# WEST VIRGINIA CODE: §62-1D-11

**§62-1D-11. Ex parte order authorizing interception.**

(a) Each application for an order authorizing the interception of a wire, oral or electronic communication shall be made only to a designated judge by petition in writing upon oath or affirmation and shall state the applicant's authority to make the application. Each application shall set forth the following:

(1) The identity of the member of the department of public safety making the application, and of the officer authorizing the application, who shall be the superintendent of the department of public safety;

(2) A full and complete statement of the facts and circumstances relied upon by the applicant, to justify his or her 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) 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, and (iv) the identity of the person, if known, committing the offense and whose communications are to be intercepted;

(3) A full and complete statement showing that other investigative procedures have been tried and failed and why such procedures reasonably appear to be unlikely to succeed if again attempted or that to do so would be unreasonably dangerous and likely to result in death or injury or the destruction of property;

(4) 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 additional communications of the same type will occur thereafter;

(5) A full and complete statement of the facts concerning all previous applications known to the person authorizing and making the application, for authorization to intercept wire, oral or electronic communications involving any of the same persons, facilities or places specified in the application and the action taken by the court with respect to each such application; and

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

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

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(c) Upon the application, the designated judge may enter an ex parte order, as requested or as modified or moulded, authorizing interception of wire, oral or electronic communications, if the judge determines on the basis of the evidence and argument presented by the applicant that:

(1) There is probable cause to believe that one or more individuals are committing, have committed, or are about to commit one or more of the particular offenses enumerated in section eight of this article;

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

(3) Normal investigative procedures have been tried and have failed and reasonably appear to be unlikely to succeed if attempted again, or that to do so would be unreasonably dangerous and likely to result in death or injury or the destruction of property; and

(4) There is probable cause to believe that the facilities from which, or the place where, the wire, oral or electronic communications are to be intercepted are being used, or are about to be used, in connection with the commission of the offense, or offenses are leased to, listed in the name of, or commonly used by this person.

(d) (1) Each order authorizing the interception of any wire, oral or electronic communication shall specify: (i) The identity of the person, if known, whose communications are to be intercepted, (ii) the nature and location of the communications facilities as to which, or the place where, authority to intercept is granted, (iii) a particular description of the type of communication sought to be intercepted and a statement of the particular offense to which it relates, (iv) the identity of members of the department of public safety authorized to intercept the communications and of the person authorizing the applications and (v) the period of time during which the interception is authorized, including a statement as to whether or not the interception automatically terminates when the described communication is first obtained.

(2) If an order authorizing the interception of a wire, oral or electronic communication is issued, an additional order may be issued upon petition of the applicant, directing that a provider of wire or electronic communication service, landlord, custodian or other person named in such order, 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 the carrier, landlord, custodian or person is according the person whose communications are to be intercepted. Such additional order shall set forth the period of time authorized for providing the information, facilities or technical assistance and shall specify the information, facilities or technical assistance required. In no event may a communications common carrier, its directors, officers, employees and agents, landlords, custodians or other persons be ordered to furnish, install or maintain the electronic, mechanical or other device being used to accomplish the authorized interception, to grant entry into or upon its premises for the purposes of such interception, or to otherwise provide

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assistance of any nature other than information, facilities or technical assistance. Any provider of wire or electronic communication service, landlord, custodian or other person furnishing the facilities or technical assistance shall be reasonably compensated therefor by the applicant for such services and be reimbursed for the reasonable expenses incurred in providing such facilities or assistance.

(e) An order entered pursuant to this section may authorize the interception of any wire, oral or electronic communication for a period of time that is necessary to achieve the objective of the authorization, not to exceed twenty days. Such twenty-day period begins on the day on which the investigative or law-enforcement officer first begins to conduct an interception under the order or ten days after the order is entered, whichever is earliest. Extensions of an order may be granted, but only upon application for an extension made as provided in subsection (a) of this section and upon the court making the findings required by subsection (c) of this section. The period of extension may be no longer than the designated judge deems necessary to achieve the purposes for which it was granted and, in no event, for longer than twenty days. Every order and extension thereof shall contain a provision that the authorization to intercept be executed as soon as practicable, be conducted in such a way as to minimize the interception of communications not otherwise subject to interception under this article and terminate upon attainment of the authorized objective, or in any event within the hereinabove described twenty-day period relating to initial applications. In addition, every such order and extension thereof shall contain a provision requiring termination of the interception during any communication to which none of the parties thereto is a person identifed as committing the offense in the statement of facts referred to in subsection (a) and there is no reasonable suspicion that any party to such communication is committing such offense: Provided, That such provision shall permit such interception up to the point of time that the person authorized to intercept the communication knows or has reason to know the identities of the parties thereto.

