in violation of the criminal laws of this state.

(2) As used in this section, the term "property" includes documents, books, papers, electronic and digital information, including, but not limited to, social media accounts, and any other tangible objects.

(a) For purposes of this section, "electronic and digital information" 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 photo-optical system, but does not include (1) Any wire or oral communication; (2) any communication made through a tone-only paging device; or (3) the radio portion of a cordless telephone communication that is transmitted between the cordless telephone handset and the base unit.

(b) A search warrant issued for the search and seizure of a computer, computer network, or other device containing electronic or digital information shall state with particularity the item, application, program, or information sought.

(c) A search warrant issued pursuant to this section or Rule 41 of the Rules of Criminal Procedure may be executed or served to the extent it is constitutionally permissible anywhere the electronic or digital information is stored, capable of being produced or where the person or entity in possession of the electronic or digital information does business or resides.

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§62-1A-3. Same -- Issuance and contents.

A warrant shall issue only upon complaint on oath or affirmation supported by affidavit sworn to or affirmed before the judge or magistrate setting forth the facts establishing the grounds for issuing the warrant. If the judge or magistrate is satisfied that there is probable cause to believe that grounds therefor exist, he shall issue a warrant identifying the property and particularly describing the place, or naming or particularly describing the person, to be searched. The warrant shall be directed to the sheriff or any deputy sheriff or constable of the county, to any member of the department of public safety or to any police officer of the municipality wherein the property sought is located, or to any other officer authorized by law to execute search warrants. It shall state the grounds or probable cause for its issuance and the names of the persons whose affidavits have been taken in support thereof. It shall command the officer to search forthwith the person or place named for the property specified, to seize such property and bring the same before the judge or magistrate issuing the warrant. Such warrant may be executed either in the day or night.

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§62-1A-4. Same -- Execution and return with inventory.

The warrant may be executed and returned only within ten days after its date. The officer taking property under the warrant shall give to the person from whom or from whose premises the property is taken a copy of the warrant and a receipt for the property taken; or if the person from whose premises the property is taken is not present at the time, the officer shall leave the copy and receipt at the place from which the property is taken. The return shall be made promptly and shall be accompanied by a written inventory of any property taken. The judge or magistrate shall upon request deliver a copy of the inventory to the person from whom or from whose premises the property was taken.

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§62-1A-5. Breaking and entering premises.

The officer may break into a house, building or structure, or any part thereof, or anything therein, or any vehicle, vessel or other conveyance, to execute a search warrant, or commit such breaking as may be necessary to liberate himself or a person aiding him in the execution of the warrant. If the place to be searched is a dwelling he shall not attempt a forcible entry until he shall have given notice of his authority and purpose and shall have been refused admittance.

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§62-1A-6. Motion for return of property and to suppress evidence.

A person aggrieved by an unlawful search and seizure may move for the return of the property and to suppress for use as evidence anything so seized on the ground that (1) the property was illegally seized without a warrant, or (2) the warrant is insufficient on its face, or (3) the property seized is not that described in the warrant, or (4) there was not probable cause for believing the existence of the grounds on which the warrant was issued, or (5) the warrant was illegally executed. If the offense giving rise to the issuance of the warrant be one which a magistrate has jurisdiction to hear and determine, the motion may be made to him If the offense is cognizable only before a court of record the motion shall be made to the court having jurisdiction. The judge or magistrate shall receive evidence on any issue of fact necessary to the decision of the motion. If the motion is granted the property shall be returned unless otherwise subject to lawful detention and it shall not be admissible in evidence at any hearing or trial. The motion may be made before trial or hearing upon three days' notice, or, the motion may be made or renewed at the trial or hearing.

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§62-1A-7. Disposition of seized property.

Property taken pursuant to the warrant shall be preserved as directed by the court or magistrate for use as evidence and thereafter shall be returned, destroyed or otherwise disposed of as the court or magistrate may direct.

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§62-1A-8. Purpose of article; construction of other provisions dealing with search warrants; repeal of inconsistent laws.

It is intended that this article govern the issuance and execution of all search warrants, and no subsequent legislation shall be held to supersede or modify the provisions of this article except to the extent that such legislation shall do so specifically and expressly. It is recognized that throughout this code there are many provisions dealing with the issuance and execution of search warrants, and it is not possible at this time to amend and reenact or to specifically repeal those provisions. Accordingly, all such provisions shall be construed so as to conform to and be consistent with the pertinent provisions of this article. In the event that there are provisions in this code so inconsistent with the provisions of this article as to preclude such construction, such other provisions are hereby repealed to the extent of such inconsistency.

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§62-1A-9. Severability.

