

## CHAPTER 626A

### PRIVACY OF COMMUNICATIONS

- |         |   |         |  |
|---------|---|---------|--|
| 626A.01 | Definitions.  | 626A.10 | Notice to defendant.                                   |
| 626A.02 | Interception and disclosure of wire or oral communications prohibited.  | 626A.11 | Admissibility of intercepted evidence.                 |
| 626A.03 | Manufacture, distribution, possession, and advertising of wire or oral communication intercepting devices prohibited. | 626A.12 | Motion to suppress evidence.                           |
| 626A.04 | Prohibition of use as evidence of intercepted wire or oral communications.  | 626A.13 | Civil remedies.  |
| 626A.05 | Authorization for interception of wire or oral communications.  | 626A.14 | Obtaining telephone and telegraph company information. |
| 626A.06 | Procedure for interception of wire or oral communications.  | 626A.15 | Duty to report violations.                             |
| 626A.07 | Return filed by officer.  | 626A.16 | Telephone company to aid in detection.                 |
| 626A.08 | Preservation of material obtained, applications and orders; destruction.  | 626A.17 | Report, concerning interception of communications.     |
| 626A.09 | Authorization for disclosure and use of intercepted wire or oral communications.                                      | 626A.18 | Illegal transfers of intercepting devices.             |
|         |   | 626A.19 | Forfeitures.   |
|         |   | 626A.20 | Suspension or revocation of licenses.                  |
|         |   | 626A.21 | Offenses committed prior to effective date.            |
|         |   | 626A.22 | Subject to other laws.                                 |
|         |   | 626A.23 | Citation.  |

#### 626A.01 DEFINITIONS.

Subdivision 1. **Terms.** As used in sections 626A.01 to 626A.23, the terms defined in this section have the meanings given them.

Subd. 2. **Person.** "Person" means any individual, partnership, corporation, joint stock company, trust, or association, including but not limited to, the subscriber to the telephone or telegraph service involved and any law enforcement officer.

Subd. 3. **Wire communications.** "Wire communication" means any communication made in whole or in part through the use of facilities for the transmission of communications by the aid of wire, cable, or other like connection between the point of origin and the point of reception.

Subd. 4. **Oral communication.** "Oral communication" means any oral communication uttered by a person exhibiting an expectation that such communication is not subject to interception under circumstances justifying such expectation.

Subd. 5. **Intercept.** "Intercept" means the aural acquisition of the contents of any wire or oral communication through the use of any electronic, mechanical, or other device.

Subd. 6. **Electronic, mechanical or other device.** "Electronic, mechanical, or other device" means any device or apparatus which can be used to intercept a wire or oral communication other than

(a) any telephone or telegraph instrument, equipment or facility, or any component thereof, (i) furnished to the subscriber or user by a communications common carrier in the ordinary course of its business and being used by the subscriber or user in the ordinary course of its business; or (ii) being used by a communications common carrier in the ordinary course of its business, or by an investigative or law enforcement officer in the ordinary course of his duties;

(b) a hearing aid or similar device being used to correct subnormal hearing to not better than normal;

(c) that which is specifically designed to only record conversations to which the operator of the device is a party;

(d) that which is used in the normal course of broadcasting by radio or television; or

(e) that which is otherwise commonly used for a purpose or purposes other than overhearing or recording conversations.

In determining whether a device which is alleged to be an electronic, mechanical or other device is, in fact, such a device there shall be taken into account, among other things, the size, appearance, directivity, range, sensitivity, frequency, power, or intensity, and the representations of the maker or manufacturer as to its performance and use.

Subd. 7. **Investigative or law enforcement officer.** "Investigative or law enforcement officer" means any officer of the United States or of a state or political subdivision thereof, or a university of Minnesota peace officer who is empowered by law to conduct investigations of or to make arrests for offenses enumerated in sections 626A.01 to 626A.23, or any attorney authorized by law to prosecute or participate in the prosecution of such offenses.

Subd. 8. **Contents.** "Contents", when used with respect to any wire or oral communication, includes any information concerning the identity of the parties to such communication or the existence, substance, purport, or meaning of that communication.

Subd. 9. **Aggrieved person.** "Aggrieved person" means a person who was a party to any intercepted wire or oral communication or a person against whom the interception was directed.

Subd. 10. **Manufacturer.** "Manufacturer" means any person who is engaged in the business of manufacturing electronic, mechanical or other devices, or who otherwise produces any such device for sale or distribution.

Subd. 11. **Dealer.** "Dealer" means any person not a manufacturer who is engaged in the business of selling electronic, mechanical or other devices. The term "dealer" shall include wholesalers, retailers and dealers in used intercepting devices.

Subd. 12. **Bureau.** "Bureau" means the bureau of criminal apprehension.

