WEST VIRGINIA CODE: §62-1D-2

§62-1D-2. Definitions.

As used in this article, unless the context in which used clearly requires otherwise, the following terms have the meanings indicated:

(a) "Aggrieved person" means a person who was a party to any intercepted wire, oral or electronic communication or a person against whom the interception was directed.

(b) "Child care center" means a facility maintained by the state or any county or municipality thereof, or any agency or facility maintained by an individual, firm, corporation, association or organization, public or private, that is licensed by Bureau of Family Assistance for the care of children in any setting.

(c) "Communications common carrier" means any telegraph company or telephone company and any radio common carrier.

(d) "Contents" when used with respect to any wire, oral or electronic communication, includes any information concerning the substance, purport or meaning of that communication.

(e) "Electronic, mechanical or other device" means any device or apparatus: (i) Which can be used to intercept a wire, oral or electronic communication; or (ii) the design of which renders it primarily useful for the surreptitious interception of any such communication. There is excepted from this definition:

(1) Any telephone or telegraph instrument, equipment or facility or any component thereof: (a) Furnished to the subscriber or user by a provider of wire or electronic communication service in the ordinary course of its business and being used by the subscriber or user in the ordinary course of its business; or furnished by the subscriber or user for connection to the facilities of the service and used in the ordinary course of its business; or (b) being used by a communications common carrier in the ordinary course of its business or by an investigative or law-enforcement officer in the ordinary course of his or her duties; or

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

(3) Any device used in a lawful consensual monitoring including, but not limited to, tape recorders, telephone induction coils, answering machines, body transmitters and pen registers.

(f) "Intercept" means 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.

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(g) "Designated judge" means a circuit court judge designated by the Chief Justice of the West Virginia Supreme Court of Appeals to hear and rule on applications for the interception of wire, oral or electronic communications.

(h) "Investigative or law-enforcement officer" means a member or members of the West Virginia State Police who is or are empowered by law to conduct investigations of or to make arrest for offenses enumerated in this chapter.

(i) "Oral communication" means any oral communication uttered by a person exhibiting an expectation that the communication is not subject to interception under circumstances justifying the expectation. The term does not include:

(A) An electronic communication; or

(b) An oral communication uttered in any child care center where there are written notices posted informing persons that their oral communications are subject to being intercepted.

(j) "Pen register" means a device which records or decodes electronic or other impulses which identify the numbers dialed or otherwise transmitted on the telephone line to which the device is attached, but the term does not include any device used by a provider or customer of a wire or electronic communication service for billing, or recording as an incident to billing, for communications services provided by the provider or any device used by a provider or customer of a wire communication service for cost accounting or other like purposes in the ordinary course of its business.

(k) "Person" means any person, individual, partnership, association, joint stock company, trust or corporation and includes any police officer, employee or agent of this state or of a political subdivision thereof.

(l) "Wire communication" means any aural transfer 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 the connection in a switching station) furnished or operated by any person engaged in providing or operating the facilities for the transmission of interstate or foreign communications or communications affecting interstate or foreign commerce and the term includes any electronic storage of the communication, but the term does not include the radio portion of a cordless telephone communication that is transmitted between the cordless telephone handset and the base unit.

(m) "Electronic communication" 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, electro-magnetic, photoelectronic or photooptical system but does not include:

(1) The radio portion of a cordless telephone communication that is transmitted between the cordless telephone handset and the base unit;

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(2) Any wire or oral communication; or

(3) Any combination made through a tone-only paging device.

(n) "User" means any person or entity who or which uses an electronic communication service and is duly authorized by the provider of the service to engage in the use.

(o) "Electronic communications system" means any wire, radio, electromagnetic, photooptical or photoelectronic facilities for the transmission of electronic communications, and any computer facilities or related electronic equipment for the electronic storage of the communications.

(p) "Electronic communication service" means any service which provides to users thereof the ability to send or receive wire or electronic communications.

(q) "Aural transfer" means a transfer containing the human voice at any point between and including the point of origin and the point of reception.

(r) "Trap and trace device" means a device which captures the incoming electronic or other impulses which identify the originating number of an instrument or device from which a wire or electronic communication was transmitted.

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