If any provision of this article or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the article which can be given effect without the invalid provision or its application, and to this end, the provisions of this article are declared to be severable.

WV Legislature

§62-1A-10. Motor vehicle searches.

(a) A law-enforcement officer who stops a motor vehicle for an alleged violation of a traffic misdemeanor law or ordinance may not search the vehicle unless he or she:

(1) Has probable cause or another lawful basis for the search;

(2) Obtains the written consent of the operator of the vehicle on a form that complies with section eleven of this article; or, alternatively,

(3) Obtains the oral consent of the operator of the vehicle and ensures that the oral consent is evidenced by an audio recording that complies with section eleven of this article.

(b) Notwithstanding the provisions of subsection (a) of this section, should a form meeting the requirement of section eleven of this article or an audio recording device be unavailable a handwritten consent executed by the vehicle operator and meeting the consent requirements of section eleven of this article will suffice.

(c) Notwithstanding the provisions of subsection (a) or (b)of this section should a court find that the officer had a reasonable suspicion of dangerousness to his or her safety which precluded recordation of the consent the recordation requirements of this section shall be found inapplicable.

(d) Failure to comply with the provisions of this section shall not, standing alone, constitute proof that any consent to search was involuntary.

(e) A finding by a court that the operator of a motor vehicle voluntarily and verbally consented to a search of the motor vehicle shall make the recordation requirements of this section inapplicable.

(f) Nothing contained in this section shall be construed to create a private cause of action.

(g) This section takes effect on January 1, 2011.

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§62-1A-11. Rules for certain evidence of consent to vehicle search.

(a) To facilitate the implementation of section ten of this article the Governor's Committee on Crime, Delinquency and Corrections shall promulgate emergency and legislative rules in accordance with article three, chapter twenty-nine-a of this code to establish the requirements for:

(1) A form used to obtain the written consent of the operator of a motor vehicle under section ten of this article; and

(2) An audio recording used as evidence of the oral consent of the operator of a motor vehicle under section ten of this article.

(b) The form required under subsection (a) of this section shall contain:

(1) A statement that the operator of the motor vehicle fully understands that he or she may refuse to give the law-enforcement officer consent to search the motor vehicle;

(2) A statement that the operator of the motor vehicle is freely and voluntarily giving the law-enforcement officer consent to search the motor vehicle;

(3) A statement that the operator of the motor vehicle may withdraw the consent at any time during the search;

(4) The time and date of the stop giving rise to the search;

(5) The make and the registration number of the vehicle to be searched; and

(6) The name of the law-enforcement officer seeking consent.

(c) The rules adopted under subdivision (2), subsection (a) of this section must require the audio recording to reflect an affirmative statement made by the operator that:

(1) The operator of the motor vehicle understands that the operator may refuse to give the law-enforcement officer consent to search the motor vehicle;

(2) The operator of the motor vehicle is voluntarily giving the law-enforcement officer consent to search the motor vehicle; and

(3) The operator of the motor vehicle was informed that he or she may withdraw the consent at any time during the search.

(d) The Governor's Committee on Crime, Delinquency and Corrections shall promulgate the emergency and legislative rules required by this section no later than December 31, 2010.

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§62-1A-12. Prohibitions on surveillance cameras on private property.

(a) Notwithstanding any provision of this code to the contrary, a law-enforcement officer may not install any surveillance camera on private land for purposes of gathering information or evidence of criminal activity of the owner or occupant of the private land without first obtaining either consent of an owner of the private land or a valid search warrant.

(b) The provisions of subsection (a) of this section do not prohibit a law-enforcement officer from:

(1) Installing a surveillance camera in any area not specified in subsection (a) of this section where the law-enforcement officer has a lawful right to be and facing a location on any private land that is open to public view; or

(2) Installing a surveillance camera on private property where exigent circumstances exist and there is insufficient time to obtain a valid search warrant.

(c) For purposes of this section:

“Law-enforcement officer” has the same meaning as that term is defined in §30-29-1 of this code.

"Private land" means posted land, cultivated land, or fenced land, as those terms are defined in §61-3B-1 of this code, that is owned by an individual or entity other than a federal, state, or local government or a political subdivision thereof.

“Property owner” means an individual or entity, other than a governmental entity, who owns, leases, licenses, or possesses real property or an employee or agent of that individual or entity.

“Surveillance camera” means a device installed on private land that permits observing, photographing, videotaping, recording, or transmitting visual images of private land or a person’s activities on private land and includes, but is not limited to, a game camera: *Provided*, That a law-enforcement officer’s vehicle dash camera or body camera shall not be considered a surveillance camera.

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