
WEST VIRGINIA CODE CHAPTER 62
ARTICLE 1D

WV Legislature

§62-1D-1. Short title.

This act shall be known and may be cited as the "West Virginia Wiretapping and Electronic Surveillance Act."

WV Legislature

§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.

(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;

(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.

§62-1D-3. Interception of communications generally.

(a) Except as otherwise specifically provided in this article it is unlawful for any person to:

(1) Intentionally intercept, attempt to intercept or procure any other person to intercept or attempt to intercept, any wire, oral or electronic communication; or

(2) Intentionally disclose or intentionally attempt to disclose to any other person the contents of any wire, oral or electronic communication, knowing or having reason to know that the information was obtained through the interception of a wire, oral or electronic communication in violation of this article; and

(3) Intentionally use or disclose or intentionally attempt to use or disclose the contents of any wire, oral or electronic communication or the identity of any party thereto, knowing or having reason to know that such information was obtained through the interception of a wire, oral or electronic communication in violation of this article.

(b) Any person who violates subsection (a) of this section is guilty of a felony and, upon conviction thereof, shall be imprisoned in the penitentiary for not more than five years or fined not more than \$10,000 or both fined and imprisoned.

(c) It is lawful under this article for an operator of a switchboard or an officer, employee, or provider of any wire or electronic communication service whose facilities are used in the transmission of a wire communication to intercept, disclose or use that communication or the identity of any party to that communication in the normal course of his or her employment while engaged in any activity which is a necessary incident to the rendition of his or her service or to the protection of the rights or property of the carrier of the communication. Providers of wire or electronic communication services may not utilize service observing or random monitoring except for mechanical or service quality control checks.

(d) Notwithstanding any other law, any provider of wire or electronic communications services, or the directors, officers, employees, agents, landlords or custodians of any such provider, are authorized to provide information, facilities or technical assistance to persons authorized by this article to intercept wire, oral or electronic communication if such provider or its directors, officers, employees, agents, landlords or custodians has been provided with a duly certified copy of a court order directing such assistance and setting forth the period of time during which the provision of the information, facilities, or technical assistance is authorized and specifying the information, facilities or assistance required. No cause of action shall lie in any court against any such provider of wire or electronic communication services, its directors, officers, agents, landlords or custodians for providing information facilities or assistance in accordance with the terms of any such order.

(e) It is lawful under this article for a person to intercept a wire, oral or electronic communication where the person is a party to the communication or where one of the

parties to the communication has given prior consent to the interception unless the communication is intercepted for the purpose of committing any criminal or tortious act in violation of the constitution or laws of the United States or the constitution or laws of this state:

(f) Notwithstanding the provisions of this article or any other provision of law, an electronic interception as defined by section one, article one-f of this chapter, is regulated solely by the provisions of article one-f of this chapter, and no penalties or other requirements of this article are applicable.

§62-1D-4. Manufacture, possession or sale of intercepting device.

(a) Except as otherwise specifically provided in this article, any person who manufactures, assembles, possesses or sells any electronic, mechanical or other device, knowing or having reason to know that the design of the device renders it primarily useful for the purpose of the illegal interception of wire, oral or electronic communications is guilty of a misdemeanor, and, upon conviction thereof, shall be imprisoned in the county jail for not more than one year or fined not more than \$5,000 or both so fined and imprisoned.

(b) It is lawful under this section for:

(1) A provider of wire or electronic communication services or an officer, agent, or employee of, or a person under contract with, any such provider, in the normal course of business of the provider to manufacture, assemble, possess or sell any electronic, mechanical or other device which is designed for or which is primarily useful for the purpose of the illegal interception of wire, oral or electronic communications;

(2) A person under contract with the United States, a state, a political subdivision of a state, or the District of Columbia, in the normal course of the activities of the United States, a state, a political subdivision thereof, or the District of Columbia, to manufacture, assemble, possess or sell any electronic, mechanical or other device which is designed for or which is primarily useful for the purpose of the illegal interception of wire, oral or electronic communications;

(3) An officer, agent or employee of the United States in the normal course of his or her lawful activities to manufacture, assemble, possess or sell any electronic, mechanical or other device which is designed for or which is primarily useful for the purpose of the illegal interception of wire, oral or electronic communications. However, any sale made under the authority of this subdivision may only be for the purpose of lawfully disposing of obsolete or surplus devices;

(4) An officer, agent or employee of a law-enforcement agency of this state or a political subdivision of this state in the normal course of his or her lawful activities to assemble or possess any electronic, mechanical or other device which is designed for or which is primarily useful for the purpose of the illegal interception of wire, oral or electronic communications, if the particular officer, agent or employee is specifically authorized by the chief administrator of the law-enforcement agency to assemble or possess the device for a particular law-enforcement purpose and the device is registered in accordance with this article.

