

No: 2448

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1987

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ENROLLED

Com. SUB. FOR

HOUSE BILL No. 2448

(By Delegates Roop + Overington)

— ● —

Passed MARCH 14, 1987

In Effect Ninety Days from Passage

ENROLLED
COMMITTEE SUBSTITUTE
FOR
H. B. 2448
(By DELEGATES ROOP and OVERINGTON)

[Passed March 14, 1987; in effect ninety days from passage.]

AN ACT to amend chapter sixty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article one-d, relating to wiretapping and certain electronic surveillance; authorizing the interception of certain oral, electronic and wire communications under specified controlled circumstances; providing certain definitions of terms with respect thereto; establishing certain limits and procedures relating thereto; requiring court orders as a condition precedent to any such interception or installation of any wiretap, pen register, trap and trace device or similar device; designated judges; providing for certain civil immunities with respect thereto; providing for exceptions; and providing criminal and civil penalties for violation of certain sections.

Be it enacted by the Legislature of West Virginia:

That chapter sixty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article one-d, to read as follows:

ARTICLE 1D. WIRETAPPING AND ELECTRONIC SURVEIL-

LANCE ACT.

§62-1D-1. Short title.

1 This act shall be known and may be cited as the “West
2 Virginia Wiretapping and Electronic Surveillance Act.”

§62-1D-2. Definitions.

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

4 (a) “Aggrieved person” means a person who was a
5 party to any intercepted wire, oral or electronic
6 communication or a person against whom the intercep-
7 tion was directed.

8 (b) “Communications common carrier” means any
9 telegraph company or telephone company and any radio
10 common carrier.

11 (c) “Contents,” when used with respect to any wire,
12 oral or electronic communication, includes any informa-
13 tion concerning the substance, purport or meaning of
14 that communication.

15 (d) “Electronic, mechanical or other device” means
16 any device or apparatus (i) which can be used to
17 intercept a wire, oral or electronic communication or (ii)
18 the design of which render it primarily useful for the
19 surreptitious interception of any such communication.
20 There is excepted from this definition:

21 (1) Any telephone or telegraph instrument, equipment
22 or facility or any component thereof: (a) Furnished to
23 the subscriber or user by a provider of wire or electronic
24 communication service in the ordinary course of its
25 business and being used by the subscriber or user in the
26 ordinary course of its business; or furnished by such
27 subscriber or user for connection to the facilities of such
28 service and used in the ordinary course of its business;
29 or (b) being used by a communications common carrier
30 in the ordinary course of its business or by an
31 investigative or law-enforcement officer in the ordinary
32 course of his duties; or

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

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

39 (e) "Intercept" means the aural or other acquisition
40 of the contents of any wire, electronic or oral commun-
41 ication through the use of any electronic, mechanical or
42 other device.

43 (f) "Designated judge" means a circuit court judge
44 designated by the chief justice of the West Virginia
45 supreme court of appeals to hear and rule on applica-
46 tions for the interception of wire, oral or electronic
47 communications.

48 (g) "Investigative or law-enforcement officer" means
49 a member or members of the department of public
50 safety who is or are empowered by law to conduct
51 investigations of or to make arrest for offenses enumer-
52 ated in this chapter.

53 (h) "Oral communication" means any oral communi-
54 cation uttered by a person exhibiting an expectation
55 that such communication is not subject to interception
56 under circumstances justifying such expectation, but
57 such term does not include any electronic
58 communication.

59 (i) "Pen register" means a device which records or
60 decodes electronic or other impulses which identify the
61 numbers dialed or otherwise transmitted on the tele-
62 phone line to which such device is attached, but such
63 term does not include any device used by a provider or
64 customer of a wire or electronic communication service
65 for billing, or recording as an incident to billing, for
66 communications services provided by such provider or
67 any device used by a provider or customer of a wire
68 communication service for cost accounting or other like
69 purposes in the ordinary course of its business.

70 (j) "Person" means any person, individual, partner-
71 ship, association, joint stock company, trust or corpora-

72 tion and includes any police officer, employee or agent
73 of this state or of a political subdivision thereof.

