

WEST VIRGINIA LEGISLATURE

2019 REGULAR SESSION

Introduced

House Bill 2173

BY DELEGATES CANESTRARO, MILLER AND LOVEJOY

[Introduced January 9, 2019; Referred
to the Committee on the Judiciary.]

1 A BILL to amend and reenact §62-1D-6 and §62-1D-9 of the Code of West Virginia, 1931, all
 2 relating to allowing state and federal law-enforcement officers to testify as to the contents
 3 and evidence of a wiretap or electronic surveillance obtained in state court in criminal
 4 proceedings both in state courts and federal courts; and providing that certain information
 5 that had previously been excluded may now be used for obtaining an arrest warrant or an
 6 indictment.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1D. WIRETAPPING AND ELECTRONIC SURVEILLANCE ACT.

§62-1D-6. Admissibility of evidence.

1 Evidence obtained, directly or indirectly, by the interception of any wire, oral or electronic
 2 communication shall be received in evidence only in grand jury proceedings and criminal
 3 proceedings in magistrate court and circuit court of West Virginia and the federal courts of the
 4 United States: *Provided*, That evidence obtained in violation of the provisions of this article shall
 5 not be admissible in any proceeding.

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

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

12 judge.

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

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

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

36 (e) When an investigative or law-enforcement officer, while engaged in intercepting wire,
37 oral, or electronic communications in the manner authorized herein, intercepts wire, oral, or

38 electronic communications relating to offenses other than those specified in the order of
39 authorization, the contents thereof, and evidence derived therefrom, may be disclosed or used as
40 provided in §62-1D-9(a), and §62-1D-9(b) of this code. Such contents and any evidence derived
41 therefrom may be used under §62-1D-9(c) of this code when authorized or approved by the
42 designated circuit judge where such judge finds on subsequent application that the contents were
43 otherwise intercepted in accordance with the provisions of this article. The application shall be
44 made as soon as may be practicable after such contents or the evidence derived therefrom is
45 obtained.

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

51 (g) Any information relating to criminal activities other than those activities for which an
52 order to intercept communications may be granted pursuant to §62-1D-8 of this code may be
53 disclosed only if such relates to the commission of a felony under the laws of this state or of the
54 United States, and such information may be offered, if otherwise admissible, as evidence in any
55 such criminal proceeding, ~~but shall not~~ and may be used for the purpose of obtaining an arrest
56 warrant, or an indictment under laws of this state.

NOTE: The purpose of this bill is to allow state and federal law-enforcement officers to testify as to the contents and evidence of a wiretap or electronic surveillance obtained in state court in criminal proceedings both in state courts and federal courts. The bill provides that certain information that had previously been excluded may now be used for obtaining an arrest warrant or an indictment.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.