

# **WEST VIRGINIA LEGISLATURE**

## **2017 REGULAR SESSION**

**Introduced**

### **House Bill 2505**

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O'NEAL, SHOTT, STORCH, GEARHEART AND ELLINGTON

[Introduced February 16, 2017; Referred  
to the Committee on the Judiciary.]

1 A BILL to amend and reenact §62-1D-2 of the Code of West Virginia, 1931, as amended, relating  
 2 to Wiretapping and Electronic Surveillance Act; excluding from protection under the act  
 3 oral communications uttered in a child care center where there are notices posted  
 4 informing persons that their oral communications are being intercepted; and defining “child  
 5 care center”.

*Be it enacted by the Legislature of West Virginia:*

1 That §62-1D-2 of the Code of West Virginia, 1931, as amended, be amended and  
 2 reenacted to read as follows:

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

**§62-1D-2. Definitions.**

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

3 ~~(a)~~ (1) “Aggrieved person” means a person who was a party to any intercepted wire, oral  
 4 or electronic communication or a person against whom the interception was directed.

5 ~~(p)~~ (2) “Aural transfer” means a transfer containing the human voice at any point between  
 6 and including the point of origin and the point of reception.

7 (3) “Child care center” means a facility maintained by the state or any county or  
 8 municipality thereof, or any agency or facility maintained by an individual, firm, corporation,  
 9 association or organization, public or private, for the care of children in any setting.

10 ~~(b)~~ (4) “Communications common carrier” means any telegraph company or telephone  
 11 company and any radio common carrier.

12 ~~(e)~~ (5) “Contents”, when used with respect to any wire, oral or electronic communication,  
 13 includes any information concerning the substance, purport or meaning of that communication.

14 ~~(f)~~ (6) “Designated judge” means a circuit court judge designated by the Chief Justice of  
 15 the West Virginia Supreme Court of Appeals to hear and rule on applications for the interception  
 16 of wire, oral or electronic communications.

17           ~~(7)~~ (7) “Electronic communication” means any transfer of signs, signals, writing, images,  
18 sounds, data or intelligence of any nature transmitted, in whole or in part, by a wire, radio, electro-  
19 magnetic, photo-electronic or photo-optical system, but does not include:

20           ~~(1)~~ (A) The radio portion of a cordless telephone communication that is transmitted  
21 between the cordless telephone handset and the base unit;

22           ~~(2)~~ (B) Any wire or oral communication;

23           ~~(3)~~ (C) Any combination made through a tone-only paging device.

24           ~~(8)~~ (8) “Electronic communication service” means any service which provides to users  
25 thereof the ability to send or receive wire or electronic communications.

26           ~~(9)~~ (9) “Electronic communications system” means any wire, radio, electromagnetic,  
27 photo-optical or photo-electronic facilities for the transmission of electronic communications, and  
28 any computer facilities or related electronic equipment for the electronic storage of ~~such~~ the  
29 communications.

30           ~~(10)~~ (10) “Electronic, mechanical or other device” means any device or apparatus: (i)  
31 Which can be used to intercept a wire, oral or electronic communication; or (ii) the design of which  
32 render it primarily useful for the surreptitious interception of any such communication. There is  
33 excepted from this definition:

34           ~~(1)~~ (A) Any telephone or telegraph instrument, equipment or facility or any component  
35 thereof: (a) Furnished to the subscriber or user by a provider of wire or electronic communication  
36 service in the ordinary course of its business and being used by the subscriber or user in the  
37 ordinary course of its business; or furnished by ~~such~~ the subscriber or user for connection to the  
38 facilities of ~~such~~ the service and used in the ordinary course of its business; or (b) being used by  
39 a communications common carrier in the ordinary course of its business or by an investigative or  
40 law-enforcement officer in the ordinary course of his or her duties; or

41           ~~(2)~~ (B) A hearing aid or similar device being used to correct subnormal hearing to not  
42 better than normal; or

43           ~~(3)~~ (C) Any device used in a lawful consensual monitoring including, but not limited to,  
44 tape recorders, telephone induction coils, answering machines, body transmitters and pen  
45 registers.

46           ~~(e)~~ (11) “Intercept” means the aural or other acquisition of the contents of any wire,  
47 electronic or oral communication through the use of any electronic, mechanical or other device.

48           ~~(g)~~ (12) “Investigative or law-enforcement officer” means a member or members of the  
49 Department of Public Safety West Virginia State Police who is or are empowered by law to  
50 conduct investigations of or to make arrest for offenses enumerated in this chapter.

51           ~~(h)~~ (13) “Oral communication” means any oral communication uttered by a person  
52 exhibiting an expectation that ~~such the~~ communication is not subject to interception under  
53 circumstances justifying ~~such the~~ expectation. ~~but such~~ The term does not include: any

54           (A) An electronic communication; or

55           (B) An oral communication uttered in any child care center where there are notices posted  
56 informing persons that their oral communications are being intercepted.

57           ~~(i)~~ (14) “Pen register” means a device which records or decodes electronic or other  
58 impulses which identify the numbers dialed or otherwise transmitted on the telephone line to which  
59 ~~such the~~ device is attached, but ~~such the~~ term does not include any device used by a provider or  
60 customer of a wire or electronic communication service for billing, or recording as an incident to  
61 billing, for communications services provided by ~~such the~~ provider or any device used by a  
62 provider or customer of a wire communication service for cost accounting or other like purposes  
63 in the ordinary course of its business.

64           ~~(j)~~ (15) “Person” means any person, individual, partnership, association, joint stock  
65 company, trust or corporation and includes any police officer, employee or agent of this state or  
66 of a political subdivision thereof.

67           ~~(k)~~ (16) “Trap and trace device” means a device which captures the incoming electronic  
68 or other impulses which identify the originating number of an instrument or device from which a

69 wire or electronic communication was transmitted.

70 ~~(m)~~ (17) “User” means any person or entity who or which uses an electronic  
71 communication service and is duly authorized by the provider of ~~such~~ the service to engage in  
72 ~~such that~~ use.

73 ~~(k)~~ (18) “Wire communication” means any aural transfer made, in whole or in part, through  
74 the use of facilities for the transmission of communications by the aid of wire, cable or other like  
75 connection between the point of origin and the point of reception (including the use of ~~such~~ the  
76 connection in a switching station) furnished or operated by any person engaged in providing or  
77 operating ~~such~~ the facilities for the transmission of interstate or foreign communications or  
78 communications affecting interstate or foreign commerce and ~~such~~ the term includes any  
79 electronic storage of ~~such~~ the communication, but ~~such~~ the term does not include the radio portion  
80 of a cordless telephone communication that is transmitted between the cordless telephone  
81 handset and the base unit.

NOTE: The purpose of this bill is to exclude from protection under the Wiretapping and Electronic Surveillance Act oral communications uttered in a child care center where there are notices posted informing persons that their oral communications are being intercepted; and defining “child care center”.

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