74 (k) "Wire communication" means any aural transfer
75 made in whole or in part through the use of facilities
76 for the transmission of communications by the aid of
77 wire, cable or other like connection between the point
78 of origin and the point of reception (including the use
79 of such connection in a switching station) furnished or
80 operated by any person engaged in providing or
81 operating such facilities for the transmission of inter-
82 state or foreign communications or communications
83 affecting interstate or foreign commerce and such term
84 includes any electronic storage of such communication,
85 but such term does not include the radio portion of a
86 cordless telephone communication that is transmitted
87 between the cordless telephone handset and the base
88 unit.

89 (l) "Electronic communication" means any transfer of
90 signs, signals, writing, images, sounds, data or intelli-
91 gence of any nature transmitted in whole or in part by
92 a wire, radio, electro-magnetic, photoelectronic or
93 photooptical system but does not include:

94 (1) The radio portion of a cordless telephone commun-
95 ication that is transmitted between the cordless tele-
96 phone handset and the base unit;

97 (2) Any wire or oral communication;

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

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

104 (n) "Electronic communications system" means any
105 wire, radio, electromagnetic, photooptical or photoelec-
106 tronic facilities for the transmission of electronic
107 communications, and any computer facilities or related
108 electronic equipment for the electronic storage of such
109 communications.

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

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

116 (q) "Trap and trace device" means a device which
117 captures the incoming electronic or other impulses
118 which identify the originating number of an instrument
119 or device from which a wire or electronic communica-
120 tion was transmitted.

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

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

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

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

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

19 (b) Any person who violates subsection (a) of this
20 section is guilty of a felony, and, upon conviction thereof,
21 shall be imprisoned in the penitentiary for not more
22 than five years or fined not more than ten thousand
23 dollars or both fined and imprisoned.

24 (c) It is lawful under this article for an operator of
25 a switchboard or an officer, employee, or provider of any
26 wire or electronic communication service whose facili-

27 ties are used in the transmission of a wire communica-
28 tion to intercept, disclose or use that communication or
29 the identity of any party to that communication in the
30 normal course of his or her employment while engaged
31 in any activity which is a necessary incident to the
32 rendition of his or her service or to the protection of the
33 rights or property of the carrier of the communication.
34 Providers of wire or electronic communication services
35 may not utilize service observing or random monitoring
36 except for mechanical or service quality control checks.

37 (1) Notwithstanding any other law, any provider of
38 wire or electronic communications services, or the
39 directors, officers, employees, agents, landlords or
40 custodians of any such provider, are authorized to
41 provide information, facilities or technical assistance to
42 persons authorized by this article to intercept wire, oral
43 or electronic communication if such provider or its
44 directors, officers, employees, agents, landlord or
45 custodians has been provided with a duly certified copy
46 of a court order directing such assistance and setting
47 forth the period of time during which the provision of
48 the information, facilities, or technical assistance is
49 authorized and specifying the information, facilities or
50 assistance required. No cause of action shall lie in any
51 court against any such provider of wire or electronic
52 communication services, its directors, officers, agents,
53 landlord or custodians for providing information
54 facilities or assistance in accordance with the terms of
55 any such order.

56 (2) It is lawful under this article for a person to
57 intercept a wire, oral or electronic communication
58 where the person is a party to the communication or
59 where one of the parties to the communication has given
60 prior consent to the interception unless the communica-
61 tion is intercepted for the purpose of committing any
62 criminal or tortious act in violation of the constitution
63 or laws of the United States or the constitution or laws
64 of this state.

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

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

12 (b) It is lawful under this section for:

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

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

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

39 (4) An officer, agent or employee of a law-enforce-
40 ment agency of this state or a political subdivision of this

41 state in the normal course of his or her lawful activities
42 to assemble or possess any electronic, mechanical or
43 other device which is designed for or which is primarily
44 useful for the purpose of the illegal interception of wire,
45 oral or electronic communications, if the particular
46 officer, agent or employee is specifically authorized by
47 the chief administrator of the law-enforcement agency
48 to assemble or possess the device for a particular law-
49 enforcement purpose and the device is registered in
50 accordance with this article.

§62-1D-5. Forfeiture of device.

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

§62-1D-6. Admissibility of evidence.

