

CHAPTER 626A

PRIVACY OF COMMUNICATIONS

626A.02	Interception and disclosure of wire or oral communications prohibited.	626A.35	General prohibition on pen register, trap and trace device, and mobile tracking device use; exception.
626A.04	Prohibition of use as evidence of intercepted wire, oral, or electronic communications.	626A.36	Application for an order for a pen register, trap and trace device, or mobile tracking device.
626A.06	Procedure for interception of wire or oral communications.	626A.37	Issuance of an order for a pen register, trap and trace device, or mobile tracking device.
626A.065	Emergency interception.	626A.38	Register, trap and trace device, or mobile tracking device.
626A.11	Admissibility of intercepted evidence.	626A.381	Service or notice; inventory.
626A.12	Motion to suppress evidence.	626A.39	Definitions.
626A.17	Report, concerning interception of communications.	626A.391	Civil action; damages.
626A.22	Repealed.	626A.40	Subject to other laws.
626A.23	Repealed.	626A.41	Citation.
626A.24	Repealed.		

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

[For text of subs 1 and 2, see M.S.1988]

Subd. 3. **Disclosing communications.** (a) Except as provided in paragraph (b), a person or entity providing an electronic communications service to the public must not intentionally divulge the contents of any communication other than one to the person or entity, or an agent of the person or entity, while in transmission on that service to a person or entity other than an addressee or intended recipient of the communication or an agent of the addressee or intended recipient.

(b) A person or entity providing electronic communication service to the public may divulge the contents of a communication:

- (1) as otherwise authorized in subdivision 2, paragraph (a), and section 626A.09;
- (2) with the lawful consent of the originator or any addressee or intended recipient of the communication;
- (3) to a person employed or authorized, or whose facilities are used, to forward the communication to its destination; or
- (4) that were inadvertently obtained by the service provider in the normal course of business if there is reason to believe that the communication pertains to the commission of a crime, if divulgence is made to a law enforcement agency.

[For text of subs 4 and 5, see M.S.1988]

History: 1989 c 336 art 1 s 1

626A.04 PROHIBITION OF USE AS EVIDENCE OF INTERCEPTED WIRE, ORAL, OR ELECTRONIC COMMUNICATIONS.

Whenever any wire, oral, or electronic 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: 1989 c 336 art 1 s 2

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, electronic, or oral communication shall be made

in writing upon oath or affirmation to a judge of the district court, of the court of appeals, 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 the applicant's 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) except as provided in subdivision 11, 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, electronic, 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.

[For text of subs 2 to 4, see M.S.1988]

Subd. 4a. Personnel used. An interception under sections 626A.01 to 626A.23 may be conducted in whole or in part by an employee of the state or any subdivision of the state who is an investigative or law enforcement officer authorized to conduct the investigation.

[For text of subs 5 to 12, see M.S.1988]

History: 1989 c 336 art 1 s 3; art 2 s 5

626A.065 EMERGENCY INTERCEPTION.

Notwithstanding any other provision in sections 626A.01 to 626A.23, any investigative or law enforcement officer, specially designated by the attorney general or a county attorney, who:

(1) reasonably determines that:

(i) an emergency situation exists that involves immediate danger of death or serious physical injury to any person that requires a wire, oral, or electronic communication to be intercepted before a warrant authorizing such interception can, with due diligence, be obtained; and

(ii) there are grounds upon which a warrant could be issued under sections 626A.01 to 626A.23 to authorize the interception; and

(2) obtains approval from a judge of the district court, of the court of appeals, or of the supreme court,

may intercept the wire, oral, or electronic communication. The judge's approval may be given orally and may be given in person or by using any medium of communication.

The judge shall do one of the following: make written notes summarizing the conversation, tape record the conversation, or have a court reporter record the conversation. An application for a warrant approving the interception must be made in accordance with section 626A.06 within 36 hours after the interception has occurred, or begins to occur. In the absence of a warrant, the interception must immediately end when the communication sought is obtained or when the application for the warrant is denied, whichever is earlier. If application for approval is denied, or in any other case where the interception is ended without a warrant having been issued, the contents of a wire, oral, or electronic communication intercepted must be treated as having been obtained in violation of sections 626A.01 to 626A.23 and an inventory shall be served as provided for in section 626A.10 on the person named in the application.

