WEST VIRGINIA LEGISLATURE

2019 REGULAR SESSION

Second

Enrolled

Committee Substitute

for

Senate Bill 61

SENATORS WELD AND TRUMP, *original sponsors*

[Repassed March 6, 2019; in effect 90 days from passage]

1 AN ACT to amend and reenact §62-1D-6, §62-1D-8, and §62-1D-9 of the Code of West Virginia,

2   1931, as amended, relating to including the crime of extortion to the list of crimes for which

3   a prosecutor may apply for a court order authorizing interception of communications;

4   permitting for the lawful disclosure of lawfully intercepted communications in court

5   proceedings including federal court; and permitting the use of derivative crime evidence

6   to obtain an arrest warrant or 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, circuit court, and any other court of competent jurisdiction:

4 *Provided,* That evidence obtained in violation of the provisions of this article shall not be

5 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; (10) extortion, as defined in §61-2-13 of this code;

15   or (11) any aider or abettor to any of the offenses referenced in this section or any conspiracy to

16   commit any of the offenses referenced in this section if any aider, abettor, or conspirator is a party

17   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 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 10 years. In the event the designated judge shall leave office prior to the expiration of

11   this 10-year period, he or she shall transfer possession of said record to another designated judge.

12   (b) Any investigative or law-enforcement officer who has obtained knowledge of the

13   contents of any wire, oral, or electronic communication or evidence derived therefrom or any

14   investigative or a law-enforcement officer of any state or any political subdivision thereof, the

15   United States or any territory, protectorate or possession of the United States, including the

16   District of Columbia, who obtains such knowledge by lawful disclosure may use the contents to

17   the extent that the use is appropriate to the proper performance of his or her official duties under

18   the provisions of this article.

19 (c) Any person who has received any information concerning a wire, oral, or electronic

20 communication intercepted in accordance with the provisions of this article or evidence derived

21 therefrom, may disclose the contents of that communication or the derivative evidence while

22 giving testimony under oath or affirmation in any criminal proceeding held under the authority of

23 this state, any political subdivision of this state, or the federal courts of the United States.

24 (d) An otherwise privileged wire, oral, or electronic communication intercepted in

25 accordance with, or in violation of, the provisions of this article does not lose its privileged

26 character: *Provided,* That when an investigative or law-enforcement officer, while engaged in

27 intercepting wire, oral, or electronic communications in the manner authorized by this article,

28 intercepts a wire, oral, or electronic communication and it becomes apparent that the conversation

29 is attorney-client in nature, the investigative or law-enforcement officer shall immediately

30 terminate the monitoring of that conversation: *Provided, however,* That notwithstanding any

31 provision of this article to the contrary, no device designed to intercept wire, oral, or electronic

32 communications shall be placed or installed in such a manner as to intercept wire, oral, or

33 electronic communications emanating from the place of employment of any attorney at law,

34 licensed to practice law in this state.

35 (e) When an investigative or law-enforcement officer, while engaged in intercepting wire,

36 oral, or electronic communications in the manner authorized herein, intercepts wire, oral, or

37 electronic communications relating to offenses other than those specified in the order of

38 authorization, the contents thereof, and evidence derived therefrom, may be disclosed or used as

39 provided in §62-1D-9(a) and §62-1D-9(b) of this code. Such contents and any evidence derived

40 therefrom may be used under §62-1D-9(c) of this code when authorized or approved by the

41 designated circuit judge where such judge finds on subsequent application that the contents were

42 otherwise intercepted in accordance with the provisions of this article. The application shall be

43 made as soon as may be practicable after such contents or the evidence derived therefrom is

44 obtained.

45   (f) Any law-enforcement officer of the United States, who has lawfully received any

46   information concerning a wire, oral, or electronic communication or evidence lawfully derived

47   therefrom, may disclose the contents of that communication or the derivative evidence while

48   giving testimony under oath or affirmation in any criminal proceeding held under the authority of

49   this state or of the United States.

50   (g) Any information relating to criminal activities other than those activities for which an

51   order to intercept communications may be granted pursuant to §62-1D-8 of this code may be

52   disclosed only if such relates to the commission of a felony under the laws of this state or of the

53   United States, and such information may be offered, if otherwise admissible, as evidence in any

54   such criminal proceeding.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

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Chairman, Senate Committee

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Chairman, House Committee

Originated in the Senate.

In effect 90 days from passage.

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Clerk of the Senate

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Clerk of the House of Delegates

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President of the Senate

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Speaker of the House of Delegates

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Day of ...., 2019.

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Governor