WEST VIRGINIA CODE: §62-1D-10

§62-1D-10. Pen registers and trap and trace devices.

(a) Except as provided in this section, no person may install or use a pen register or a trap and trace device without first obtaining permission to do so from the designated judge by order granted in the same manner as is required for an order granting permission to intercept any wire, oral or electronic communication.

(b) The prohibition of subsection (a) 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:

(1) 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

(2) To record the fact that a wire or electronic communication was initiated or completed in order to protect such provider or 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

(3) With the consent of the user of that service.

(c) The prosecuting attorney of any county or any duly appointed special prosecutor may make application for an order or an extension of an order under this section authorizing or approving the installation and use of a pen register or a trap and trace device in writing under oath or affirmation, to the designated judge. Such application shall be made in the same manner as set forth in section ten of this article.

(d) Upon application made to the court as provided in subsections (a) and (b) of this section, the designated judge shall enter an ex parte order authorizing the installation and use of a pen register or a trap and trace device if the designated judge finds that the applicant has certified to the court that the information likely to be obtained by such installation and used is relevant to an ongoing criminal investigation.

(e) An order issued under this section shall relate with specificity (i) The identity of the person to whom the telephone line to which the pen register or trap and trace device is to be attached is leased or in whose name such telephone is listed, (ii) the identity, if known, of the person who is the subject of the criminal investigation, (iii) 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 (iv) a statement of the offense to which the information likely to be obtained by the pen register or trap and trace device relates. Such order shall also direct, upon the request of the applicant, the furnishing of information, facilities and technical assistance

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necessary to accomplish the installation of the pen register or trap and trace device.

(f) 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 thirty days. One extension of such thirty-day period may be granted by order of the designated judge upon application if such judge makes the same findings as required by subsections (c) and (d) of this section.

(g) An order authorizing or approving the installation and use of a pen register or a trap and trace device shall direct that (i) the order be sealed until otherwise ordered by the court; and (ii) 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.

(h) Upon the request of an officer of a law-enforcement agency authorized to install and use a pen register or a trap and trace device under this section, or an attorney acting in behalf of such agency or officer, a provider of wire or electronic communication service, landlord, custodian or other person shall furnish such 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. Unless otherwise ordered by the designated judge, the results of the trap and trace device shall be furnished to the office of the law-enforcement agency, designated by the court, at reasonable intervals during regular business hours for the duration of the period during which the pen register or trap and trace device is installed as provided in such order.

(i) 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 services so rendered and shall be reimbursed for reasonable expenses incurred in providing such facilities and assistance.

(j) No cause of action shall lie against any provider of a wire or electronic communication service, its officers, agents or employees for providing information, facilities or assistance provided or rendered in accordance with the terms of any court order entered pursuant to this section.

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