History: 1989 c 336 art 2 s 6.

626A.11 ADMISSIBILITY OF INTERCEPTED EVIDENCE.

Subdivision 1. Illegally obtained evidence inadmissible. Evidence obtained by any act of intercepting wire, oral, or electronic 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 wire, oral, or electronic communications pursuant to a warrant issued under section 626A.06 shall be admissible in any proceeding unless the person or persons 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 person 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.

[For text of subds 3 and 4, see M.S.1988]

History: 1989 c 336 art 1 s 4,5

626A.12 MOTION TO SUPPRESS EVIDENCE.

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

- (i) the wire, oral, or electronic 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, oral, or electronic 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. 1a. [Repealed, 1989 c 336 art 1 s 17]

[For text of subds 2 to 5, see M.S.1988]

History: 1989 c 336 art 1 s 6

626A.17 REPORT, CONCERNING INTERCEPTION OF COMMUNICATIONS.

Subdivision 1. Reports and transmittal of documents to state court administrator. Within 30 days after the expiration of an order granting or denying an application under this chapter, or each extension thereof, or the denial of an order approving an interception or the use of a pen register, trap and trace device, or mobile tracking device, the issuing or denying judge shall report to the state 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 or use of a pen register, trap and trace device, or mobile tracking device 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 or activity under the order was to be carried out.

Subd. 2. Report by county attorney. No later than January 15 of each year each county attorney shall report to the state 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 or use of a pen register, trap and trace device, or mobile tracking device 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 or activity under the order was to be carried out;
- (b) a general description of the interceptions made or information obtained under such order or extension, including (i) the approximate nature and frequency of incriminating communications intercepted or evidence obtained, (ii) the approximate nature and frequency of other communications intercepted, (iii) the approximate number of persons whose communications were intercepted or whose activities were monitored, and (iv) the approximate nature, amount, and cost of the personnel and other resources used in the interceptions or the use of the pen register, trap and trace device, or mobile tracking device;
- (c) the number of arrests resulting from interceptions made or activity conducted under such order or extension, and the offenses for which arrests were made;
- (d) the number of trials resulting from such interceptions or activity;
- (e) the number of motions to suppress made with respect to such interceptions or activity, and the number granted or denied;

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

(g) the information required by clauses (b) to (f) with respect to orders or extensions obtained in a preceding calendar year.

Subd. 3. Report to legislature by state court administrator. On or before November 15 of each even-numbered year, the state court administrator shall transmit to the legislature a report concerning (a) all warrants and orders authorizing the interception of communications and the use of a pen register, trap and trace device, mobile tracking device, or other electronic or mechanical device during the two previous calendar years and (b) all applications that were denied during the two previous calendar years. Each report shall include a summary and analysis of the data required to be filed under this section. The report is public and must be available for public inspection at the legislative reference library and the state court administrator's office.

History: 1989 c 336 art 1 s 7

626A.22 [Repealed, 1989 c 336 art 1 s 17]

626A.23 [Repealed, 1989 c 336 art 1 s 17]

626A.24 [Repealed, 1989 c 336 art 1 s 17]

626A.35 GENERAL PROHIBITION ON PEN REGISTER, TRAP AND TRACE DEVICE, AND MOBILE TRACKING DEVICE USE; EXCEPTION.

Subdivision 1. In general. Except as provided in this section, no person may install or use a pen register, trap and trace device, or mobile tracking device without first obtaining a court order under section 626A.37.