1 Evidence obtained, directly or indirectly, by the
2 interception of any wire, oral or electronic communica-
3 tion shall be received in evidence only in grand jury
4 proceedings and criminal proceedings in magistrate
5 court and circuit court: *Provided*, That evidence
6 obtained in violation of the provisions of this article shall
7 not be admissible in any proceeding.

§62-1D-7. Designated judges.

1 The chief justice of the supreme court of appeals shall,
2 on an annual basis, designate five active circuit court
3 judges to individually hear and rule upon applications
4 for orders authorizing the interception of wire, oral or
5 electronic communications: *Provided*, That no desig-
6 nated circuit judge may consider any application for
7 such an order if he or she presides as judge of the circuit
8 court of the county wherein the applied for installation
9 would occur or of the county wherein the communica-
10 tions facility, line or device to be monitored is located.

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

1 The prosecuting attorney of any county or duly
2 appointed special prosecutor may apply to one of the
3 designated circuit judges referred to in section seven of
4 this article and such judge, in accordance with the
5 provisions of this article, may grant an order authoriz-
6 ing the interception of wire, oral or electronic commun-
7 ications by an officer of the investigative or law-
8 enforcement agency when the prosecuting attorney or
9 special prosecutor has shown reasonable cause to believe
10 the interception would provide evidence of the commis-
11 sion of (i) kidnapping or abduction as defined and
12 prohibited by the provisions of sections fourteen and
13 fourteen-a, article two, chapter sixty-one of this code and
14 including threats to kidnap or demand ransom as
15 defined and prohibited by the provisions of section
16 fourteen-c of said article two, or (ii) of any offense
17 included and prohibited by section eleven, article four,
18 chapter twenty-five of said code, sections eight, nine and
19 ten, article five, chapter sixty-one of said code or section
20 one, article eight, chapter sixty-two of said code to the
21 extent that any of said sections provide for offenses
22 punishable as a felony or (iii) dealing, transferring or
23 trafficking in any controlled substance or substances in
24 the felonious violation of chapter sixty-a of this code or
25 (iv) any aider or abettor to any of the foregoing offenses
26 or any conspiracy to commit any of the foregoing
27 offenses if any aider, abettor or conspirator is a party
28 to the communication to be intercepted.

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

1 (a) Any investigative or law-enforcement officer who
2 has obtained knowledge of the contents of any wire, oral
3 or electronic communication or evidence derived
4 therefrom, may disclose the contents to another inves-
5 tigative or law-enforcement officer of any state or any
6 political subdivision thereof, the United States or any
7 territory, protectorate or possession of the United States,
8 including the District of Columbia, only to the extent
9 that the disclosure is required for the proper perfor-
10 mance of the official duties of the officer making or
11 receiving the disclosure, however, a record of such

12 disclosure and the date, time, method of disclosure and
13 the name of the person or persons to whom disclosure
14 is made shall be forwarded, under seal, to the desig-
15 nated circuit judge who authorized such interception,
16 who shall preserve said record for not less than ten
17 years. In the event the designated judge shall leave
18 office prior to the expiration of this ten-year period, he
19 or she shall transfer possession of said record to another
20 designated judge.

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

32 (c) Any person who has received any information
33 concerning a wire, oral or electronic communication
34 intercepted in accordance with the provisions of this
35 article or evidence derived therefrom, may disclose the
36 contents of that communication or the derivative
37 evidence while giving testimony under oath or affirma-
38 tion in any criminal proceeding held under the authority
39 of this state or of any political subdivision of this state.

40 (d) An otherwise privileged wire, oral or electronic
41 communication intercepted in accordance with, or in
42 violation of, the provisions of this article does not lose
43 its privileged character: *Provided*, That when an
44 investigative or law-enforcement officer, while engaged
45 in intercepting wire, oral or electronic communications
46 in the manner authorized by this article, intercepts a
47 wire, oral or electronic communication and it becomes
48 apparent that the conversation is attorney-client in
49 nature, the investigative or law-enforcement officer
50 shall immediately terminate the monitoring of that
51 conversation: *Provided, however*, That notwithstanding
52 any provision of this article to the contrary, no device

53 designed to intercept wire, oral or electronic commun-
54 ications shall be placed or installed in such a manner
55 as to intercept wire, oral or electronic communications
56 emanating from the place of employment of any
57 attorney at law, licensed to practice law in this state.

