

WEST VIRGINIA LEGISLATURE

2019 REGULAR SESSION

INTRODUCED

FISCAL
NOTE

House Bill 2940

DELEGATES STORCH, D. KELLY, HOWELL, MILLER,

STEELE AND CANESTRARO

[Introduced February 8, 2019; Referred

to the Committee on the Judiciary.]

1 A BILL to amend and reenact §62-1D-6, §62-1D-8 and 62-1D-9 of the Code of West Virginia,
 2 1931, as amended, all relating to admissibility of evidence; including the crimes of treason,
 3 first and second degree murder, first degree robbery, and participation in an organized
 4 criminal enterprise to the list of crimes for which a prosecutor may apply for a court order
 5 authorizing interception of communications.

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, or any other court of competent criminal
 4 jurisdiction: *Provided*, That evidence obtained in violation of the provisions of this article shall not
 5 be admissible in any proceeding.

**§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 appointed special prosecutor may apply to
 2 one of the designated circuit judges referred to in §62-1D-7 of this code and the judge, in
 3 accordance with the provisions of this article, may grant an order authorizing the interception of
 4 wire, oral, or electronic communications by an officer of the investigative or law-enforcement
 5 agency when the prosecuting attorney or special prosecutor has shown reasonable cause to
 6 believe the interception would provide evidence of the commission of: (1) Kidnapping or
 7 abduction, as defined and prohibited by the provisions of §61-2-14 and §61-2-14a of this code
 8 and including threats to kidnap or demand ransom, as defined and prohibited by the provisions of
 9 §61-2-14c of this code; (2) any offense included and prohibited by §25-4-11, §61-5-8, §61-5-9,
 10 and §61-5-10 or §62-8-1 of this code to the extent that any of said sections provide for offenses
 11 punishable as a felony; (3) felony violations of §60A-1-101 *et seq.* of this code; (4) violations of

12 §61-14-1 *et seq.* of this code; (5) violations of §61-2-1 of this code; (6) violations of §61-2-12 of
13 this code; (7) felony violations of §61-8B-1 *et seq.* of this code; (8) violations of §61-1-1 of this
14 code; (9) violations of §61-13-3 of this code; ~~or~~ (10) treason, as defined in §61-1-1 of this code;
15 (11) murder, as defined in §61-2-1 of this code; (12) robbery, as defined in §61-2-12(a) of this
16 code; (13) extortion or attempted extortion, as defined in §61-2-13 of this code; (14) participation
17 in an organized criminal enterprise, as defined in §61-13-2 of this code; or (15) any aider or
18 abettor to any of the offenses referenced in this section or any conspiracy to commit any of the
19 offenses referenced in this section if any aider, abettor, or conspirator is a party to the
20 communication to be intercepted.

§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 or under federal law.

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 subdivision of this state, or 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 subsections (a) and (b) of this section. Such contents and any evidence derived
41 therefrom may be used under subsection (c) of this section 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 section eight of this article may be
53 disclosed only if such relates to the commission of a felony under the laws of this state and such
54 information may be offered, if otherwise admissible, as evidence in any such criminal proceeding,
55 but shall not be used for the purpose of obtaining an arrest warrant, or an indictment under laws
56 of this state or of the United States.

NOTE: The purpose of this bill is to add treason, murder, certain degrees of robbery, and organized crimes to the list of crimes wherein interception of communications may be authorized.

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