

WIRETAP REPORTING INSTRUCTIONS

(Revised September 1, 2009)



Prepared by:
DATA MANAGEMENT BRANCH
STATISTICS DIVISION
OFFICE OF JUDGES PROGRAMS
ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS
WASHINGTON D.C.

INSTRUCTIONS FOR REPORTING INTERCEPTS, WIRE, ORAL, OR ELECTRONIC COMMUNICATIONS

Introduction

Under Title 18, United States Code, Section 2519, the Administrative Office of the U.S. Courts is required to transmit to Congress a report on the number of applications for orders authorizing or approving the interception of wire, oral, or electronic communications. These regulations are issued in accordance with Title 18, U.S.C., Section 2519(3), and prescribe the form of the annual reports required to be filed with the Director of the Administrative Office of the United States Courts. Reports must be filed by:

- a. any state or federal judge approving or denying an application for a court order authorizing the interception of a wire, oral, or electronic communication; and
 - b. any state or federal prosecuting official who has authorized an application for a court order to permit an interception of wire, oral, or electronic communication by an investigative or law enforcement officer.
1. Judges required by law to file reports include:
 - a. a judge of any court of general criminal jurisdiction of a State who is authorized by a specific statute of that State to sign orders authorizing interceptions of wire, oral, or electronic communications, including judges in the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States;
 - b. a judge of a United States court of appeals; and
 - c. a judge of a United States district court.
 2. Prosecuting officials required by law to file reports include:
 - a. the Attorney General of the United States or designee;
 - b. the Attorney General or principal prosecuting officer of a State, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States; and
 - c. the principal prosecuting attorney for any political subdivision of a State at the county level or above.

Report Forms

1. **Annual Prosecutor Summary (Form WT-1)** - This form is used by the prosecutor to provide a summary of the number of interceptions being reported for the year, including information required by the U. S. Congress on the number of wiretaps where encryption was encountered. The WT1 form is to be submitted to the Administrative Office of the U. S. Courts, Attn: Statistics Division (WT), One Columbus Circle, N.E., Washington D.C. 20544. The form can also be faxed to the Administrative Office (AO) at 202-502-1422 or 1411 or emailed to SD-Wiretap@ao.uscourts.gov.
2. **Report of Application and/or Order Authorizing Interception of Communication (Form WT-2)** - This form is used to report a wiretap for the first time. The form is divided into two sections, one to be completed upon approval or denial of the application and the second upon termination of the investigation:
 - a. Part 1 is the judge's report and should be completed by the clerical staff of the judge authorizing or denying the application. A photocopy of the form (with Part 1 completed) is submitted to the Administrative Office of the U.S. Courts by the judge or clerks office.
 - b. Part 2 is the prosecuting official's report and is to be completed and signed by the prosecutor upon termination of the investigation. For federal wiretaps, the original form (with both Parts completed) is first forwarded to the law enforcement agency contact official. The contact official will then send the completed forms to DOJ, Office of Enforcement Operations in Washington D.C. The Office of Enforcement Operations will finally submit the reviewed forms to the AO. Wiretaps from state and local jurisdictions (with both parts completed) are forwarded directly to the AO. A photocopy should be retained for the prosecutor's files.
3. **Supplementary Report for Wiretaps Reported in Previous Calendar Years (Form WT-3)** - This form should be used by the prosecutors to report any additional activity on interceptions which were already reported to the AO in previous years. If there has been no additional activity, do not submit a "No Activity" report.

When to File Reports

1. Reports by judges are to be submitted according to the following timetable:
 - a. if the application is approved, the report is to be submitted on or before the 30th day following the expiration of the order and all extensions of it, or
 - b. if the application is denied, the report is to be submitted on or before the 30th day following the denial.
2. Reports by prosecuting officials are required to be filed on or before **January 31** of each year for each application whose period of interception expired during the previous calendar year.
3. Reports by both officials are to be filed only when the period of interception permitted by the court order has expired. No interim reports are to be made.