Subd. 13. **Communications common carrier.** "Communications common carrier" means any individual, partnership, corporation, or association which provides telephone or telegraph service to subscribers or users pursuant to tariffs on file with the Minnesota Public Utilities Commission or the Federal Communications Commission.

**History:** 1969 c 953 s 1; 1977 c 82 s 6; 1980 c 614 s 123

## **626A.02 INTERCEPTION AND DISCLOSURE OF WIRE OR ORAL COMMUNICATIONS PROHIBITED.**

Subdivision 1. **Offenses.** Except as otherwise specifically provided in sections 626A.01 to 626A.23 any person who

(a) willfully intercepts, endeavors to intercept, or procures any other person to intercept or endeavor to intercept, any wire or oral communication;

(b) willfully uses, endeavors to use, or procures any other person to use or endeavor to use any electronic, mechanical, or other device to intercept any oral communication when

(i) such device is affixed to, or otherwise transmits a signal through, a wire, cable, or other like connection used in wire communication; or

(ii) such device transmits communications by radio, or interferes with the transmission of such communication;

(c) willfully discloses, or endeavors to disclose, to any other person the contents of any wire or oral communication, knowing or having reason to know that the information was obtained through the interception of a wire or oral communication in violation of this subdivision; or

(d) willfully uses, or endeavors to use, the contents of any wire or oral communication, knowing or having reason to know that the information was obtained through the interception of a wire or oral communication in violation

of this subdivision; shall be fined not more than \$10,000 or imprisoned not more than five years, or both.

Subd. 2. **Exemptions.** (a) It shall not be unlawful under sections 626A.01 to 626A.23 for an operator of a switchboard, or an officer, employee, or agent of any communication common carrier, whose facilities are used in the transmission of a wire communication, to intercept, disclose, or use that communication in the normal course of his employment while engaged in any activity which is a necessary incident to the rendition of his service or to the protection of the rights or property of the carrier of such communication: provided, that said communication common carriers shall not utilize service observing or random monitoring except for mechanical or service quality control checks.

(b) It shall not be unlawful under sections 626A.01 to 626A.23 for an officer, employee, or agent of the Federal Communications Commission, in the normal course of his employment and in discharge of the monitoring responsibilities exercised by the commission in the enforcement of chapter 5 of title 47 of the United States Code to intercept a wire communication, or oral communication transmitted by radio, or to disclose or use the information thereby obtained.

(c) It shall not be unlawful under sections 626A.01 to 626A.23 for a person acting under color of law to intercept a wire or oral communication, where such person is a party to the communication or one of the parties to the communication has given prior consent to such interception.

(d) It shall not be unlawful under this chapter for a person not acting under color of law to intercept a wire or oral communication where such person is a party to the communication or where one of the parties to the communication has given prior consent to such interception unless such communication is intercepted for the purpose of committing any criminal or tortious act in violation of the constitution or laws of the United States or of any state or for the purpose of committing any other injurious act.

**History:** 1969 c 953 s 2

**626A.03 MANUFACTURE, DISTRIBUTION, POSSESSION, AND ADVERTISING OF WIRE OR ORAL COMMUNICATION INTERCEPTING DEVICES PROHIBITED.**

Subdivision 1. Except as otherwise specifically provided in sections 626A.01 to 626A.23, any person who willfully

(a) manufactures, assembles, possesses, or sells any electronic, mechanical, or other device, knowing or having reason to know that the design of such device renders it primarily useful for the purpose of the surreptitious interception of wire or oral communications;

(b) places in any newspaper, magazine, handbill, or other publication any advertisement of

(i) any electronic, mechanical, or other device knowing or having reason to know that the design of such device renders it primarily useful for the purpose of the surreptitious interception of wire or oral communications; or

(ii) any other electronic, mechanical, or other device, where such advertisement promotes the use of such device for the purposes of the surreptitious interception of wire or oral communications, shall be fined not more than \$10,000 or imprisoned not more than five years, or both.

Subd. 2. It shall not be unlawful under this section for

(a) a communications common carrier or an officer, agent or employee of, or a person under contract with, a communications common carrier, in the normal course of the communications common carrier's business, or

(b) an officer, agent, or employee of, or a person under contract with, the United States, a state, or a political subdivision thereof, in the normal course of the activities of the United States, a state, or a political subdivision thereof, to manufacture, assemble, possess, or sell any electronic, mechanical, or other device knowing or having reason to know that the design of such device renders it primarily useful for the purpose of the surreptitious interception of wire or oral communication.

**History:** 1969 c 953 s 3

#### **626A.04 PROHIBITION OF USE AS EVIDENCE OF INTERCEPTED WIRE OR ORAL COMMUNICATIONS.**

Whenever any wire or oral communication has been intercepted, no part of the contents of such communication and no evidence derived therefrom may be received in evidence in any trial, hearing, or other proceeding in or before any court or grand jury if the disclosure of that information would be in violation of sections 626A.01 to 626A.23.