58 (e) When an investigative or law-enforcement officer,
59 while engaged in intercepting wire, oral or electronic
60 communications in the manner authorized herein,
61 intercepts wire, oral or electronic communications
62 relating to offenses other than those specified in the
63 order of authorization, the contents thereof, and
64 evidence derived therefrom, may be disclosed or used as
65 provided in subsections (a) and (b) of this section. Such
66 contents and any evidence derived therefrom may be
67 used under subsection (c) of this section when authorized
68 or approved by the designated circuit judge where such
69 judge finds on subsequent application that the contents
70 were otherwise intercepted in accordance with the
71 provisions of this article. The application shall be made
72 as soon as may be practicable after such contents or the
73 evidence derived therefrom is obtained.

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

82 (g) Any information relating to criminal activities
83 other than those activities for which an order to
84 intercept communications may be granted pursuant to
85 section eight of this article may be disclosed only if such
86 relates to the commission of a felony under the laws of
87 this state, and such information may be offered, if
88 otherwise admissible, as evidence in any such criminal
89 proceeding, but shall not be used for the purpose of
90 obtaining an arrest warrant, or an indictment under
91 laws of this state.

§62-1D-10. Pen registers and trap and trace devices.

1 (a) Except as provided in this section, no person may
2 install or use a pen register or a trap and trace device
3 without first obtaining permission to do so from the
4 designated judge by order granted in the same manner
5 as is required for an order granting permission to
6 intercept any wire, oral or electronic communication.

7 (b) The prohibition of subsection (a) does not apply
8 with respect to the use of a pen register or a trap and
9 trace device by a provider of electronic or wire
10 communication service:

11 (1) Relating to the operation, maintenance, and
12 testing of a wire or electronic communication service or
13 to the protection of the rights or property of such
14 provider, or to the protection of users of that service
15 from abuse of service or unlawful use of service; or

16 (2) To record the fact that a wire or electronic
17 communication was initiated or completed in order to
18 protect such provider or another provider furnishing
19 service toward the completion of the wire communica-
20 tion, or a user of that service, from fraudulent, unlawful
21 or abusive use of service; or

22 (3) With the consent of the user of that service.

23 (c) The prosecuting attorney of any county or any duly
24 appointed special prosecutor may make application for
25 an order or an extension of an order under this section
26 authorizing or approving the installation and use of a
27 pen register or a trap and trace device in writing under
28 oath or affirmation, to the designated judge. Such
29 application shall be made in the same manner as set
30 forth in section ten of this article.

31 (d) Upon application made to the court as provided in
32 subsections (a) and (b) of this section, the designated
33 judge shall enter an ex parte order authorizing the
34 installation and use of a pen register or a trap and trace
35 device if the designated judge finds that the applicant
36 has certified to the court that the information likely to
37 be obtained by such installation and used is relevant to
38 an ongoing criminal investigation.

39 (e) An order issued under this section shall relate with

40 specificity (i) The identity of the person to whom the
41 telephone line to which the pen register or trap and
42 trace device is to be attached is leased or in whose name
43 such telephone is listed, (ii) the identity, if known, of the
44 person who is the subject of the criminal investigation,
45 (iii) the number and, if known, physical location of the
46 telephone line to which the pen register or trap and
47 trace device is to be attached and, in the case of a trap
48 and trace device, the geographic limits of the trap and
49 trace order, and (iv) a statement of the offense to which
50 the information likely to be obtained by the pen register
51 or trap and trace device relates. Such order shall also
52 direct, upon the request of the applicant, the furnishing
53 of information, facilities and technical assistance
54 necessary to accomplish the installation of the pen
55 register or trap and trace device.

56 (f) An order issued under this section shall authorize
57 the installation and use of a pen register or a trap and
58 trace device for a period not to exceed thirty days. One
59 extension of such thirty-day period may be granted by
60 order of the designated judge upon application if such
61 judge makes the same findings as required by subsections
62 (c) and (d) of this section.