4. A report to the AO is not required in the following cases:
 - a. when the order is issued at the request of, or with the consent of, one of the principal parties to the communication; for example, a wire interception to investigate obscene telephone calls, where the interception device was installed at the request of the victim;
 - b. when a police officer or police informant is a party to the communication;
 - c. when only a body microphone is used;
 - d. when a pen register (a mechanical device attached to telephone lines to record all numbers dialed from that line) is used alone. **NOTE:** A pen register, used in conjunction with any wiretap that does come within the statutory prohibition, must be reported; or
 - e. a federal wiretap case that is sealed for security purposes (i.e. terrorist cases) or as part of an ongoing investigation.

Do not submit a “No Activity” report if there has been no interception activity during the calendar year.

General Reporting Guidelines

Part 1 (Judge’s Report)

1. When part 1 (Judge’s Report) is completed, a copy should be submitted to:
Administrative Office of the U.S. Courts, Attn: Statistics Division (WT)
One Columbus Circle, N.E.
Washington D.C. 20544

The forms can also be faxed to the AO at 202-502-1422 or 1411 or emailed to SD-Wiretap@ao.uscourts.gov.,

2. Provide the form WT-2 to the official making the application, and
3. Retain a copy for the judge’s file.

Part 2 (Prosecutor’s Report)

State Jurisdictions

Send completed Part 1 and Part 2 via mail, fax or e-mail (see information above).

Federal Jurisdictions

- a. Submit completed Part 1 and Part 2 to the federal law enforcement agency contact official,
- b. Federal law enforcement agency contact official should send completed Part 1 & 2 to the Office of Enforcement Operations, DOJ, Washington D.C.

Completing Form WT-1, Annual Prosecutor Summary

When all of the reports for individual wiretaps for the year have been compiled and prepared for submission, the prosecutor should complete a Form WT-1 to summarize the reports being submitted for the jurisdiction. The report contains two sections, one related to wiretaps terminated in the current year and a second related to wiretaps terminated in earlier years but being reported this year for the first time. For each of the two sections, report:

1. **Number of Reports Submitted** - indicate the number of WT-2 reports being submitted (should equal the sum of Items 2 and 3 below);
2. **Number of Applications Denied** - indicate the number of WT-2 reports being submitted (as indicated in Item 1 above) where the application was denied;
3. **Number of Applications Granted** - indicate the number of WT-2 reports being submitted (as indicated in Item 1 above) where the application was granted;
4. **Number Where Encryption Was Encountered** - indicate the number of WT-2 reports being submitted (as indicated in Item 3 above) where encryption of any kind was encountered; and
5. **Of Those With Encryption, Number Where Encryption Prevented Law Enforcement from Obtaining the Plain Text of Communication Intercepted** - indicate the number of WT-2 reports where encryption was involved (as indicated in Item 4 above) AND said encryption prevented law enforcement from obtaining the plain text of the communication.

NOTE: For items 4 and 5 above, only indicate the number of the reports involved. Do NOT include on either the WT-1 or WT-2 forms any information that indicates which reports involved encryption.

Completing Form WT-2 - Report of Application and/or Order Authorizing Interception of Communication

Part 1- Judge's Report (Items 1-8)

When the period of interception (including all extensions) permitted by the court has expired, the prosecuting official should complete items 1 through 8.

A report must be submitted for each order. If one application results in two orders authorizing interception of communication, then two reports must be filed with the AO. In the case of an extension of an intercept, report all information concerning the original order and each extension of that order on a single reporting form. **Applications that are denied by a judge must also be reported.**

Item 1. Judge Authorizing or Denying the Application

Provide the name of the judge(s) authorizing or denying the interception, the jurisdiction of the judge and the court reference number.

Item 2. Source - Official Making Application

Provide the name, title, jurisdiction or agency and telephone number of the official making the application.

Item 3. Source - Prosecution Official Authorizing Application

Provide the name, district or jurisdiction, reference number and the telephone number of the prosecutor or DAAG who authorized the application.

Item 3A. Law Enforcement Agency Conducting the Wiretap

Provide the agency's name, contact person, telephone number and agency reference number of the law enforcement agency conducting the wiretap.