(f) Whenever an order authorizing the interception of any wire, oral or electronic communication is entered pursuant to this article, the order shall 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 the intervals required by such order.

(g) The contents of any wire, oral or electronic communication intercepted by any means authorized by this article shall be recorded on tape or wire or other comparable device. The recording of the contents of any wire, oral or electronic communication under this subsection shall be done in such a way or ways as will protect the recording from editing or alterations thereto. Immediately upon the expiration of the period of time during which interception and recording is authorized by the order, or extensions thereof, such recordings shall be made available to the judge issuing such order. Custody of the recordings shall be with the superintendent of the department of public safety. Such recordings may not be destroyed except upon an order of the judge to whom application was made and in any event shall be retained for a period of ten years. Duplicate recordings may be made for use or disclosure pursuant to the provisions of subsections (a) and (b), section nine of this article

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for investigations by law-enforcement agencies.

(h) Applications made and orders granted under this article shall be ordered sealed by the court and shall remain in his or her custody. The applications and orders may be disclosed only upon a showing of good cause and may not be destroyed except upon order of such designated judge and in any event shall be kept for not less than ten years. In the event the designated judge shall leave office prior to the expiration of this ten-year period, he or she shall transfer possession of said applications and orders to another designated judge.

(i) Any violation of the provisions of this section may be punished as for criminal contempt of court by the designated judge to whom application was made.

(j) Within sixty days of the termination of the ordered interception of wire, oral or electronic communications, the superintendent of the department of public safety shall provide the designated judge who issued said order a list containing the names and addresses of all persons whose communications were intercepted. Within a reasonable time, but not later than ninety days after the termination of the period specified in an order permitting the interception of any wire, oral or electronic communication or extensions thereof, the designated judge shall cause to be served upon the persons named in the order and such other parties to intercepted communications as the designated judge may determine in his or her discretion that the interest of justice requires written notice of the interception of communications. Such written notice shall include: (i) the fact of the entry of the order, (ii) the date of the entry and the period of authorized interception and (iii) the fact that during the period wire, oral or electronic communications were or were not intercepted: Provided, That the service of such notice shall be the sole responsibility of the superintendent of the department of public safety.

The designated judge shall, upon motion therefor, make available for inspection by such person or his or her counsel all of the intercepted communications, applications and orders pertaining to that person and the alleged offense for which the interception was requested and granted.

(k) The contents of any intercepted wire, oral or electronic communication or evidence derived therefrom may not be received in evidence or otherwise disclosed in any trial, hearing or other proceeding in any court of this state unless each party, not less than twenty days before the trial, hearing or proceeding at which the communication or evidence is to be presented has been furnished with a copy of the written petition or application and order under which the interception was authorized. Where no application or order is required under the provisions of this article, each party, not less than twenty days before any such trial, hearing or proceeding shall be furnished with information concerning when, where and how the interception took place and why no application or order was required.

(l) Any aggrieved person in any trial, hearing or proceeding in or before any court of this state may move to suppress the contents of any intercepted wire, oral or electronic communication or evidence derived therefrom on the grounds that (i) the communication

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was unlawfully intercepted; (ii) the order of authorization under which it was intercepted is insufficient on its face or was not obtained or not issued in strict compliance with this article; or (iii) the interception was not made in conformity with the order of authorization. Such motion may be made before or during the trial, hearing or proceeding. If the motion is granted, the contents of the intercepted wire, oral or electronic communication or evidence derived therefrom, shall not be admissible in evidence, in any such trial, hearing or proceeding. The designated judge, upon the filing of such motion shall make available to the movant thereof or to his or her counsel the intercepted communication or evidence derived therefrom for inspection.

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