Subd. 2. Exception. The prohibition of subdivision 1 does not apply with respect to the use of a pen register or a trap and trace device by a provider of electronic or wire communication service:

(1) relating to the operation, maintenance, and testing of a wire or electronic communication service or to the protection of the rights or property of the provider, or to the protection of users of that service from abuse of service or unlawful use of service; or

(2) to record the fact that a wire or electronic communication was initiated or completed in order to protect the provider, another provider furnishing service toward the completion of the wire communication, or a user of that service, from fraudulent, unlawful, or abusive use of service; or

(3) where the consent of the user of that service has been obtained.

Subd. 2a. Exception. The prohibition of subdivision 1 does not apply to the use of a mobile tracking device where the consent of the owner of the object to which the mobile tracking device is to be attached has been obtained.

Subd. 3. Penalty. Whoever knowingly violates subdivision 1 shall be fined not more than \$3,000 or imprisoned not more than one year, or both.

History: 1989 c 336 art 1 s 8

626A.36 APPLICATION FOR AN ORDER FOR A PEN REGISTER, TRAP AND TRACE DEVICE, OR MOBILE TRACKING DEVICE.

Subdivision 1. Application. An investigative or law enforcement officer with responsibility for an ongoing criminal investigation may make application for an order or an extension of an order under section 626A.37 authorizing or approving the installation and use of a pen register, trap and trace device, or mobile tracking device under sections 626A.35 to 626A.39, in writing under oath or equivalent affirmation, to a district court.

Subd. 2. Contents of application. An application under subdivision 1 must include:

(1) the identity of the law enforcement or investigative officer making the applica-

tion, the identity of any other officer or employee authorizing or directing the application, and the identity of the law enforcement agency conducting the investigation; and

(2) a statement of the facts and circumstances relied upon by the applicant to justify the applicant's belief that an order should be issued.

History: 1989 c 336 art 1 s 9

626A.37 ISSUANCE OF AN ORDER FOR A PEN REGISTER, TRAP AND TRACE DEVICE, OR MOBILE TRACKING DEVICE.

Subdivision 1. **In general.** Upon an application made under section 626A.36, the court may enter an ex parte order authorizing the installation and use of a pen register, trap and trace device, or mobile tracking device within the jurisdiction of the court if the court finds on the basis of the information submitted by the applicant that there is reason to believe that the information likely to be obtained by the installation and use is relevant to an ongoing criminal investigation.

Subd. 2. **Contents of order.** (a) An order issued under this section must specify:

(1) the identity, if known, of the person to whom is leased or in whose name is listed the telephone line to which the pen register or trap and trace device is to be attached or of the person to be traced by the mobile tracking device;

(2) the identity, if known, of the person who is the subject of the criminal investigation;

(3) the number and, if known, physical location of the telephone line to which the pen register or trap and trace device is to be attached or the identity or nature of the object or objects to which the mobile tracking device is to be attached, and, in the case of a trap and trace device, the geographic limits of the trap and trace order;

(4) a statement of the offense to which the information likely to be obtained by the pen register, trap and trace device, or mobile tracking device relates;

(5) the identity of the law enforcement or investigative officer responsible for installation and use of the pen register, trap and trace device, or mobile tracking device; and

(6) the period during which the use of the pen register, trap and trace device, or mobile tracking device is authorized.

(b) An order issued under this section must direct, upon the request of the applicant, the furnishing of information, facilities, and technical assistance necessary to accomplish the installation of the pen register, trap and trace device, or mobile tracking device under section 626A.38.

Subd. 3. **Time period and extensions.** (a) An order issued under this section must authorize the installation and use of a pen register, a trap and trace device, or a mobile tracking device for a period not to exceed 60 days, or the period necessary to achieve the objective of the authorization, whichever is less.

(b) Extensions of an order may be granted, but only upon an application for an order under section 626A.36 and upon the judicial finding required by subdivision 1. The extension must include a statement of any changes in the information required in subdivision 2. The period of extension must be for a period not to exceed 60 days, or the period necessary to achieve the objective for which it is granted, whichever is less.