Item 4. Offense

Provide the most serious offense specified in the order or application for an extension of the order. A general description such as terrorism, computer fraud, gambling, narcotics, racketeering, etc. will suffice. **DO NOT** cite the offense by title and section. The following controls should be used to determine the most serious offense:

- a. When two or more offenses are specified in the application, the offense with the maximum statutory sentence is to be classified as the most serious.
- b. When two of the offenses have the same maximum sentence, a crime against a person takes priority over a crime against property.

Item 5. Type of Order

Check the appropriate box to indicate whether the order authorizing the intercept was an ordinary specification order which requires a particular description of the type and location of the intercept device, or whether the order was a roving - relaxed specificity order (as defined in 18 U.S.C. 2518(11)) which allowed a less explicit description. If the order was a roving - relaxed specificity order, the category "No Location Specified" should be checked in item 8 on the form.

Item 6. Duration of Intercept:

Original Request

Provide the number of days requested and the date of the application. Check the appropriate box to show whether the application was denied or granted and the date order was denied or granted. If the application was granted with modifications or was amended, check the box provided and indicate the date.

Extensions

For each extension (if any) provide all information as required for Original Request above.

Total Number of Extensions

Insert the total number of extensions authorized for the wiretap.

Total Days Authorized

Insert the total number of days authorized by adding the number of days authorized in the original request to the number of days authorized in any extension(s).

Item 7. Type of Intercept

Check the appropriate box to indicate whether the application was for (1) a wire intercept of a telephone communication, (2) an intercept of an oral communication, or (3) an intercept of an electronic communication. Within the general category, also check the appropriate box to indicate the specific type of intercept requested.

Item 8. Location Shown in Intercept Order

Check the appropriate box to indicate the facilities where the communications were to be intercepted. The following definitions are to be used in making this determination:

Personal Residence - includes single family dwelling (detached home, semi-detached, townhouse, row house, duplex), apartment (garden style, low rise, high rise, self contained private room or apartment within a house or condominium), mobile home/trailer, multiple dwelling (boarding house with common telephones, dormitory, fraternity/sorority house, nursing home), etc.

Business - includes store, office, restaurant, gym, hospital, school, government agency, etc.

Public Area - includes pay telephone, park, station, airport, library, street, cemetery, etc.

Portable Device - Carried By/On Individual - includes cell phone, pager, etc.

Other Location - includes motel, prison, jail, vehicle, etc. or other specified location not covered by any other category.

No Location Specified In Order - Check this box only if a Relaxed Specification Order was authorized pursuant to Title 18 U.S.C. Section 2518(11). This box is checked only if "Relaxed" is checked under item 5, "Type of Order."

Reports should not disclose the name, address or phone number of any individual whose communication may have been intercepted, the specific address where the intercept was installed, or the telephone number which was tapped. The AO is not authorized to collect this information.

When Part 1 of the form has been completed by the prosecutor, it is to be forwarded to the judge who authorized or denied the intercept for signature.

NOTE: The authorizing or denying judge is required to file a report with the Administrative Office of the U. S. Courts within 30 days of the expiration of the order (including all extensions). Therefore, the report must be submitted to the judge within this time-frame.

Completing Form WT-2 (Part 2) - Items 9 through 13

Items 9 through 13 must be completed by the prosecuting official for all authorized interceptions which expired during the previous calendar year. **These reports must be submitted to the AO by January 31.** If the application was denied (as reflected in Item 6 of Part 1), items 9 through 13 should be left blank. The prosecutor should sign the Form WT-2 (which should have been previously signed by the judge) and forward it to the AO along with the reports of authorized interceptions. The information required in Part 2 of the report is as follows:

Item 9. Installation

Check the statement which applies to this interception.

Never Installed - If the intercept was never installed, check this box. No further information is required. Skip items 10 through 12.

Installed, But Not Used - If the intercept was installed but never used, check this box. You must complete item 11 relating to the cost of the installation as required below.

Installed and Used - If the intercept was installed and used (monitored for any period of time), check this and complete items 10 through 13 as required below. Fill in all the blanks. Insert a dash or zero, if there is nothing to report.

Item 10. Description of Intercepts

Provide information for each item below in the appropriate blocks. (DO NOT provide names, addresses, or phone numbers.)