**History:** 1969 c 953 s 4

#### **626A.05 AUTHORIZATION FOR INTERCEPTION OF WIRE OR ORAL COMMUNICATIONS.**

Subdivision 1. **Application for warrant.** The attorney general, or not more than one assistant or special assistant attorney general specifically designated by the attorney general or a county attorney of any county or not more than one assistant county attorney specifically designated by the county attorney may make application as provided in section 626A.06, to a judge of the district court or of the supreme court for a warrant authorizing or approving the interception of wire or oral communications by investigative or law enforcement officers having responsibility for the investigation of the offense as to which the application is made. No court commissioner shall issue a warrant under sections 626A.01 to 626A.23.

Subd. 2. **Offenses for which interception of wire or oral communication may be authorized.** A warrant authorizing interception of wire or oral communications by investigative or law enforcement officers may only be issued when such interception may provide evidence of the commission of any criminal felony offense involving murder, manslaughter, aggravated assault, aggravated robbery, kidnapping, aggravated rape, prostitution, bribery, perjury, escape from custody, theft, receiving stolen property, embezzlement, burglary, forgery, aggravated forgery, gambling, and offenses relating to controlled substances, or an attempt or conspiracy to commit any such offense or said offenses, as punishable under sections 609.185, 609.19, 609.195, 609.20, 609.225, 609.245, 609.25, 609.291, 609.321 to 609.324, 609.42, 609.48, 609.485, subdivision 4, clause (1), 609.52, 609.53, 609.54, 609.58, 609.625, 609.63, 609.76, 609.825, and chapter 152.

**History:** 1969 c 953 s 5; 1971 c 24 s 56; 1973 c 704 s 1; 1976 c 253 s 1; 1979 c 255 s 8

#### **626A.06 PROCEDURE FOR INTERCEPTION OF WIRE OR ORAL COMMUNICATIONS.**

Subdivision 1. **The applications.** Each application for a warrant authorizing or approving the interception of a wire or oral communication shall be made in writing upon oath or affirmation to a judge of the district court or of the supreme court and shall state the applicant's authority to make such application. Each application shall include the following information:

(a) the identity of the investigative or law enforcement officer making the application, and the officer authorizing the application;

(b) a full and complete statement of the facts and circumstances relied upon by the applicant, to justify his belief that an order should be issued, including (i) details as to the particular offense that has been, is being, or is about to be committed, (ii) a particular description of the nature and location of the facilities from which or the place where the communication is to be intercepted, (iii) a particular description of the type of communications sought to be intercepted, (iv) the identity of the person, if known, committing the offense and whose communications are to be intercepted;

(c) a full and complete statement as to whether or not other investigative procedures have been tried and failed or why they reasonably appear to be unlikely to succeed if tried or to be too dangerous;

(d) a statement of the period of time for which the interception is required to be maintained. If the nature of the investigation is such that the authorization for interception should not automatically terminate when the described type of communication has been first obtained, a particular description of facts establishing probable cause to believe that additional communications of the same type will occur thereafter;

(e) a full and complete statement of the facts concerning all previous applications known to the individual authorizing and making the application, made to any judge for authorization to intercept, or for approval of interceptions of, wire or oral communications involving any of the same persons, facilities, or places specified in the application, and the action taken by the judge on each such application;

(f) where statements in the application are solely upon the information or belief of the applicant, the grounds for the belief must be given; and

(g) the names of persons submitting affidavits in support of the application.

**Subd. 2. Additional showing of probable cause.** The court to whom any such application is made, before issuing any warrant thereon, may examine on oath the person seeking the warrant and any witnesses he may produce, and must take his affidavit or other affidavits in writing, and cause them to be subscribed by the party or parties making the same. The court may also require the applicant to furnish additional documentary evidence or additional oral testimony to satisfy himself of the existence of probable cause for issuance of the warrant.

**Subd. 3. Finding of probable cause by the judge.** Upon such application the judge may enter an ex parte order, as requested or as modified, authorizing or approving interception of wire or oral communications within the territorial jurisdiction of the court in which the judge is sitting, if the judge determines on the basis of the facts submitted by the applicant that:

(a) there is probable cause for belief that an individual is committing, has committed, or is about to commit a particular offense enumerated in section 626A.05, subdivision 2;

(b) there is probable cause for belief that particular communications concerning that offense will be obtained through such interception;

(c) normal investigative procedures have been tried and have failed or reasonably appear to be unlikely to succeed if tried or to be too dangerous;

(d) there is probable cause for belief that the facilities from which, or the place where, the wire or oral communications are to be intercepted are being used, or are about to be used, in connection with the commission of such offense, or are leased to, listed in the name of, or commonly used by such person.