63 (g) An order authorizing or approving the installation
64 and use of a pen register or a trap and trace device shall
65 direct that (i) the order be sealed until otherwise
66 ordered by the court; and (ii) the person owning or
67 leasing the line to which the pen register or a trap and
68 trace device is attached, or who has been ordered by the
69 court to provide assistance to the applicant, not disclose
70 the existence of the pen register or trap and trace device
71 or the existence of the investigation to the listed
72 subscriber, or to any other person, unless or until
73 otherwise ordered by the court.

74 (h) Upon the request of an officer of a law-enforce-
75 ment agency authorized to install and use a pen register
76 or a trap and trace device under this section, or an
77 attorney acting in behalf of such agency or officer, a
78 provider of wire or electronic communication service,
79 landlord, custodian or other person shall furnish such
80 investigative or law-enforcement officer forthwith all

81 information, facilities and technical assistance necessary
82 to accomplish the installation of the pen register
83 unobtrusively and with a minimum of interference with
84 the services that the person so ordered by the court
85 accords the party with respect to whom the installation
86 and use is to take place, if such assistance is directed
87 by a court order. Unless otherwise ordered by the
88 designated judge, the results of the trap and trace device
89 shall be furnished to the office of the law-enforcement
90 agency, designated by the court, at reasonable intervals
91 during regular business hours for the duration of the
92 period during which the pen register or trap and trace
93 device is installed as provided in such order.

94 (i) A provider of a wire or electronic communication
95 service, landlord, custodian or other person who
96 furnishes facilities or technical assistance pursuant to
97 this section shall be reasonably compensated for services
98 so rendered and shall be reimbursed for reasonable
99 expenses incurred in providing such facilities and
100 assistance.

101 (j) No cause of action shall lie against any provider
102 of a wire or electronic communication service, its
103 officers, agents or employees for providing information,
104 facilities or assistance provided or rendered in accor-
105 dance with the terms of any court order entered
106 pursuant to this section.

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

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

7 (1) The identity of the member of the department of
8 public safety making the application, and of the officer
9 authorizing the application, who shall be the superin-
10 tendent of the department of public safety;

11 (2) A full and complete statement of the facts and
12 circumstances relied upon by the applicant, to justify his

13 or her belief that an order should be issued, including
14 (i) details as to the particular offense that has been, is
15 being, or is about to be committed, (ii) a particular
16 description of the nature and location of the facilities
17 from which or the place where the communication is to
18 be intercepted, (iii) a particular description of the type
19 of communications sought to be intercepted, and (iv) the
20 identity of the person, if known, committing the offense
21 and whose communications are to be intercepted;

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

28 (4) A statement of the period of time for which the
29 interception is required to be maintained. If the nature
30 of the investigation is such that the authorization for
31 interception should not automatically terminate when
32 the described type of communication has been first
33 obtained, a particular description of facts establishing
34 probable cause to believe additional communications of
35 the same type will occur thereafter;

36 (5) A full and complete statement of the facts concern-
37 ing all previous applications known to the person
38 authorizing and making the application, for authoriza-
39 tion to intercept wire, oral or electronic communications
40 involving any of the same persons, facilities or places
41 specified in the application and the action taken by the
42 court with respect to each such application; and

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

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

51 (c) Upon the application, the designated judge may

52 enter an ex parte order, as requested or as modified or
53 moulded, authorizing interception of wire, oral or
54 electronic communications, if the judge determines on
55 the basis of the evidence and argument presented by the
56 applicant that:

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

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

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

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

75 (d) (1) Each order authorizing the interception of any
76 wire, oral or electronic communication shall specify: (i)
77 the identity of the person, if known, whose communica-
78 tions are to be intercepted, (ii) the nature and location
79 of the communications facilities as to which, or the place
80 where, authority to intercept is granted, (iii) a partic-
81 ular description of the type of communication sought to
82 be intercepted and a statement of the particular offense
83 to which it relates, (iv) the identity of members of the
84 department of public safety authorized to intercept the
85 communications and of the person authorizing the
86 applications and (v) the period of time during which the
87 interception is authorized, including a statement as to
88 whether or not the interception automatically termi-
89 nates when the described communication is first
90 obtained.