- 10A. Termination Date of Interception - Provide month, day, and year.
- 10B. Number of Days in Actual Use - This number should not exceed the total number of days authorized.
- 10C. Number of Communications Intercepted - Count each communication and uninterrupted conversation separately.
- 10D. Number of Persons Whose Communications Were Intercepted - Provide the TOTAL NUMBER OF DIFFERENT INDIVIDUALS whose communications were intercepted during the time the wiretap was in operation. This includes the person(s) initiating the communications, the person(s) receiving them, and any additional persons participating in the communications. Do not include any names. (NOTE: These instructions have been revised starting with reporting for CY 2000, and you are no longer asked to count each person in conversation EACH time that an intercept is made.)

- 10E. Number of Incriminating Communications Intercepted - Count each communication which may be used as evidence in the investigation.
- 10F. Was encryption encountered in this wiretap? Please check Yes or No.
- 10G. If Yes, did encryption prevent law enforcement from obtaining the plain text of communications intercepted? Please check Yes or No.

Item 11. Cost

Check the box if the costs for this wiretap are not reported here or are reported in another related wiretap. If the box is checked, please provide the reference(s) number(s) of the wiretap where the costs can be found.

- 11A. **Nature and Quantity of Personnel Used to Install, Monitor and Prepare Transcripts** - Provide the number and type of officers or employees used both in installing and monitoring the equipment. Also include time spent in preparing transcripts.
- 11B. **Personnel Cost** - Provide the estimated salary cost for the time spent by the personnel noted above who were used to install and monitor the equipment or prepare transcripts. Costs should be rounded to the nearest dollar.
- 11C. **Resource Cost** - Provide the estimated cost of installation if the installation is done on a contractual basis; rental, lease, or amortization of equipment; and the cost of supplies, including magnetic tapes and discs. Costs should be rounded to the nearest dollar.
- 11D. **Total Cost** - Provide the sum of personnel and resource costs

Item 12. Results

Check the box if there is no arrest information to be reported at this time (subsequent arrest information should be reported on the WT-3, Supplementary Form). Check the next box if there is arrests information for this wiretap, but it is included in another wiretap report. Please provide the reference number of the wiretap with the related arrest information.

- 12A. **Number of Persons Arrested** - Provide the total number of persons arrested. If two or more wiretaps are related, show arrests on one form only. Count each person only once, regardless of the number of offenses charged. (Do not provide names.)
- 12B. **Specify Numbers of Motions to Suppress** - Provide the number of motions to suppress (quash evidence) made with respect to the interceptions that were granted, denied, and are still pending. If two or more wiretaps are related, show motions on one form only.
- 12C. **Number of Persons Convicted** - Provide the total number of persons convicted as a result of the interception. Persons who pled guilty would be counted in this category. Each convicted person is counted only once. If two or more wiretaps are related, show convictions on one form only.
- 12D. **Number of Trials Completed** - Provide the number of trials resulting from this

interception that have been completed. Do not count as a trial any instance where a plea was taken during the trial. Also, do not count any grand jury information, such as dismissal of indictment. If trials are completed in two or more related wiretaps, show trials on one form only.

- 12E. Conviction Offense** - Provide the offense for which the convictions were obtained. If more than one offense was involved, indicate only the one deemed most significant.

Item 13. Comments and Assessment

Assess the importance of the interceptions in obtaining convictions. If two or more wiretaps are related, you can provide comments for all related wiretaps on one form and, on all other related forms, insert the statement "See No. _____. Include drugs and seizure amounts, impact on crime and the community etc. " Do not include personal information such as the target's names, telephone numbers, addresses, names of gangs or other sensitive information.

Completing Form WT-3 - Supplementary Report for Wiretaps Reported in Previous Calendar Years

Form WT-3 is a supplementary report used to record information about all applications reported in prior years which resulted in additional arrests, trials, motions or convictions during the current reporting year. A separate Form WT-3 is required for each reporting year for which activity is being submitted. **A supplementary report is not required if there has been no additional activity for any wiretap reported in a previous calendar year.**

DO NOT REPORT ANY ACTIVITY WHICH HAS BEEN PREVIOUSLY REPORTED ON EITHER THE ORIGINAL FORM WT-2 OR ON A SUPPLEMENTARY FORM WT-3.

