WEST VIRGINIA CODE CHAPTER 62 ARTICLE 1F

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§62-1F-1. Definitions.

(a) For the purposes of this article, the following terms have the following meanings:

(1) "Body wire" means: (a) An audio and/or video recording device surreptitiously carried on or under the control of an investigative or law-enforcement officer or informant to simultaneously record a nonconsenting party's conduct or oral communications; or (2) radio equipment surreptitiously carried on or under the control of an investigative or law-enforcement officer or informant to simultaneously transmit a nonconsenting party's conduct or oral communications to recording equipment located elsewhere or to other law-enforcement officers monitoring the radio transmitting frequency.

(2) "Home" means the residence of a nonconsenting party to an electronic interception, provided that access to the residence is not generally permitted to members of the public and the non-consenting party has a reasonable expectation of privacy in the residence under the circumstances.

(3) "Informant" means a person acting in concert with and at the direction of a law-enforcement officer in the investigation of possible violations of the criminal laws of this state or the United States.

(4) "Investigative or law-enforcement officer" means any officer empowered by law to conduct investigations of or to make arrests for criminal offenses enumerated in this code or an equivalent offense in another jurisdiction.

(5) "Electronically intercept" or "electronic interception" mean the simultaneous recording with a body wire of a nonconsenting party's conduct or oral communications in his or her home by an investigative or law-enforcement officer or informant who is invited into the home and physically present with the nonconsenting party in the home at the time of the recording.

(b) Words and phrases that are not defined in this article, but which are defined in article one-d of this chapter, shall have the same meanings established in article one-d unless otherwise noted.

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§62-1F-2. Electronic interception of conduct or oral communications in the home authorized.

(a) Prior to engaging in electronic interception, as defined in section one of this article, an investigative or law-enforcement officer shall, in accordance with this article, first obtain from a magistrate or a judge of a circuit court within the county wherein the nonconsenting party's home is located an order authorizing said interception. The order shall be based upon an affidavit by the investigative or law-enforcement officer or an informant that establishes probable cause that the interception would provide evidence of the commission of a crime under the laws of this state or the United States.

(b) The Legislature hereby requests the Supreme Court of Appeals to promptly undertake all necessary actions and promulgate any requisite rules to assure a magistrate or circuit judge is available after normal business hours to authorize warrants.

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§62-1F-3. Application for an order authorizing interception.

(a) Each application for an order authorizing electronic interception in accordance with the provisions of this article shall be made only to the magistrate or judge of the circuit court 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 investigative or law-enforcement officer making the application, and of the person authorizing the application, who shall be the head of the investigative or law-enforcement agency or an officer of the investigative or law-enforcement agency designated in writing by the head of that agency: Provided, That an application made by a member of the State Police or an officer assigned to a multijurisdictional task force authorized under section four, article ten, chapter fifteen of this code also may be authorized by the supervisor of that member or officer if the supervisor holds a rank of sergeant or higher;

(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 description of the person whose conduct or communications are sought to be intercepted and a particular description of the home at which it is anticipated that the interception would occur: Provided, That the description of the home may be omitted where there is good cause to believe that the location is subject to change, (iii) a particular description of the type of conduct or communications sought to be intercepted, and (iv) the identity of the person, if known, committing the offense and whose conduct or communications are to be intercepted;

(3) 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 conduct or communication has been first obtained, a particular description of facts establishing probable cause to believe additional conduct or communications of the same type will occur thereafter; and

(4) 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 magistrate or judge of the circuit court may require the applicant to furnish additional testimony or documentary evidence in support of the application.

(c) Notwithstanding the provisions of subsection (a) of this section, the magistrate or judge may take an oral statement under oath in which the applicant must set forth the information required in subsection (a) of this section. The applicant shall swear the oath by telephone. A magistrate or judge administering an oath telephonically under this subsection shall execute a declaration that recites the manner and time of the oath's administration. The oral statement shall be recorded. The recording shall be considered to be an application for the purposes of this section. In such cases, the recording of the sworn oral statement and the

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transcribed statement shall be certified by the magistrate or judge receiving it and shall be retained as a part of the record of proceedings for the issuance of the order.

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§62-1F-4. Order authorizing interception.

(a) Upon application filed pursuant to the provisions of section three of this article, the magistrate or judge of the circuit court may enter an ex parte order, as requested or as modified or moulded, authorizing an electronic interception in a home if the magistrate or 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 specified crimes under the laws of this state or the United States will be obtained through interception; and

(2) There is probable cause to believe that the home where the electronic interception is to occur is being used, or is about to be used, in connection with the commission of the offense, or offenses: Provided, That such determination shall not be required where the identity of the person committing the offense and whose conduct or communications are to be intercepted is known, and the applicant makes an adequate showing as required pursuant to paragraph (ii), subdivision two, subsection (a), section three of this article that the location cannot be predetermined.