Nothing in sections 626A.01 to 626A.23 is to be considered as modifying in any way the existence or scope of those privileged communications defined in chapter 595. In acting upon an application for a warrant for intercepting communications, the potential contents of any such future communications that are within the provisions of chapter 595 shall not be considered by the court in making its finding as to the probability that material evidence will be obtained by such interception of communications.

Subd. 4. **The warrant.** Each warrant to intercept communications shall be directed to a law enforcement officer, commanding him to hold the recording of all intercepted communications conducted under said warrant in his custody subject to the further order of the court issuing the warrant. The warrant shall contain the grounds for its issuance with findings, as to the existence of the matters contained in subdivision 1 and shall also specify:

(a) the identity of the person, if known, whose communications are to be intercepted and recorded;

(b) the nature and location of the communications facilities as to which, or the place where, authority to intercept is granted, and in the case of telephone or telegraph communications the general designation of the particular line or lines involved;

(c) a particular description of the type of communication sought to be intercepted, and a statement of the particular offense to which it relates;

(d) the identity of the law enforcement office or agency authorized to intercept the communications, the name of the officer or officers thereof authorized to intercept communications, and of the person authorizing the application;

(e) the period of time during which such interception is authorized, including a statement as to whether or not the interception shall automatically terminate when the described communication has been first obtained;

(f) any other limitations on the interception of communications being authorized, for the protection of the rights of third persons;

(g) a statement that using, divulging, or disclosing any information concerning such application and warrant for intercepting communications is prohibited and that any violation is punishable by the penalties of sections 626A.01 to 626A.23.

(h) a statement that the warrant shall be executed as soon as practicable, shall be executed in such a way as to minimize the interception of communications not otherwise subject to interception under sections 626A.01 to 626A.23 and must terminate upon attainment of the authorized objective, or in any event in ten days.

Denial of an application for a warrant to intercept communications or of an application for renewal of such warrant shall be by written order that shall include a statement as to the offense or offenses designated in the application, the identity of the official applying for the warrant and the name of the law enforcement office or agency.

Subd. 5. **Duration of warrant.** No warrant entered under this section may authorize or approve the interception of any wire or oral communication for any period longer than is necessary to achieve the objective of the authorization, nor in any event longer than ten days.

The effective period of any warrant for intercepting communications shall terminate immediately when any person named in the warrant has been charged with an offense specified in the warrant.

Subd. 6. **Extensions.** Any judge of the district court or of the supreme court may grant extensions of a warrant, but only upon application for an exten-

sion made in accordance with subdivision 1 and the court making the findings required by subdivision 3. The period of extension shall be no longer than the authorizing judge deems necessary to achieve the purposes for which it was granted and in no event for longer than ten days. In addition to satisfying the requirements of subdivision 1, an application for a renewal of any warrant for intercepting communications shall also:

(a) contain a statement that all interception of communications under prior warrants has been in compliance with sections 626A.01 to 626A.23;

(b) contain a statement setting forth the results thus far obtained from the interception;

(c) state the continued existence of the matters contained in subdivision 1; and

(d) specify the facts and circumstances of the interception of communications under prior warrants which are relied upon by the applicant to show that such continued interception of communications is necessary and in the public interest.

Any application to intercept communications of a person previously the subject of such a warrant for any offense designated in a prior warrant shall constitute a renewal of such warrant.

**Subd. 7. Delivery and retention of copies.** Any warrant for intercepting communications under this section, or any order renewing a prior warrant, together with the application made therefor and any supporting papers upon which the application was based, shall be delivered to and retained by the applicant as authority for the interception of communications authorized therein. A true copy of such warrant and the application made therefor shall be retained in his possession by the judge issuing the same, and, in the event of the denial of an application for such a warrant, a true copy of the papers upon which the application was based shall in like manner be retained by the judge denying the same.

**Subd. 8. Periodic reports to issuing judge.** Whenever a warrant authorizing interception is entered pursuant to this section, the warrant may require reports to be made to the judge who issued the order showing what progress has been made toward achievement of the authorized objective and the need for continued interception. Such reports shall be made at such intervals as the judge may require.

**Subd. 9. Secrecy of warrant proceedings.** A warrant for intercepting communications and the application, affidavits, and return prepared in connection therewith, and also any information concerning the application for, the granting of, or the denial of a warrant for intercepting communications shall remain secret and subject to all the penalties of sections 626A.01 to 626A.23 for unauthorized disclosure to persons not lawfully engaged in preparing and executing such a warrant, unless and until the same shall have been disclosed in a criminal trial or proceeding or shall have been furnished to a defendant pursuant to sections 626A.01 to 626A.23.