91 (2) If an order authorizing the interception of a wire,
92 oral or electronic communication is issued, an additional
93 order may be issued upon petition of the applicant,
94 directing that a provider of wire or electronic commun-
95 ication service, landlord, custodian or other person
96 named in such order, furnish the applicant forthwith all
97 information, facilities and technical assistance necessary
98 to accomplish the interception unobtrusively and with a
99 minimum of interference with the services that the
100 carrier, landlord, custodian or person is according the
101 person whose communications are to be intercepted.
102 Such additional order shall set forth the period of time
103 authorized for providing the information, facilities or
104 technical assistance and shall specify the information,
105 facilities or technical assistance required. In no event
106 may a communications common carrier, its directors,
107 officers, employees and agents, landlords, custodians or
108 other persons be ordered to furnish, install or maintain
109 the electronic, mechanical or other device being used to
110 accomplish the authorized interception, to grant entry
111 into or upon its premises for the purposes of such
112 interception, or to otherwise provide assistance of any
113 nature other than information, facilities or technical
114 assistance. Any provider of wire or electronic commun-
115 ication service, landlord, custodian or other person
116 furnishing the facilities or technical assistance shall be
117 reasonably compensated therefor by the applicant for
118 such services and be reimbursed for the reasonable
119 expenses incurred in providing such facilities or
120 assistance.

121 (e) An order entered pursuant to this section may
122 authorize the interception of any wire, oral or electronic
123 communication for a period of time that is necessary to
124 achieve the objective of the authorization, not to exceed
125 twenty days. Such twenty-day period begins on the day
126 on which the investigative or law-enforcement officer
127 first begins to conduct an interception under the order
128 or ten days after the order is entered, whichever is
129 earliest. Extensions of an order may be granted, but
130 only upon application for an extension made as provided
131 in subsection (a) of this section and upon the court
132 making the findings required by subsection (c) of this

133 section. The period of extension may be no longer than
134 the designated judge deems necessary to achieve the
135 purposes for which it was granted and, in no event, for
136 longer than twenty days. Every order and extension
137 thereof shall contain a provision that the authorization
138 to intercept be executed as soon as practicable, be
139 conducted in such a way as to minimize the interception
140 of communications not otherwise subject to interception
141 under this article and terminate upon attainment of the
142 authorized objective, or in any event within the herein-
143 above described twenty-day period relating to initial
144 applications. In addition, every such order and extension
145 thereof shall contain a provision requiring termination
146 of the interception during any communication to which
147 none of the parties thereto is a person identified as
148 committing the offense in the statement of facts referred
149 to in subsection (a) and there is no reasonable suspicion
150 that any party to such communication is committing
151 such offense: *Provided*, That such provision shall permit
152 such interception up to the point of time that the person
153 authorized to intercept the communication knows or has
154 reason to know the identities of the parties thereto.

155 (f) Whenever an order authorizing the interception of
156 any wire, oral or electronic communication is entered
157 pursuant to this article, the order shall require reports
158 to be made to the judge who issued the order showing
159 what progress has been made toward achievement of the
160 authorized objective and the need for continued inter-
161 ception. Such reports shall be made at the intervals
162 required by such order.

163 (g) The contents of any wire, oral or electronic
164 communication intercepted by any means authorized by
165 this article shall be recorded on tape or wire or other
166 comparable device. The recording of the contents of any
167 wire, oral or electronic communication under this
168 subsection shall be done in such a way or ways as will
169 protect the recording from editing or alterations thereto.
170 Immediately upon the expiration of the period of time
171 during which interception and recording is authorized
172 by the order, or extensions thereof, such recordings shall
173 be made available to the judge issuing such order.

174 Custody of the recordings shall be with the superintend-
175 ent of the department of public safety. Such recordings
176 may not be destroyed except upon an order of the judge
177 to whom application was made and in any event shall
178 be retained for a period of ten years. Duplicate
179 recordings may be made for use or disclosure pursuant
180 to the provisions of subsections (a) and (b) of section nine
181 of this article for investigations by law enforcement
182 agencies.

