

IC 35-33.5-2

Chapter 2. Applications, Procedures, and Reports

IC 35-33.5-2-1

Application for warrant by prosecuting or designated deputy prosecuting attorney; coapplicant; interception equipment under control of state police; reimbursement to state police

Sec. 1. (a) A prosecuting attorney or, if the prosecuting attorney is unavailable, a chief deputy prosecuting attorney specifically authorized by the prosecuting attorney, may submit an application for a warrant or an extension to a circuit or superior court where:

- (1) the county that the prosecuting attorney represents is located; and
- (2) the communication subject to the warrant is anticipated to be sent or received.

The prosecuting attorney or authorized chief deputy prosecuting attorney may not delegate the responsibility of applying for a warrant or an extension to another deputy prosecuting attorney.

(b) One (1) of the following persons must serve as a coapplicant for a warrant or an extension under subsection (a):

- (1) The superintendent of the state police department.
- (2) The police chief of a consolidated city where the communication subject to the warrant is anticipated to be sent or received.
- (3) The sheriff of the county containing a consolidated city where the communication subject to the warrant is anticipated to be sent or received.

(c) Only the state police department may install equipment used to intercept an electronic communication under this chapter.

(d) The state police department may:

- (1) operate or monitor equipment used to intercept an electronic communication; or
- (2) if the interception of an electronic communication is performed on behalf of another law enforcement agency, permit the law enforcement agency to operate or monitor the equipment under the supervision of the department.

(e) The superintendent of the state police department may terminate an interception under this chapter if the superintendent of the state police department determines that there is probable cause to believe that the allegations concerning the offense that are the basis of the interception are without merit. If an interception of an electronic communication is terminated under this subsection, the law enforcement agency that is the co-applicant for the interception shall reimburse the state police department for the department's expenses incurred in connection with the application for interception, including the costs of removing equipment related to the interception.

(f) If the interception of an electronic communication is performed on behalf of another law enforcement agency, the law enforcement agency shall reimburse the department for the department's expenses

in connection with the installation, operation, and maintenance of equipment used to intercept an electronic communication.

As added by P.L.161-1990, SEC.3. Amended by P.L.105-2007, SEC.6.

IC 35-33.5-2-2

Application or extension in writing and upon oath of affirmation; information required

Sec. 2. (a) Except as provided in section 3.5 of this chapter, an application for a warrant or extension must be made in writing and upon oath or affirmation. Each application must also include the following:

- (1) The identity of the persons submitting the application.
- (2) An affidavit setting forth the facts relied upon by an applicant to show why a warrant should be issued or an extension granted, including the following:
 - (A) Facts establishing probable cause for the belief that a designated offense allegedly has been, is being, or may be committed.
 - (B) A description of the nature and location of the facility, place, or device from which the communication is to be intercepted.
 - (C) The identity, if known, of the person allegedly committing the designated offense whose communication is to be intercepted.
 - (D) A description of the type of communication to be intercepted.
- (3) A statement specifying that other investigative procedures:
 - (A) have been tried and failed; or
 - (B) may not succeed or are too dangerous to attempt.
- (4) A statement of the duration necessary for the interception. However, if the applicant requests that the authorization for interception not automatically terminate once the described type of communication is initially obtained, the application must also include a description of facts supporting the belief that additional communications of the same type will occur.
- (5) A statement of facts and any action taken by the court concerning any previous application for a warrant or an extension that:
 - (A) has been made to a court under this article;
 - (B) sought to obtain communications from any of the same persons, places, or facilities as the current application; and
 - (C) is known to exist by the persons making the current application.
- (6) If it is reasonably necessary to make a secret entry upon private property to install an interception device, a statement describing the following:
 - (A) The private property.
 - (B) Who owns and who occupies the private property.

(C) The reasons necessitating secret entry.

(b) In addition to the information required in subsection (a), if an application is for an extension, the application must contain a statement setting forth the results obtained from the original warrant or a reasonable explanation of the failure to obtain results under the original warrant.

(c) The court may require an applicant to furnish additional testimony or evidence in support of an application.

As added by P.L.161-1990, SEC.3. Amended by P.L.105-2007, SEC.7.

IC 35-33.5-2-3

Allegations of fact; basis; information required; supporting affidavits

Sec. 3. (a) Allegations of fact in an application for a warrant submitted under this chapter may be based either upon the personal knowledge of the applicant or upon information and belief.

(b) If the applicant personally knows the facts alleged, the applicant shall state that the affidavit is based upon personal knowledge.

(c) If the allegations of fact are derived in whole or in part from the statements of persons other than the applicant:

(1) the sources of the applicant's information and belief must be either disclosed or described;

(2) the application must contain facts establishing the existence and reliability of:

(A) any informant; and

(B) information supplied by any informant; and

(3) the basis of an informant's knowledge or belief must be disclosed, as far as possible.

(d) If the applicant's information and belief is derived from:

(1) tangible evidence; or

(2) recorded oral evidence;

the applicant shall attach to the application a copy or detailed description of the tangible evidence or recorded oral evidence.

(e) Affidavits of persons other than the applicant may be attached to the application if the affidavits of other persons tend to support any fact or conclusion alleged in the application. An affidavit attached to the application under this subsection may be based either on personal knowledge of the affiant or on information and belief. However, if the attached affidavit is based on information and belief the affiant shall state the source of, and the reason for, the information and belief.