Subd. 4. **Nondisclosure of existence of pen register, trap and trace device, or mobile tracking device.** An order authorizing or approving the installation and use of a pen register, trap and trace device, or a mobile tracking device must direct that:

(1) the order be sealed until otherwise ordered by the court; and

(2) the person owning or leasing the line to which the pen register or a trap and trace device is attached, or who has been ordered by the court to provide assistance to the applicant, not disclose the existence of the pen register, trap and trace device, mobile tracking device, or the existence of the investigation to the listed subscriber, or to any other person, unless or until otherwise ordered by the court.

Subd. 5. **Jurisdiction.** A warrant or other order for a mobile tracking device issued

under this section or other authority may authorize the use of a mobile tracking device within the jurisdiction of the court and outside of that jurisdiction as long as the device is installed in the jurisdiction.

History: 1989 c 336 art 1 s 10

626A.38 REGISTER, TRAP AND TRACE DEVICE, OR MOBILE TRACKING DEVICE.

Subdivision 1. Pen registers or mobile tracking devices. Upon the request of an officer of a law enforcement agency authorized to install and use a pen register or mobile tracking device under sections 626A.35 to 626A.39, a provider of wire or electronic communication service, landlord, custodian, or other person shall furnish the investigative or law enforcement officer immediately with all information, facilities, and technical assistance necessary to accomplish the installation of the pen register or mobile tracking device unobtrusively and with a minimum of interference with the services that the person so ordered by the court accords the party with respect to whom the installation and use is to take place, if the assistance is directed by a court order as provided in section 626A.37, subdivision 2, paragraph (b).

[For text of subds 2 to 4, see M.S.1988]

Subd. 5. [Repealed, 1989 c 336 art 1 s 17]

History: 1989 c 336 art 1 s 11

626A.381 SERVICE OR NOTICE; INVENTORY.

Subdivision 1. Notice required. Except as provided in subdivision 2, within a reasonable time not later than 90 days after the filing of an application under section 626A.36, if the application is denied, or of the termination of an order, as extended under section 626A.37, the issuing or denying judge shall have served on the persons named in the order or application an inventory that includes notice of:

- (1) the fact of the entry of the order or the application;
- (2) the date of the entry and the period of authorized, approved, or disapproved activity under the order, or the denial of the application; and
- (3) the fact that during the period, activity did or did not take place under the order.

Subd. 2. Exception. On an ex parte showing of good cause, a judge may postpone or dispense with service of the inventory required by this section.

Subd. 3. Inspection. The judge, upon the filing of a motion, may make available to a person or the person's counsel portions of the results of activity under the order or referred to in the application, or the order or application as the judge determines is in the interest of justice.

History: 1989 c 336 art 1 s 12

626A.39 DEFINITIONS.

[For text of subds 1 to 4, see M.S.1988]

Subd. 5. Mobile tracking device. "Mobile tracking device" means an electronic or mechanical device that permits the tracking of the movement of a person or object.

History: 1989 c 336 art 1 s 13

626A.391 CIVIL ACTION; DAMAGES.

Subdivision 1. General. A person who is harmed by a violation of sections 626A.35 to 626A.39 may bring a civil action against the person who violated these sections for damages and other appropriate relief, including:

- (1) preliminary and equitable or declaratory relief; and

(2) reasonable costs and attorneys fees.

Subd. 2. **Limitation.** An action under this section must be commenced within two years after:

(1) the occurrence of the violation; or

(2) the date upon which the claimant first had a reasonable opportunity to discover the violation.

Subd. 3. **Defenses.** (1) A good faith reliance on a court warrant or order, a grand jury subpoena, or a statutory authorization; or

(2) A good faith reliance on a request of an investigative or law enforcement officer under United States Code, title 18, section 2518(7)

is a complete defense against any civil or criminal action brought under sections 626A.35 to 626A.39.

History: 1989 c 336 art 1 s 14

626A.40 SUBJECT TO OTHER LAWS.

Nothing in this chapter authorizes conduct constituting a violation of any law of the United States.

History: 1989 c 336 art 1 s 15

626A.41 CITATION.

This chapter may be cited as the privacy of communications act.

History: 1989 c 336 art 1 s 16