

# HOUSE BILL REPORT

## SHB 2195

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### As Passed Legislature

**Title:** An act relating to intercepting, recording, or divulging monitored inmate conversations.

**Brief Description:** Authorizing the department of corrections to intercept, record, and divulge electronically monitored inmate conversations.

**Sponsors:** By House Committee on Corrections (originally sponsored by Representatives Blanton, Quall, Sheldon and Costa; by request of Department of Corrections).

#### **Brief History:**

##### **Committee Activity:**

Corrections: 1/16/96, 1/19/96 [DPS].

##### **Floor Activity:**

Passed House: 2/2/96, 91-3.

Senate Amended.

House Concurred.

Passed Legislature.

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### HOUSE COMMITTEE ON CORRECTIONS

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 10 members: Representatives Ballasiotes, Chairman; Blanton, Vice Chairman; Sherstad, Vice Chairman; Quall, Ranking Minority Member; Tokuda, Assistant Ranking Minority Member; Cole; Dickerson; Koster; Schoesler and D. Sommers.

**Staff:** Diana Canzoneri (786-7156).

**Background:** The Washington State Privacy Act. This act generally prohibits any individual or entity from intercepting or recording any private communication or conversation without first obtaining the consent of all participants. Several exceptions to the prohibition are specified in current law, including one granted to the Department of Corrections (DOC).

Exception Allowing DOC to Intercept Inmate Telephone Conversations. Under this exception, DOC is allowed to intercept, record, and divulge any telephone call that an

inmate makes. The department was directed to provide written notification to all inmates before the monitoring system was activated.

The Legislature also specified a number of procedures and conditions that DOC must follow in implementing the system and using the intercepted information. These include a procedure to inform the recipient of a call that the conversation with the inmate is being recorded. Requirements are also specified for accessing, divulging, and storing recordings. Conversations between inmates and attorneys are not allowed to be intercepted.

Penalties and Sanctions for Violation of Act. Those who violate the provisions of the Privacy Act are guilty of a gross misdemeanor and can be held civilly liable for damages and litigation costs. Any information obtained in violation of the Privacy Act is generally inadmissible in any civil or criminal case.

**Summary of Bill:** The exception granted to the Department of Corrections under the Washington State Privacy Act is broadened to include other inmate conversations in addition to telephone conversations. The department is authorized to intercept, record, and divulge monitored conversations in inmate cells, living units, rooms, dormitories, and common spaces where inmates may be present.

Conditions governing access to--and disclosure of--recorded telephone conversations also apply to non-telephonic conversations. In addition, non-telephonic as well as telephonic conversations between inmates and attorneys must not be intercepted. The department's policies and procedures implementing the expanded monitoring policy must recognize the privileged nature of a confession made to a member of the clergy.

The portions of the bill authorizing and placing conditions on the expanded monitoring policy go into effect August 1, 1996.

The department is required to notify all inmates, residents, and personnel of the expanded monitoring policy. Written notification to current inmates, residents, and personnel must be given by May 1, 1996. The department is also required to post a conspicuous notice by July 1, 1996, to inform visitors of the monitoring policy. An emergency clause is included to enable these deadlines to be met.

An existing statute (RCW 9.73.145) is repealed that is nearly identical to the statute being amended in this bill (RCW 9.73.095).

A subsection related to a past deadline for notification of inmates regarding telephonic monitoring is removed.

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date:** The bill contains several effective dates. Please refer to the bill.

**Testimony For:** Department of Corrections staff routinely monitor and communicate with offenders through intercoms to promote and maintain security, facilitate administration, and assess whether an inmate may be having a health-related problem. Occasionally, staff overhear a conversation where an inmate implicates him or herself in a crime or discipline problem. Under current law, information uncovered in this manner may not be admissible in an inmate disciplinary hearing. The admissibility of information so obtained might also be challenged in court. Passage of this bill would make the department's monitoring practice legal and facilitate use of such information in disciplinary hearings and court cases.

**Testimony Against:** None.

**Testified:** Eldon Vail, Washington State Department of Corrections (Pro).