

No: 2448

# WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1987



# 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)

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

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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, photoelectric 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.

*Ernie O. Whician*  
Chairman Senate Committee

*Lyle Settle*  
Chairman House Committee  
Member

Originating in the House.

Takes effect ninety days from passage.

*Todd C. Wallis*  
Clerk of the Senate

*Donald Hoop*  
Clerk of the House of Delegates

*Wass Tordwin*  
President of the Senate

*W. P. [Signature]*  
Speaker of the House of Delegates

The within *appeared* this the *3<sup>rd</sup>*  
*March*, 1987.

*Arch. [Signature]*  
Governor

PRESENTED TO THE  
GOVERNOR

Date 3/25/87

Time 4:45 p.m.

RECEIVED

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SECRETARY OF THE  
NAVY