(b) Each order authorizing an electronic interception in accordance with the provisions of this article shall specify: (i) The identity of the person, if known, whose conduct or communications are to be intercepted; (ii) the nature and location of the home for which authority to intercept is granted, if necessary under subdivision three, subsection (a) of this section; (iii) a particular description of the type of conduct or communications sought to be intercepted and a statement of the particular offense to which it relates; (iv) the identity of the law-enforcement officer or officers applying for authorization to electronically intercept and of the officer authorizing the application; 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 conduct or communication is first obtained.

(c) An order entered pursuant to the provisions of this section may authorize the electronic interception 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 the order is entered. 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 magistrate or judge of the circuit court making the findings required by subsection (b) of this section. The period of extension may be no longer than the magistrate or 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 electronically intercept be executed as soon as practicable, be conducted in such a way as to minimize the interception of conduct or 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.

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§62-1F-5. Recording of intercepted communications.

(a) If recorded, the contents of any conduct or oral communications electronically intercepted shall be recorded on tape or wire or other comparable device and done in such a way or ways as will protect the recording from editing or alterations thereto.

(b) Whenever practicable, the investigative or law-enforcement officer overseeing the recording of an electronic interception shall keep a signed, written record of:

(1) The date and hours of the surveillance;

(2) The time and duration of each electronic interception;

(3) The participants, if known, in each electronic interception; and

(4) A summary of the content of each intercepted communication.

(c) 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, if requested, to the magistrate or judge issuing such order. Custody of the recordings shall be with the law-enforcement officer authorizing the application underlying the order. Such recordings may not be destroyed except upon an order of the magistrate or judge to whom application was made or a circuit judge presiding over any subsequent prosecution related to the electronic interception. The records shall be maintained by the magistrate court clerk or circuit clerk of the county where the application was filed. Duplicate recordings may be made for use or disclosure pursuant to the provisions of subsections (a) and (b), section nine, article one-d of this chapter for investigations by law-enforcement agencies.

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§62-1F-6. Sealing of applications, orders and supporting papers.

Applications made and orders granted under this article shall be ordered sealed by the magistrate or judge of the circuit court to whom the application is made, and maintained under seal in the custody of the magistrate court clerk or the circuit clerk of the county in where the application was filed. The applications and orders are discoverable and may be disclosed only in accordance with the applicable provisions of this code and the rules of criminal procedure for the State of West Virginia, and may not be destroyed except upon order of such magistrate or judge, and in any event shall be kept for not less than ten years.

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§62-1F-7. Investigative disclosure or use of contents of wire, electronic or oral communications or derivative evidence.

(a) Any law-enforcement officer who has obtained knowledge of the contents of any electronic interception, or evidence derived therefrom, may disclose such contents or evidence to another law-enforcement officer to the extent that such disclosure is appropriate to the proper performance of the official duties of the officer making or receiving the disclosure.

(b) Any law-enforcement officer who, by any means authorized by this article, has obtained knowledge of the contents of any electronic interception or any evidence derived therefrom may use such contents or evidence to the extent such use is appropriate to the proper performance of his or her official duties.

(c) Any person who by any means authorized by this article, has obtained knowledge of the contents of any electronic interception or evidence derived therefrom, may disclose such contents or evidence to a law-enforcement officer and may disclose such contents or evidence while giving testimony under oath or affirmation in any criminal proceeding in any court of this state or of another state or of the United States or before any state or Federal grand jury or investigating grand jury.

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§62-1F-8. Interception of communications relating to other offenses.

When a law-enforcement officer, while engaged in court authorized electronic interception in the manner authorized herein, intercepts 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 section seven. Such contents and evidence may be disclosed in testimony under oath or affirmation in any criminal proceeding in any court of this state or of another state or of the United States or before any state or Federal grand jury when authorized by a judge who finds on subsequent application that the contents were otherwise intercepted in accordance with the provisions of this article. Such application shall be made as soon as practicable.

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§62-1F-9. Retroactive authorization.

Notwithstanding any other provision of this article, when (1) a situation exists with respect to engaging in electronic interception before an order authorizing such interception can with due diligence be obtained; (2) the factual basis for issuance of an order under this article exists; and (3) it is determined that exigent circumstances exist which prevent the submission of an application under section three of this article, conduct or oral communications in the person's home may be electronically intercepted on an emergency basis if an application submitted in accordance with section three of this article is made to a magistrate or judge of the circuit within the county wherein the person's home is located as soon as practicable, but not more than three business days after the aforementioned determination. If granted, the order shall recite the exigent circumstances present and be retroactive to the time of such determination. In the absence of an order approving such electronic interception, the interception shall immediately terminate when the communication sought is obtained or when the application for the order is denied, whichever is earliest.

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