§62-1D-5. Forfeiture of device.

Any electronic, mechanical or other device used, manufactured, assembled, possessed or sold in violation of either sections three or four of this article may be seized by and forfeited to the department of public safety.

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§62-1D-6. Admissibility of evidence.

Evidence obtained, directly or indirectly, by the interception of any wire, oral, or electronic communication shall be received in evidence only in grand jury proceedings and criminal proceedings in magistrate court, circuit court, and any other court of competent jurisdiction: Provided, That evidence obtained in violation of the provisions of this article shall not be admissible in any proceeding.

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§62-1D-7. Designated judges.

The chief justice of the Supreme Court of Appeals shall, on an annual basis, designate five active circuit court judges to individually hear and rule upon applications for orders authorizing the interception of wire, oral or electronic communications: Provided, That no designated circuit judge may consider any application for such an order if he or she presides as judge of the circuit court of the county wherein the applied for installation would occur or of the county wherein the communications facility, line or device to be monitored is located.

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§62-1D-8. County prosecuting attorney or duly appointed special prosecutor may apply for order authorizing interception.

The prosecuting attorney of any county or duly appointed special prosecutor may apply to one of the designated circuit judges referred to in §62-1D-7 of this code and the judge, in accordance with the provisions of this article, may grant an order authorizing the interception of wire, oral, or electronic communications by an officer of the investigative or law-enforcement agency when the prosecuting attorney or special prosecutor has shown reasonable cause to believe the interception would provide evidence of the commission of: (1) Kidnapping or abduction, as defined and prohibited by the provisions of §61-2-14 and §61-2-14a of this code and including threats to kidnap or demand ransom, as defined and prohibited by the provisions of §61-2-14c of this code; (2) any offense included and prohibited by §25-4-11, §61-5-8, §61-5-9, and §61-5-10 or §62-8-1 of this code to the extent that any of said sections provide for offenses punishable as a felony; (3) felony violations of §60A-1-101 et seq. of this code; (4) violations of §61-14-1 et seq. of this code; (5) violations of §61-2-1 of this code; (6) violations of §61-2-12 of this code; (7) felony violations of §61-8B-1 et seq. of this code; (8) violations of §61-1-1 of this code; (9) violations of §61-13-3 of this code; (10) extortion, as defined in §61-2-13 of this code; or (11) any aider or abettor to any of the offenses referenced in this section or any conspiracy to commit any of the offenses referenced in this section if any aider, abettor, or conspirator is a party to the communication to be intercepted.

§62-1D-9. Lawful disclosure or use of contents of communication.

(a) Any investigative or law-enforcement officer who has obtained knowledge of the contents of any wire, oral, or electronic communication or evidence derived therefrom, may disclose the contents to another investigative or law-enforcement officer of any state or any political subdivision thereof, the United States or any territory, protectorate, or possession of the United States, including the District of Columbia, only to the extent that the disclosure is required for the proper performance of the official duties of the officer making or receiving the disclosure, however, a record of such disclosure and the date, time, method of disclosure, and the name of the person or persons to whom disclosure is made shall be forwarded, under seal, to the designated circuit judge who authorized such interception, who shall preserve said record for not less than 10 years. In the event the designated judge shall leave office prior to the expiration of this 10-year period, he or she shall transfer possession of said record to another designated judge.

(b) Any investigative or law-enforcement officer who has obtained knowledge of the contents of any wire, oral, or electronic communication or evidence derived therefrom or any investigative or a law-enforcement officer of any state or any political subdivision thereof, the United States or any territory, protectorate or possession of the United States, including the District of Columbia, who obtains such knowledge by lawful disclosure may use the contents to the extent that the use is appropriate to the proper performance of his or her official duties under the provisions of this article.

(c) Any person who has received any information concerning a wire, oral, or electronic communication intercepted in accordance with the provisions of this article or evidence derived therefrom, may disclose the contents of that communication or the derivative evidence while giving testimony under oath or affirmation in any criminal proceeding held under the authority of this state, any political subdivision of this state, or the federal courts of the United States.