**Subd. 10. Persons executing warrant.** A warrant for the interception of communications may in all cases be served by any of the officers mentioned in its direction, but by no other person except in aid of the officer on his requiring it, he being present and acting in its execution.

**History:** 1969 c 953 s 6

#### **626A.07 RETURN FILED BY OFFICER.**

Upon expiration of a warrant issued under section 626A.06, the officer designated in the warrant shall forthwith deliver the original warrant and accom-

panying papers to the judge issuing the same, together with a written return, verified by the certificate of the officer, setting forth:

(a) the precise description of each installation of an instrument for the interception of communications, and the designation of any telephone or telegraph lines involved in such interception;

(b) the date or dates on which interception was conducted; and

(c) an identification of all recordings made as required herein. Said recordings shall be delivered to the issuing judge with the return.

**History:** 1969 c 953 s 7

#### **626A.08 PRESERVATION OF MATERIAL OBTAINED, APPLICATIONS AND ORDERS; DESTRUCTION.**

Subdivision 1. **Material obtained.** Every part of any communication, conversation, or discussion overheard pursuant to sections 626A.01 to 626A.23 shall be completely recorded on tape or wire or other comparable device and shall be done in such manner as will protect the recording from editing or other alterations. Immediately upon the expiration of the period of the order, or extensions thereof, such recordings shall be made available to the judge issuing such order and sealed under his directions. Custody of the recordings shall be wherever the judge orders. They shall not be destroyed except upon an order of the issuing or denying judge or his successor and in any event shall be kept for ten years. Duplicate recordings may be made for use or disclosure pursuant to the provisions of section 626A.09 for investigations. The presence of the seal provided for by this subdivision, or a satisfactory explanation for the absence thereof, shall be a prerequisite for the use or disclosure of the contents of any wire or oral communication or evidence derived therefrom under section 626A.09.

Subd. 2. **Application and orders.** Applications made and warrants issued under sections 626A.01 to 626A.23 shall be sealed by the judge. Custody of the applications and orders shall be wherever the judge directs. Such applications and orders shall be disclosed only upon a showing of good cause before a judge of the district court and shall not be destroyed except on order of the issuing or denying judge, and in any event shall be kept for ten years.

Subd. 3. **Destruction of recordings.** When an order for destruction is issued the person directed to destroy such recordings shall do so in the presence of at least one witness not connected with a law enforcement office or agency, all of whom shall execute affidavits setting forth the facts and circumstances thereof. The affidavits shall be filed with and approved by the court having custody of the original warrant and supporting papers.

Subd. 4. **Contempt.** Any violation of the provisions of this section may be punished as contempt of the issuing or denying judge.

**History:** 1969 c 953 s 8

#### **626A.09 AUTHORIZATION FOR DISCLOSURE AND USE OF INTERCEPTED WIRE OR ORAL COMMUNICATIONS.**

Subdivision 1. Any investigative or law enforcement officer who, by any means authorized by sections 626A.01 to 626A.23, has obtained knowledge of the contents of any wire or oral communication, or evidence derived therefrom may disclose such contents to another investigative or law enforcement officer to the extent that such disclosure is appropriate to the proper performance of the official duties of the officer making or receiving the disclosure.

Subd. 2. Any investigative or law enforcement officer who, by any means authorized by sections 626A.01 to 626A.23, has obtained knowledge of the contents of any wire or oral communication or evidence derived therefrom may use



such contents to the extent such use is appropriate to the proper performance of his official duties.

Subd. 3. Any person who has received, by any means authorized by sections 626A.01 to 626A.23, any information concerning a wire or oral communication, or evidence derived therefrom intercepted in accordance with the provisions of sections 626A.01 to 626A.23 may disclose the contents of that communication or such derivative evidence while giving testimony under oath or affirmation in any criminal proceeding in any court of the United States or of any state or in any federal or state grand jury proceeding.

Subd. 4. No otherwise privileged wire or oral communication intercepted in accordance with, or in violation of, the provisions of sections 626A.01 to 626A.23 shall lose its privileged character.

Subd. 5. When an investigative or law enforcement officer, while engaged in intercepting wire or oral communications in the manner authorized herein, intercepts wire or oral communications relating to offenses other than those specified in the order of authorization or approval, the contents thereof, and evidence derived therefrom, may be disclosed or used as provided in subdivisions 1 and 2. Such contents and any evidence derived therefrom may be used under subdivision 3 when authorized or approved by a judge of the district court where such judge finds on subsequent application that the contents were otherwise intercepted in accordance with the provisions of sections 626A.01 to 626A.23. Such application shall be made as soon as practicable.