As added by P.L.161-1990, SEC.3.

IC 35-33.5-2-3.5

Alternative procedure for issuance of warrant; requirement for recording and transcription

Sec. 3.5. (a) A court may issue a warrant without the affidavit

required under section 2 of this chapter, if the court receives sworn testimony of the same facts required for an affidavit:

- (1) in a nonadversarial, recorded hearing before the judge;
- (2) orally by telephone or radio; or
- (3) in writing by facsimile (fax) transmission.

In addition, the prosecuting attorney or, if the prosecuting attorney is unavailable, a chief deputy prosecuting attorney specifically authorized by the prosecuting attorney, shall inform the court that a person described in section 1(b) of this chapter has agreed to serve as a coapplicant of the warrant. The prosecuting attorney or authorized chief deputy prosecuting attorney may not delegate the responsibility of applying for a warrant to another deputy prosecuting attorney.

(b) After the affiant recites the facts required for an affidavit and verifies the facts recited under penalty of perjury, a prosecuting attorney or chief deputy prosecuting attorney who applies for a warrant under subsection (a)(2) shall read to the court from a warrant form on which the prosecuting attorney or chief deputy prosecuting attorney enters the information read by the affiant to the court. The court may direct the prosecuting attorney or chief deputy prosecuting attorney to modify the warrant. If the court agrees to issue the warrant, the court shall direct the prosecuting attorney or chief deputy prosecuting attorney to sign the judge's name to the warrant, adding the time of the issuance of the warrant.

(c) After transmitting an affidavit, a prosecuting attorney or chief deputy prosecuting attorney who applies for a warrant under subsection (a)(3) shall transmit to the court a copy of a warrant form completed by the prosecuting attorney or chief deputy prosecuting attorney. The court may modify the transmitted warrant. If the court agrees to issue the warrant, the court shall transmit to the applicant a duplicate of the warrant. The judge shall then sign the warrant retained by the court, adding the time of the issuance of the warrant.

(d) If a warrant is issued under subsection (a)(2), the court shall record the conversation and order the court reporter to type or transcribe the recording for entry in the record. The court shall certify the recording, the transcription, and the warrant retained by the court for entry in the record.

(e) If a warrant is issued under subsection (a)(3), the court shall order the court reporter to retype or copy the facsimile transmission for entry in the record. The court shall certify the transcription or copy and warrant retained by the court for entry in the record.

(f) The court reporter shall notify the prosecuting attorney or chief deputy prosecuting attorney who received a warrant under subsection (a)(2) or (a)(3) when the transcription or copy required under this section is entered in the record. The prosecuting attorney or chief deputy prosecuting attorney shall sign the typed, transcribed, or copied entry upon receiving notice from the court reporter.

As added by P.L.105-2007, SEC.8.

IC 35-33.5-2-4

Reports to legislative council on warrants or extensions granted; reports on arrests or convictions

Sec. 4. (a) Not later than December 31 of each year, a prosecuting attorney who during that year:

- (1) has received a warrant or an extension; or
- (2) represents a county in which an arrest or a conviction has occurred as the result of the warrant or extension;

shall report in an electronic format under IC 5-14-6 the information described in subsection (b) to the legislative council.

(b) A prosecuting attorney shall report the following information under subsection (a):

- (1) The information required in section 5 of this chapter.
- (2) The number of arrests resulting from an interception made under a warrant or extension and the designated offense for which each arrest was made.
- (3) The number of charges filed as a result of an interception.
- (4) The number of motions to suppress made with respect to an interception and the number of motions granted or denied.
- (5) The number of convictions resulting from an interception, the designated offense for which each conviction was obtained, and a general assessment of the importance of interception in obtaining the convictions.
- (6) A general description of the interceptions made under a warrant or an extension, including the following:
 - (A) The approximate nature and frequency of incriminating communications intercepted.
 - (B) The approximate nature and frequency of other communications intercepted.
 - (C) The approximate number of persons whose communications were intercepted.
 - (D) The approximate nature, amount, and cost of manpower and other resources used in relation to the interceptions.

As added by P.L.161-1990, SEC.3. Amended by P.L.28-2004, SEC.176.

IC 35-33.5-2-5

Reports to executive director of division of state court administration on terminations and denials

Sec. 5. Within twenty-eight (28) days after the termination of a warrant or an extension, or the denial of an application for a warrant or an extension, the court to which application for the warrant or an extension was made shall submit a report to the executive director of the division of state court administration (IC 33-24-6-1) containing the following information:

- (1) The fact that a warrant or an extension was applied for.
- (2) The type of warrant or extension applied for.
- (3) The fact that the application for a warrant or an extension was granted, modified, or denied.
- (4) The duration authorized for interception by the warrant and

the number and duration of any extensions.

(5) The designated offense for which the warrant or extension was issued or applied for.

(6) The identity of the persons who applied for the warrant or extension.

(7) The nature and location of the place, facility, or device from which communications were to be intercepted.

(8) The reasons for withholding notice under IC 35-33.5-4-3, if the notice was withheld.

As added by P.L.161-1990, SEC.3. Amended by P.L.98-2004, SEC.142; P.L.105-2007, SEC.9.