(d) An otherwise privileged wire, oral, or electronic communication intercepted in accordance with, or in violation of, the provisions of this article does not lose its privileged character: Provided, That when an investigative or law-enforcement officer, while engaged in intercepting wire, oral, or electronic communications in the manner authorized by this article, intercepts a wire, oral, or electronic communication and it becomes apparent that the conversation is attorney-client in nature, the investigative or law-enforcement officer shall immediately terminate the monitoring of that conversation: Provided, however, That notwithstanding any provision of this article to the contrary, no device designed to intercept wire, oral, or electronic communications shall be placed or installed in such a manner as to intercept wire, oral, or electronic communications emanating from the place of employment of any attorney at law, licensed to practice law in this state.

(e) When an investigative or law-enforcement officer, while engaged in intercepting wire, oral, or electronic communications in the manner authorized herein, intercepts wire, oral, or electronic communications relating to offenses other than those specified in the order of

authorization, the contents thereof, and evidence derived therefrom, may be disclosed or used as provided in §62-1D-9(a) and §62-1D-9(b) of this code. Such contents and any evidence derived therefrom may be used under §62-1D-9(c) of this code when authorized or approved by the designated circuit judge where such judge finds on subsequent application that the contents were otherwise intercepted in accordance with the provisions of this article. The application shall be made as soon as may be practicable after such contents or the evidence derived therefrom is obtained.

(f) Any law-enforcement officer of the United States, who has lawfully received any information concerning a wire, oral, or electronic communication or evidence lawfully derived therefrom, may disclose the contents of that communication or the derivative evidence while giving testimony under oath or affirmation in any criminal proceeding held under the authority of this state or of the United States.

(g) Any information relating to criminal activities other than those activities for which an order to intercept communications may be granted pursuant to §62-1D-8 of this code may be disclosed only if such relates to the commission of a felony under the laws of this state or of the United States, and such information may be offered, if otherwise admissible, as evidence in any such criminal proceeding.

§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 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.

§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.

(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 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 identified 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 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 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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§62-1D-12. Civil liability; defense to civil or criminal action.

(a) Any person whose wire, oral or electronic communication is intercepted, disclosed, used or whose identity is disclosed in violation of this article shall have a civil cause of action against any person who so intercepts, discloses, or uses, or procures any other person to intercept, disclose, or use the communications, and shall be entitled to recover from any such person or persons:

- (1) Actual damages, but not less than \$100 for each day of violation;
- (2) Punitive damages, if found to be proper; and
- (3) Reasonable attorney fees and reasonable costs of litigation incurred.

(b) A good faith reliance by a provider of electronic or wire communication services on a court order or legislative authorization constitutes a complete defense to any civil or criminal action brought under this article or any other law.

§62-1D-13. Registration of intercepting devices; serial number.

(a) Law-enforcement agencies in the state shall register with the department of public safety all electronic, mechanical or other devices whose design renders them primarily useful for the purposes of the surreptitious interception of wire, oral or electronic communications which are owned by them or possessed by or in the control of the agency, their employees or agents. All such devices shall be registered within ten days from the date on which the devices come into the possession or control of the agency, its employees or agents.

(b) Such registration shall include the name and address of the agency as well as a detailed description of each device registered, the serial number thereof and such other information as the department may require.

(c) A registration number shall be issued for each device registered pursuant to this section, which number shall be permanently affixed or indicated upon such device.

§62-1D-14. Breaking and entering, etc., to place or remove equipment.

Any person who trespasses upon any premises with the intent to place, adjust or remove wiretapping or electronic surveillance or eavesdropping equipment without an order from the designated judge authorizing the same is guilty of a felony, and, upon conviction thereof, shall be imprisoned in the penitentiary for not more than five years.

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§62-1D-15. Training and certification of law-enforcement officers employed in the interception of wire, oral or electronic communications which require a court order.

The superintendent of the department of public safety shall establish a course of training in the legal and technical aspects of wiretapping and electronic surveillance, shall establish such regulations as he or she deems necessary and proper for such training program, and shall establish minimum standards for certification and periodic recertification of investigative or law-enforcement officers as eligible to conduct wiretapping or electronic surveillance as authorized by this article.

§62-1D-16. Severability of provisions.

The various provisions of this article shall be construed as separable and severable, and should any of the provisions or parts thereof be construed or held unconstitutional or for any reason be invalid, the remaining provisions of this article shall not be thereby affected.

WV Legislature