First, provide the calendar year during which the additional activity occurred. Then, complete the following information for each interception reported on Form WT-3:

- Column 1. Report Year** - Indicate the year in which the wiretap originally appeared in the *Report on Applications for Orders Authorizing or Approving the Interception of Wire, Oral, or Electronic Communications* (published Wiretap Report).
- Column 2. A.O. Report Number** - Provide the number of the wiretap as shown in the Annual Wiretap Report submitted to the United States Congress for the year indicated in Column 1. If you do not have this report, call the AO at (202) 502-1440 to find out the correct number. Do not list any internal application or reference numbers which may have been used by your office.
- Column 3. Date of Application** - Insert the month, day, and year. This date should correspond with the date of application previously reported.
- Column 4. Cost** - Indicate any additional costs for surveillance, equipment, transcripts of recordings, etc. that have not been previously reported. Court costs should not be included.
- Column 5. Persons Arrested** - Record the number of arrests for each offense charged, if there have been any additional arrests as a result of evidence obtained from the wiretap.
- Column 6. Trials Completed** - Provide the number of trials completed that have not been previously reported for this wiretap.
- Column 7. Motions to Suppress** - Indicate the number of motions to quash evidence which has been granted, denied or are pending if they have not been previously reported.
- Column 8. Persons Convicted** - For each type of offense, record the number of additional convictions.

The person responsible for completing the WT-3 should fill in their name, jurisdiction, address and phone number in the space provided at the bottom of the form. Please be sure you have completed all eight columns for each intercept order. If no entry is appropriate, enter a dash (-).

Questions or Other Information

If you have questions regarding the submission of wiretap reports or require other information, please call (202) 502-1440. If you prefer, you may also fax a request to (202) 502-1422, 1411 or e-mail your request to sd-wiretap@ao.uscourts.gov.

Common Questions on Reporting Wiretaps

1. Q: One order involves three phones. Submit one report or three? A: One (one report per order).
2. Q: One order involved 3 wiretaps: one terminated after two days, one terminated after five days (because those two lines were not being used by intercepted parties), and the third lasted 11 days. Which termination date should be used? A: The one which was in operation the latest.
3. Q: Should a pen register which led to a wiretap be reported if it was in operation BEFORE the wiretap? A: No. Only report a pen register in operation in conjunction with the wiretap.
4. Q: One person was convicted on six different offenses. Count as one conviction or 6? A: One, count the number of people.
5. Q: Should body microphones on police officers or informants be reported? A: No. Do not report wiretaps where there was consent by one of the participants.
6. Q: Under results, is a plea counted as a trial? A: No, only a completed trial is counted as a trial. (Also, grand jury actions such as dismissal of indictment are not counted as trials.)
7. Q: A motion to suppress which was originally granted was appealed and reversed as a result. Should it be shown as denied? A: Yes.
8. Q: Should overtime be included in the cost reported? A: Yes. Cost figures should include all "manpower" cost, regular time, overtime, regardless of whether paid by Federal government or state government.
9. Q: Are pleas counted as convictions? A: Yes.
10. Q: What does "incriminating" mean? A: An incriminating interception is one which can be used as evidence.
11. On a supplemental report, five defendants are being tried together. Should this be reported as five trials or one? A: One.
12. Q: Are costs reported even if the wiretap was Federal (equipment) and the officers (personnel costs) were not federal? A: Yes, if the cost information can be obtained, it should be included.
13. Q: Is the State Attorney General's (SAG) office responsible for completing reports for all applications authorized in their state or just those authorized by the SAG office? A: Unless specifically covered by state statute or SAG policy, only the ones authorized by the SAG office. Other wiretaps authorized in the state should be reported by the principal prosecuting official in the county or district where the application was actually authorized.
14. Q: When is a wiretap order reported as a "roving" wiretap? A: For federal wiretaps, only when

the order specifically is authorized under 18 U.S.C. 2518(11) as a relaxed specification order; for state wiretaps, only when authorized under a specific statute that permits approval for relaxed specification orders.