**History:** 1969 c 953 s 9

#### **626A.10 NOTICE TO DEFENDANT.**

Subdivision 1. **Notice of order.** Within a reasonable time but not later than 90 days after the termination of the period of a warrant or extensions thereof, the issuing or denying judge shall cause to be served, on the persons named in the warrant and the application, and such other parties to intercepted communications as the judge may determine in his discretion that is in the interest of justice, an inventory which shall include notice of:

- (1) the fact of the issuance of the warrant or the application;
- (2) the date of the issuance and the period of authorized, approved or disapproved interception, or the denial of the application; and
- (3) the fact that during the period wire or oral communications were or were not intercepted.

Subd. 2. **Notice of intent to use evidence obtained by interception of wire or oral communication.** The contents of any intercepted wire or oral communication or evidence derived therefrom shall not be received in evidence otherwise disclosed in any trial, hearing, or other proceeding in a federal or state court unless each party, not less than ten days before the trial, hearing, or proceeding, has been furnished with a copy of the court order, and accompanying application, under which the interception was authorized or approved. This ten-day period may be waived by the judge if he finds that it was not possible to furnish the party with the above information ten days before the trial, hearing, or proceeding and that the party will not be prejudiced by the delay in receiving such information.

**History:** 1969 c 953 s 10

#### **626A.11 ADMISSIBILITY OF INTERCEPTED EVIDENCE.**

Subdivision 1. **Illegally obtained evidence inadmissible.** Evidence obtained by any act of intercepting communications, in violation of section 626A.02, and all evidence obtained through or resulting from information obtained by any such act, shall be inadmissible for any purpose in any action, proceeding, or

hearing; provided, however, that any such evidence shall be admissible in any civil or criminal action, proceeding, or hearing against the person who has, or is alleged to have, violated sections 626A.01 to 626A.23.

Subd. 2. **Official available as a witness.** No evidence obtained as a result of intercepting communications pursuant to a warrant issued under section 626A.06 shall be admissible in any proceeding unless the law enforcement official or officials overhearing or recording such communication, conversation, or discussion be called or made available as witnesses subject to cross examination by the party against whom such intercepted evidence is being offered. The provisions of this clause shall not apply if the trial court finds that such law enforcement official is dead; or is out of the state; or is unable to attend or testify because of age, sickness, infirmity, or imprisonment; or that such exceptional circumstances exist as to make it desirable, in the interest of justice and with due regard to the importance of presenting such persons in open court, to allow the evidence to be received.

Subd. 3. **Failure to give notice.** In the absence of the notice to a defendant required by section 626A.10, no evidence relating to intercepted communications shall be admissible in evidence or otherwise disclosed in any criminal proceeding against the defendant.

**History:** 1969 c 953 s 11

#### **626A.12 MOTION TO SUPPRESS EVIDENCE.**

Subdivision 1. **The motion.** Any aggrieved person may move to suppress the contents of any intercepted wire or oral communication, or evidence derived therefrom on the grounds that:

- (i) the communication was unlawfully intercepted;
- (ii) the order of authorization or approval under which it was intercepted is insufficient on its face;
- (iii) the interception was not made in conformity with the order of authorization or approval;
- (iv) there was not probable cause for believing the existence of the grounds on which the warrant was issued; or
- (v) the evidence was otherwise illegally obtained.

The court shall hear evidence upon any issue of fact necessary to a determination of the motion.

If the motion is granted, the contents of the intercepted wire or oral communication, or evidence derived therefrom, shall be treated as having been obtained in violation of sections 626A.01 to 626A.23.

If the motion is denied, the order denying such may be reviewed on appeal from a judgment of conviction notwithstanding the fact that such judgment of conviction is predicated upon a plea of guilty.

Subd. 2. **Time of making motion.** Upon receiving the notice required to be given by section 626A.10, subdivision 2, a defendant shall make his motion to suppress prior to the commencement of any trial or hearing in which the communications or conversations claimed to have been unlawfully obtained are proposed to be offered as evidence, except that the court shall entertain a motion made for the first time during trial upon a showing that (a) the defendant was unaware of the interception of communications until after the commencement of the trial, or (b) the defendant obtained material evidence previously unavailable to him indicating it was unlawfully obtained, or (c) the defendant has not had adequate time or opportunity to make the motion before trial.

If a motion has been made and denied before trial, the determination shall be binding upon the trial court, except that, if it is established that, after the

making of such motion, the defendant obtained additional material evidence of unlawfulness which could not have been obtained with reasonable diligence before the making of the motion, the court shall entertain another motion, or a renewal of a motion, during the trial.

When the motion is made before trial, the trial shall not be commenced until the motion has been determined.

When the motion is made during trial, the court shall, in the absence of the jury, if there be one, hear evidence in the same manner as if the motion had been made prior to trial, and shall decide all issues of fact and law.

If no motion is made in accordance with the provisions of this section, the defendant shall be deemed to have waived any objection during trial to the admission of evidence based on the ground that such evidence was unlawfully obtained.