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

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

196 (j) Within sixty days of the termination of the ordered
197 interception of wire, oral or electronic communications,
198 the superintendent of the department of public safety
199 shall provide the designated judge who issued said order
200 a list containing the names and addresses of all persons
201 whose communications were intercepted. Within a
202 reasonable time but not later than ninety days after the
203 termination of the period specified in an order permit-
204 ting the interception of any wire, oral or electronic
205 communication or extensions thereof, the designated
206 judge shall cause to be served upon the persons named
207 in the order and such other parties to intercepted
208 communications as the designated judge may determine
209 in his or her discretion that the interest of justice
210 requires written notice of the interception of
211 communications. Such written notice shall include: (i)
212 the fact of the entry of the order, (ii) the date of the entry
213 and the period of authorized interception and (iii) the
214 fact that during the period wire, oral or electronic

215 communications were or were not intercepted: *Provided*,
216 That the service of such notice shall be the sole
217 responsibility of the superintendent of the department
218 of public safety.

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

225 (k) The contents of any intercepted wire, oral or
226 electronic communication or evidence derived therefrom
227 may not be received in evidence or otherwise disclosed
228 in any trial, hearing or other proceeding in any court
229 of this state unless each party, not less than twenty days
230 before the trial, hearing or proceeding at which the
231 communication or evidence is to be presented has been
232 furnished with a copy of the written petition or
233 application and order under which the interception was
234 authorized. Where no application or order is required
235 under the provisions of this article, each party, not less
236 than twenty days before any such trial, hearing or
237 proceeding shall be furnished with information concern-
238 ing when, where and how the interception took place
239 and why no application or order was required.

240 (l) Any aggrieved person in any trial, hearing or
241 proceeding in or before any court of this state, may move
242 to suppress the contents of any intercepted wire, oral or
243 electronic communication or evidence derived therefrom
244 on the grounds that (i) The communication was unlaw-
245 fully intercepted, (ii) The order of authorization under
246 which it was intercepted is insufficient on its face or was
247 not obtained or not issued in strict compliance with this
248 article; or (iii) The interception was not made in
249 conformity with the order of authorization. Such motion
250 may be made before or during the trial, hearing or
251 proceeding. If the motion is granted, the contents of the
252 intercepted wire, oral or electronic communication or
253 evidence derived therefrom, shall not be admissible in
254 evidence, in any such trial, hearing or proceeding. The
255 designated judge, upon the filing of such motion shall

256 make available to the movant thereof or to his or her
257 counsel the intercepted communication or evidence
258 derived therefrom for inspection.

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

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

9 (1) Actual damages, but not less than one hundred
10 dollars for each day of violation;

11 (2) Punitive damages, if found to be proper; and

12 (3) Reasonable attorney fees and reasonable costs of
13 litigation incurred.

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

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

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

12 (b) Such registration shall include the name and
13 address of the agency as well as a detailed description

14 of each device registered, the serial number thereof and
15 such other information as the department may require.

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

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

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

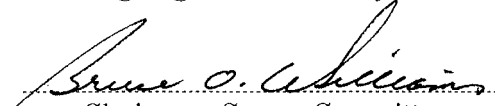
**§62-1D-15. Training and certification of law-enforce-
ment officers employed in the interception
of wire, oral or electronic communications
which require a court order.**

1 The superintendent of the department of public safety
2 shall establish a course of training in the legal and
3 technical aspects of wiretapping and electronic surveil-
4 lance, shall establish such regulations as he or she deems
5 necessary and proper for such training program, and
6 shall establish minimum standards for certification and
7 periodic recertification of investigative or law-enforce-
8 ment officers as eligible to conduct wiretapping or
9 electronic surveillance as authorized by this article.

§61-1D-16. Severability of provisions.

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


The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.


Chairman Senate Committee

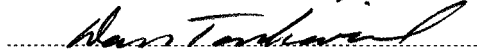

Chairman House Committee
Member

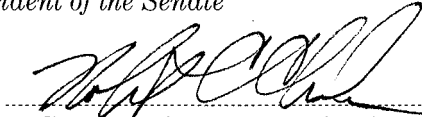
Originating in the House.

Takes effect ninety days from passage.


Clerk of the Senate


Clerk of the House of Delegates


President of the Senate


Speaker of the House of Delegates

The within  appeared this the 3rd
day of March, 1987.


Governor

PRESENTED TO THE

GOVERNOR

Date 3/25/87

Time 4:45 p.m.

RECEIVED

197 MAR - 1 PM 3:10

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ATTORNEY GENERAL
WASHINGTON, D.C.