

Senate Bill No. 11

(By Senator Stollings)

[Introduced January 8, 2014; referred to the Committee on the
Judiciary.]

A BILL to amend and reenact §51-2A-8 of the Code of West Virginia, 1931, as amended; and to amend and reenact §62-1D-6 of said code, all relating to cellular telephone communications; stating expressly that wiretapping evidentiary provisions apply to family court proceedings; providing an exception; and providing that cellular phone communications, including texting, are confidential and are not subject to discovery or admissible as evidence in civil proceedings.

Be it enacted by the Legislature of West Virginia:

That §51-2A-8 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §62-1D-6 of said code be amended and reenacted, all to read as follows:

CHAPTER 51. COURTS AND THEIR OFFICERS.

ARTICLE 2A. FAMILY COURTS.

§51-2A-8. Rules of practice and procedure; applicability of Rules

1 **of Evidence; applicability of evidentiary provision**
2 **in Wiretapping and Electronic Surveillance Act;**
3 **record of hearings; duties of clerk of circuit court.**

4 (a) Pleading, practice and procedure in matters before a
5 family court judge are governed by rules of practice and procedure
6 for family law promulgated by the Supreme Court of Appeals.

7 (b) The West Virginia Rules of Evidence apply to proceedings
8 before a family court judge, except as otherwise provided by law,
9 including, but not limited to, section six, article one-d, chapter
10 sixty-two of this code.

11 (c) Hearings before a family court shall be recorded
12 electronically. A magnetic tape or other electronic recording
13 medium on which a hearing is recorded shall be indexed and securely
14 preserved by the secretary-clerk of the family court judge and
15 ~~shall~~ may not be placed in the case file in the office of the
16 circuit clerk. ~~Provided, That~~ Upon the request of the family court
17 judge, the magnetic tapes or other electronic recording media shall
18 be stored by the clerk of the circuit court. When requested by
19 either of the parties, a family court judge shall provide a
20 duplicate copy of the tape or other electronic recording medium of
21 each hearing held. For evidentiary purposes, a duplicate of ~~such~~
22 the electronic recording prepared by the secretary-clerk ~~shall be~~
23 is a "writing" or "recording" as those terms are defined in Rule
24 1001 of the West Virginia Rules of Evidence and unless the

1 duplicate is shown not to reflect the contents accurately, it shall
2 be treated as an original in the same manner that data stored in a
3 computer or similar data is regarded as an "original" under ~~such~~
4 the rule. The party requesting the copy shall pay an amount equal
5 to the actual cost of the tape or other medium or the sum of \$5,
6 whichever is greater. Unless otherwise ordered by the court, the
7 preparation of a transcript and the payment of the cost ~~thereof~~
8 ~~shall be~~ of the preparation is the responsibility of the party
9 requesting the transcript.

10 (d) The recording of the hearing or the transcript of
11 testimony, as the case may be, and the exhibits, together with all
12 documents filed in the proceeding, constitute the exclusive record
13 and, on payment of lawfully prescribed costs, shall be made
14 available to the parties.

15 (e) In any proceeding in which a party has filed an affidavit
16 that he or she is financially unable to pay the fees and costs, the
17 family court judge shall determine whether either party is
18 financially able to pay the fees and costs based on the information
19 set forth in the affidavit or on ~~any~~ evidence submitted at the
20 hearing. If a family court judge determines that either party is
21 financially able to pay the fees and costs, the family court judge
22 shall assess the payment of ~~such~~ the fees and costs ~~accordingly~~ as
23 part of an order. The provisions of this subsection do not alter
24 ~~or diminish the provisions of~~ section one, article two, chapter

1 fifty-nine of this code.

2 (f) The clerks of the circuit court ~~shall~~ have, within the
3 scope of the jurisdiction of family courts, all the duties and
4 powers prescribed by law that clerks exercise on behalf of circuit
5 courts ~~Provided, That~~ except that a family court judge may not
6 require the presence or attendance of a circuit clerk or deputy
7 circuit clerk at any hearing before the family court.

8 **CHAPTER 62. CRIMINAL PROCEDURE.**

9 **ARTICLE 1D. WIRETAPPING AND ELECTRONIC SURVEILLANCE ACT.**

10 **§62-1D-6. Admissibility of evidence.**

11 Evidence obtained, directly or indirectly, by the interception
12 of any wire, oral or electronic communication ~~shall be received in~~
13 ~~evidence only in~~ is not admissible except in grand jury proceedings
14 and criminal proceedings in magistrate court and circuit court.
15 ~~Provided, That~~ Evidence obtained in violation of ~~the provisions of~~
16 this article ~~shall not be~~ is not admissible in any proceeding.
17 Cellular telephone communications, including texting, are
18 confidential and are neither admissible nor subject to discovery in
19 civil proceedings.

NOTE: The purpose of this bill is to expressly provide that the evidentiary provisions of wiretapping laws apply to proceedings before family courts and to qualify cellular telephone communications, including texting, as confidential and are neither admissible nor subject to discovery in civil proceedings.

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