**Subd. 3. Where motion made.** The motion shall be made in the court having jurisdiction of the trial, hearing, or proceeding in which the evidence is being sought to be used.

**Subd. 4. Examination of communications by court.** In any motion made under this section, if the court finds necessary to the determination of such motion to consider the contents of the intercepted communications in question, and the state does not consent to the examination thereof by the moving party, the court may order the state to deliver such recordings and any transcripts of the same for the inspection of the court in camera. Upon such delivery the court shall rule on the motion, and if the moving party objects to such ruling, and the trial is continued to an adjudication of the guilt of the moving party, the entire recordings shall be preserved by the state, and, in the event the defendant appeals, shall be made available to the appellate court for the purpose of determining the correctness of the ruling of the trial judge.

**Subd. 5. Appeal by state.** The state shall be allowed to appeal from an order granting a motion to suppress evidence obtained through intercepted communications, if the prosecuting attorney shall certify to the judge or other official granting such motion that the appeal is not taken for purposes of delay. Such appeal shall be taken within 30 days after the date the order was entered and shall be diligently prosecuted. The appeal shall be made pursuant to the provisions of sections 632.11 to 632.13.

**History:** 1969 c 953 s 12

### 626A.13 CIVIL REMEDIES.

Any person whose wire or oral communication is intercepted, disclosed, or used in violation of sections 626A.01 to 626A.23 shall (1) have a civil cause of action against any person who intercepts, discloses, or uses, or procures any other person to intercept, disclose, or use such communications, and (2) be entitled to the following remedies:

(a) to an injunction by any court of competent jurisdiction prohibiting further interception or use or divulgence by the person involved;

(b) to treble damages against the person or persons committing such interception, divulgence, or use, but in no event shall such recovery be less than \$1,000;

(c) to any punitive damages that may be awarded by the court or jury; and

(d) a reasonable attorney's fee and other litigation costs reasonably incurred.

A good faith reliance on a court order shall constitute a complete defense to any civil or criminal action brought under sections 626A.01 to 626A.23. Good faith reliance by a telephone or telegraph company on a warrant issued pursuant

to sections 626A.01 to 626A.23, or on provisions of sections 626A.01 to 626A.23 requiring action by such company, shall constitute a complete defense to any civil action brought under sections 626A.01 to 626A.23.

**History:** 1969 c 953 s 13

#### **626A.14 OBTAINING TELEPHONE AND TELEGRAPH COMPANY INFORMATION.**

No person shall:

(a) by trick or false representation or impersonation, obtain or attempt to obtain from any officer or any employee of any telegraph or telephone company information concerning the identification or location of any wires, cables, lines, terminals, or other apparatus used in furnishing telegraph or telephone service, or any information concerning any communication passing over telegraph or telephone lines of any such company, or the existence, content, or meaning of any record thereof; or

(b) by trick or false representation or impersonation, obtain or attempt to obtain access to any premises or to installations of any telegraph or telephone company upon such premises.

**History:** 1969 c 953 s 14

#### **626A.15 DUTY TO REPORT VIOLATIONS.**

Any officer or employee of a telephone or telegraph company shall report to the police department or county attorney having jurisdiction, any violation of sections 626A.01 to 626A.23 coming to his attention.

**History:** 1969 c 953 s 15

#### **626A.16 TELEPHONE COMPANY TO AID IN DETECTION.**

Subject to regulation by the Minnesota public utilities commission, any telephone or telegraph company shall, upon request of any subscriber and upon responsible offer to pay the reasonable cost thereof, and with the discretion of the carrier; subject, however, to an appropriate court order to furnish whatever services may be within its command for the purpose of detecting any unlawful interception of communications. All such requests by subscribers shall be subject to the provisions of section 626A.05 and the company shall disclose only the existence or absence of interception that is not the subject of a court order under that section. All such requests by subscribers shall be kept confidential unless divulgence is authorized in writing by the requesting subscriber.

**History:** 1969 c 953 s 16; 1980 c 614 s 123

#### **626A.17 REPORT, CONCERNING INTERCEPTION OF COMMUNICATIONS.**

Subdivision 1. **Reports and transmittal of documents to court administrator.** Within 30 days after the expiration of an order granting or denying an application, or each extension thereof, or the denial of an order approving an interception, the issuing or denying judge shall report to the court administrator:

- (a) the fact that an order or extension was applied for;
- (b) the kind of order or extension applied for;
- (c) the fact that the order or extension was granted as applied for, was modified, or was denied;
- (d) the period of interceptions authorized by the order, and the number and duration of any extensions of the order;
- (e) the offense specified in the order or application, or extension of an order;

- (f) the identity of the applying investigative or law enforcement officer and agency making the application and the person authorizing the application; and
- (g) the nature of the facilities from which or the place where communications were to be intercepted.

