WEST VIRGINIA CODE: §62-1G-2

§62-1G-2. Subpoenas for criminal investigations relating to certain offenses against minors for records concerning an electronic communications system or service or remote computing service; content; fee for providing information; and limiting liability.

(a) As used in this section:

(1)(A) "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, electromagnetic, photoelectronic or photooptical system.

(B) "Electronic communication" does not include:

(i) Any oral communication;

(ii) Any communication made through a tone-only paging device;

(iii) Any communication from a tracking device; or

(iv) Electronic funds transfer information stored by a financial institution in a communications system used for the electronic storage and transfer of funds.

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

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

(4)(A) "Electronic service provider" means a person or entity engaged in the business of providing computer communications through which a consumer may obtain access to the Internet.

(B) "Electronic service provider" does not include a common carrier if it provides only telecommunications service.

(5) "Sexual offense against a minor" means:

(A) A violation or attempted violation of section five,

article eight-d, chapter sixty-one of this code;

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(B) A sexual offense or attempted sexual offense committed against a minor in violation of article eight-b, chapter sixty-one of this code;

(C) The distribution and display or attempted distribution and display of obscene materials to a minor in violation of section two, article eight-a, chapter sixty-one of this code;

(D) The use or attempted use of obscene matter with the intent to seduce a minor in violation of section four, article eight-a, chapter sixty-one of this code;

(E) The employment or use or the attempted employment or use of a minor to produce obscene materials in violation of section five, article eight-a, chapter sixty-one of this code;

(F) The solicitation of a minor by use of a computer in violation of section fourteen-b, article three-c, chapter sixty-one of this code; or

(G) The use of a minor in filming sexually explicit conduct in violation of sections two and three, article eight-c, chapter sixty-one of this code.

(6) "Remote computing service" means the provision to the public of computer storage or processing services by means of an electronic communications system.

(b) When a law-enforcement agency is investigating a sexual offense against a minor, an offense of stalking under section nine-a, article two, chapter sixty-one of this code when the victim is a minor or an offense of child kidnapping under section fourteen, article two, chapter sixty-one of this code, and has reasonable suspicion that an electronic communications system or service or remote computing service has been used in the commission of a sexual offense against a minor as defined in this section, an offense of stalking when the victim is a minor or an offense of child kidnapping, a magistrate or a circuit court judge may issue a subpoena, upon written application on a form approved by the West Virginia Supreme Court of Appeals, to the electronic communications system or service or remote computing service provider that owns or controls the Internet protocol address, websites, electronic mail address or service to a specific telephone number, requiring the production of the following information, if available, upon providing in the subpoena the Internet protocol address, electronic mail address, telephone number or other identifier, and the dates and times the address, telephone number or other identifier suspected of being used in the commission of the offense:

(1) Names;

(2) Addresses;

(3) Local and long distance telephone connections;

(4) Records of session times and durations;

(5) Length of service, including the start date and types of service utilized;

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(6) Telephone or other instrument subscriber numbers or other subscriber identifiers, including any temporarily assigned network address; and

(7) Means and sources of payment for the service, including any credit card or bank account numbers.

(c) A subpoena issued under this section shall state that the electronic communications system or service or remote computing service provider shall produce only those records listed in subdivisions (1) through (7) of subsection (b) of this section, that are reasonably necessary to the investigation of the suspected criminal activity or offense as described in the subpoena: Provided, that the law-enforcement agency may not examine the contents of electronic communications without a warrant.

(d) (1) An electronic communications system or service or remote computing service provider that provides information in response to a subpoena issued under this section may charge a fee, not to exceed the actual cost for providing the information.

(2) The law-enforcement agency conducting the investigation shall pay the fee.

(e) The electronic communications system or service or remote computing service provider served with or responding to the subpoena shall not disclose the existence of the subpoena or its response to the subpoena to the account holder identified in the subpoena.

(f) If the electronic communications system or service or remote computing service provider served with the subpoena does not own or control the Internet protocol address, websites or electronic mail address or provide service for the telephone number that is a subject of the subpoena, the provider shall:

(1) Notify the investigating law-enforcement agency that it is not the provider of the service; and

(2) Provide to the investigating law-enforcement agency any information the provider knows, through reasonable effort, that it has regarding how to locate the electronic service provider that does own or control the Internet protocol address, websites or electronic mail address, or provides service for the telephone number.

(g) There shall be no cause of action against any electronic communication system or service, remote computing service provider, electronic service provider or telecommunications carrier or its officers, employees, agents or other specified persons for providing information, facilities or assistance in accordance with the terms of the subpoena issued under this section.

(h) Applications for subpoenas authorized by this section may be transmitted to the appropriate court by any means permitted by rules promulgated by the West Virginia Supreme Court of Appeals.

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(i) The West Virginia Supreme Court of Appeals shall prescribe a form to be used by law-enforcement agencies applying for a subpoena authorized by this section.

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