

# Wiretap Reporting Instructions



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# **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 (AO) is required to transmit annually 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 reports required to be filed with the Director of the Administrative Office of the U.S. Courts. Reports must be filed by:

- 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
- 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.

Judges required by law to file reports include:

- 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;
- a judge of a United States court of appeals; and
- a judge of a United States district court.

Prosecuting officials required by law to file reports include:

- the Attorney General of the United States or designee;
- 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
- the principal prosecuting attorney for any political subdivision of a State at the county level or above.

## Wiretap Reporting Instructions (Continued)

### Report Forms

- 1. Annual Prosecutor Summary of Wiretap Reports (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 completed WT-1 Form is to be e-mailed to [SD-Wiretap@ao.uscourts.gov](mailto:SD-Wiretap@ao.uscourts.gov).

The form can also be faxed to the Administrative Office (AO) at 202-502-1422 or 1411, or mailed to the Administrative Office of the U.S. Courts, Attn: Statistics Division (WT), One Columbus Circle N.E., Washington DC 20544.

For federal cases, federal law enforcement agencies are required to submit the completed WT-1 Form to the Office of Enforcement Operations of the U.S. Department of Justice.

- 2. Report of Application and/or Order Authorizing Interception of Communications (Form WT-2)** - This form is used to report a wiretap for the first time. The form is divided into two parts; the first should 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 prosecutor or staff of the judge authorizing or denying the application. Part 1 should be signed by the judge. A photocopy of the form should be submitted to the Administrative Office of the U.S. Courts by the judge or clerk's 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 through the case agent. The contact official will then send the completed forms to the Office of Enforcement Operations of the U.S. Department of Justice in Washington, DC. The Office of Enforcement Operations will finally submit the reviewed forms to the AO. Wiretap reports from state and local jurisdictions are forwarded directly to the AO. A photocopy should be retained for the prosecutor's files.
- 3. Supplementary Report (Form WT-3) for Wiretaps Reported in Previous Calendar Years** - This form is 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.

## Wiretap Reporting Instructions (Continued)

### Where to Access the Wiretap Report Forms

Wiretap Forms WT-1, WT-2 and WT-3 in PDF format can be accessed from the internet by going to the Federal Judiciary's website at [www.uscourts.gov](http://www.uscourts.gov) and selecting Forms & Fees, then Court Forms By Number, and scrolling to the end of the screen to the wiretap forms.

### When to Submit Wiretap Reports to the Administrative Office

1. **Due Dates** - Enacted by Congress on May 27, 2010, the Federal Judiciary Administrative Improvements Act of 2010, Public Law 111-174, changed reporting due dates for judges and prosecutors.
  - a. In January of each year, any judge who has issued an order (or any extensions) under 18 U.S.C. § 2518 that expired during the preceding calendar year, or who has denied approval of an interception during that year must submit Part 1 of the WT-2 (Judge's Report) to the Administrative Office of the U.S. Courts. In the past, many judges have found it more efficient to submit the WT-2 reports to the AO throughout the year rather than to wait until the **annual deadline of January 31**. The AO will continue to accept and process reports submitted throughout the year.
  - b. Prosecutors are required to submit Part 2 of the WT-2 (Prosecutor's Report) with respect to each application for an order or extension made during the preceding calendar year to the Administrative Office of the U.S. Courts **by March 31**. In the past, many prosecutors have found it more efficient to submit the WT-2 reports to the AO throughout the year rather than to wait until the annual deadline. The AO will continue to accept and process reports submitted throughout the year.
2. **Not Required** - 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

## Wiretap Reporting Instructions (Continued)

conjunction with any wiretap that does come within the statutory prohibition, must be reported.

- e. when WT-2 Part 2 of a federal wiretap case 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.**

### How to Submit Wiretap Reports (For State Jurisdictions Only)

All state completed wiretap reports (WT-1, WT-2, and WT-3) should be submitted directly to the AO by electronic submission, mail or by fax.

1. Electronic Submission (Preferred)

Wiretap forms can be accessed online, completed in PDF format, saved to a local computer and then electronically submitted to the AO by e-mail. Send the e-mail to [SD-Wiretap@ao.uscourts.gov](mailto:SD-Wiretap@ao.uscourts.gov) with the wiretap reports attached. Forms can also be scanned and e-mailed as well. Do not send duplicate copies. When reports have been e-mailed, for example, do not fax the same report.

2. Mailing Wiretap Forms

Wiretap forms can be mailed to the Administrative Office of the U.S. Courts, Attn: Statistics Division (WT), One Columbus Circle N.E., Washington DC 20544.

3. Faxing Wiretap Forms

Wiretap forms can be faxed to the AO at 202-502-1422 or 1411.

### How to Submit Wiretap Reports (For Federal Jurisdictions Only)

Part 1 (Judge’s Report) completed by the U.S. Attorney or the Court should be electronically submitted, mailed or faxed to the AO.

1. Electronic Submission (Preferred)

Wiretap forms can be accessed online, completed in PDF format, saved to a local computer and then electronically submitted to the AO by e-mail. Send the e-mail to [SD-Wiretap@ao.uscourts.gov](mailto:SD-Wiretap@ao.uscourts.gov) with the wiretap reports attached. Forms can also be

## Wiretap Reporting Instructions (Continued)

scanned and e-mailed as well. Do not send duplicate copies. When reports have been e-mailed, for example, do not fax the same report.