Subd. 2. **Report by county attorney.** No later than January 15 of each year each county attorney shall report to the court administrator:

(a) with respect to each application for an order or extension made during the preceding year:

- (1) the fact that an order or extension was applied for;
- (2) the kind of order or extension applied for;
- (3) the fact that the order or extension was granted as applied for, was modified, or was denied;
- (4) the period of interceptions authorized by the order, and the number and duration of any extensions of the order;
- (5) the offense specified in the order or application, or extension of an order;

(6) the identity of the applying investigative or law enforcement officer and agency making the application and the person authorizing the application; and

(7) the nature of the facilities from which or the place where communications were to be intercepted.

(b) a general description of the interceptions made under such order or extension, including (i) the approximate nature and frequency of incriminating communications intercepted, (ii) the approximate nature and frequency of other communications intercepted, (iii) the approximate number of persons whose communications were intercepted, and (iv) the approximate nature, amount, and cost of the manpower and other resources used in the interceptions;

(c) the number of arrests resulting from interceptions made under such order or extension, and the offenses for which arrests were made;

(d) the number of trials resulting from such interceptions;

(e) the number of motions to suppress made with respect to such interceptions, and the number granted or denied;

(f) the number of convictions resulting from such interceptions and the offenses for which the convictions were obtained and a general assessment of the importance of the interceptions; and

(g) the information required by paragraphs (b) through (f) of this subdivision with respect to orders or extensions obtained in a preceding calendar year.

Subd. 3. **Report to legislature by court administrator.** On or before November 15 of each even numbered year, the court administrator shall transmit to the legislature a report concerning (a) all warrants authorizing the interception of communications during the two previous calendar years and (b) all applications that were denied during the two previous calendar years. Each such report shall include a summary and analysis of the data required to be filed under this section.

**History:** 1969 c 953 s 17; 1971 c 81 s 2; 1974 c 406 s 74

### 626A.18 ILLEGAL TRANSFERS OF INTERCEPTING DEVICES.

No person shall receive an electronic, mechanical or other device, knowing or having reasonable cause to believe that such electronic, mechanical or other device has been sold or transported in violation of the provisions of sections 626A.01 to 626A.23. Whenever on the trial for a violation of sections 626A.01 to 626A.23 the defendant is shown to have or have had possession of such electronic, mechanical or other device, such device shall be deemed sufficient evi-

dence to authorize conviction unless the defendant explains such possession to the satisfaction of the jury.

**History:** 1969 c 953 s 18

#### **626A.19 FORFEITURES.**

Subdivision 1. **Laws applicable.** Any electronic, mechanical or other device involved in any violation of the provisions of sections 626A.01 to 626A.23 or any regulation promulgated thereunder, or which has come into the custody of a law enforcement officer and the title thereto cannot be ascertained, shall be subject to seizure and forfeiture.

Subd. 2. **Disposal.** In the case of any forfeiture under this section no notice of public sale shall be required and no such electronic, mechanical or other device shall be sold at public sale. Such device shall be delivered to the bureau who may order the same destroyed or may sell or transfer the same without charge to the state of Minnesota or any political subdivision thereof for official use.

**History:** 1969 c 953 s 19

#### **626A.20 SUSPENSION OR REVOCATION OF LICENSES.**

On the conviction of any person of the violation of any provision of this chapter, a copy of the judgment and sentence, and of the opinion of the court, if any opinion be filed, shall be sent by the clerk of the court to the board or officer, if any, by whom the convicted defendant has been licensed or registered to practice his profession or to carry on his business. On the conviction of any such person, such board or officer may, in its discretion, suspend or revoke the license or registration of the convicted defendant to practice his profession or to carry on his business. On the application of any person whose license or registration has been suspended or revoked, and upon proper showing and for good cause the board or officer may, in its discretion, reinstate such license or registration.

**History:** 1969 c 953 s 20

#### **626A.21 OFFENSES COMMITTED PRIOR TO EFFECTIVE DATE.**

Nothing contained in any provision of sections 626A.01 to 626A.23 applies to any offense committed, or other act done, at any time before July 1, 1969. Such an offense must be punished according to, and such act must be governed by, the provisions of law existing when it is done or committed, in the same manner as if sections 626A.01 to 626A.23 had not been passed.

**History:** 1969 c 953 s 21

#### **626A.22 SUBJECT TO OTHER LAWS.**

Nothing in sections 626A.01 to 626A.23 shall be deemed to authorize any conduct constituting a violation of any law of the United States.

**History:** 1969 c 953 s 22

#### **626A.23 CITATION.**

Sections 626A.01 to 626A.23 may be cited as the Privacy of Communications Act.

**History:** 1969 c 953 s 23