### 2. Mailing Wiretap Forms

Wiretap forms can be mailed to the Administrative Office of the U.S. Courts, Attn: Statistics Division (WT), One Columbus Circle N.E., Washington DC 20544.

### 3. Faxing Wiretap Forms

Wiretap forms can be faxed to the AO at 202-502-1422 or 1411.

The Assistant U.S. Attorney copy of WT-2, Part 1 and the original Part 2 should be submitted directly to the federal law enforcement agency's contact official. The federal law enforcement agency's contact official should review the forms for completeness and accuracy and then submit to the Office of Enforcement Operations of the U.S. Department of Justice in Washington DC.

## **Completing Form WT-1, Annual Prosecutor Summary of Wiretap Reports**

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 this



## Wiretap Reporting Instructions (Continued)

encryption prevented law enforcement from obtaining the plain text of the communication.

### **Completing Form WT-2 - Report of Application and/or Order Authorizing Interception of Communications**

#### **Completing the Judge's Report (WT-2, Part 1) Items 1 through 8**

When the period of interception (including all extensions) permitted by the court has expired, the prosecuting official or the court 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 county, court, district or jurisdiction, the state and court reference number.
- Item 2. Source - Official Making Application - Provide the official's name, title, jurisdiction or agency and telephone number.
- Item 3. Prosecution Official Authorizing Application - Provide the name of the Deputy Assistant Attorney General (for federal cases only), name of the prosecutor, district or jurisdiction and state, prosecutor reference number and telephone number of the prosecutor.
- Item 3A. Law Enforcement Agency Conducting the Wiretap - Provide the name, contact person's name, 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 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.

## Wiretap Reporting Instructions (Continued)

- 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 the 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(es) 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(es) 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.

## Wiretap Reporting Instructions (Continued)

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 "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. After signature, Part 1 of the WT-2 should be submitted to the AO (see page 4) and a copy should be provided back to prosecuting official making the application.

### **Completing the Prosecutor's Report (WT-2 Part 2) Identifying Information and Items 9 - 13**

Identifying information, Items 1 - 3A, reported on Part 1 should be repeated on Part 2. The prosecutor must also complete Items 9 -13. If the application was denied (as reflected in Item 6 of Part 1), Items 9 through 13 should be left blank. The information required is as follows:

Information repeated from Part 1 to be included in Part 2:

1. Judge's Name, County/Court/District/Jurisdiction and State as reported under Item 1 of Part 1
2. Law Enforcement Agency Reference Number as reported under Item 3a of Part 1
3. Prosecution Official Authorizing Application as reported under Item 3 of Part 1
4. The original request date of application as reported in Item 6 of Part 1

## Wiretap Reporting Instructions (Continued)

### 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. 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 zero if there is nothing to report.

### Item 10. Description of Intercepts

Provide information for each item below. (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 Calendar Year 2000. Do not 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.

## Wiretap Reporting Instructions (Continued)

### Item 11. Cost

Check the box if the costs for this wiretap are not reported here and are reported in another related wiretap. If the box is checked, please provide the reference number(s) of the wiretap where the costs can be found and leave items 11A-11D blank.

- 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 installed and monitored the equipment or prepared 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 discs, etc. 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 the case is pending and there is no arrest information to be reported at this time. Subsequent arrest information will be reported at a later date on the WT-3, Supplementary Report for Wiretaps Reported in Previous Calendar Years. Check the next box if there are arrests associated with this wiretap, but are reported in another wiretap report. Please provide the reference number of the wiretap with the related arrest information and leave items 12A - 12E blank.

- 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. Number of Motions to Suppress - Provide the number of motions to suppress (quash evidence) made with respect to the interceptions that were granted, denied, or 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

## Wiretap Reporting Instructions (Continued)

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 completed trials resulting from this interception. 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, 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 costs, 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.**

Complete the following information for each interception reported on Form WT-3:

Column 1. Report Year - Enter 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). For example, enter 2009 for a wiretap which first appeared in the 2009 Wiretap Report. If the report year is

## Wiretap Reporting Instructions (Continued)

unknown, refer to the wiretap reports by year on the AO's website at [www.uscourts.gov/Statistics/WiretapReports](http://www.uscourts.gov/Statistics/WiretapReports).

Column 2. A.O. Report Number - Provide the number of the wiretap as shown in the Annual Wiretap Report for the year indicated in Column 1. If the A.O. report number is unknown, you can find this information by accessing the wiretap reports by year on the AO's website at [www.uscourts.gov/Statistics/WiretapReports](http://www.uscourts.gov/Statistics/WiretapReports).

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. Also, enter a general description of the charge(s).

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 have been granted, denied or are pending if not 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 provide his or her name, jurisdiction, address and phone number in the space provided at the bottom of the form. If you prefer e-mail, please provide an e-mail address following your name. Please be sure you have completed all eight columns for each intercept order. If no entry is appropriate, leave blank or enter a zero.

### Contact 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 or 1411 or e-mail your request to [sd-wiretap@ao.uscourts.gov](mailto:sd-wiretap@ao.uscourts.gov).

## Wiretap Reporting Instructions (Continued)

### 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 three 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 the Federal government or a state government.
9. Q: Are pleas counted as convictions?



## Wiretap Reporting Instructions (Continued)

A: Yes.

10. Q: What does "incriminating" mean?

A: An incriminating interception is one which can be used as evidence.

11. Q: 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 (SAG) office responsible for completing reports for all applications authorized in that state or just those authorized by the SAG office?

A: Unless specifically covered by state statute or SAG policy, the SAG is responsible for completing only the reports 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.