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HOUSE BILL 1396

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State of Washington                      56th Legislature                      1999 Regular Session

By Representatives Hurst, Ballasiotes, O'Brien, Lovick and Campbell

Read first time 01/22/1999. Referred to Committee on Judiciary.

1            AN ACT Relating to interception, transmission, or recording of  
2      communications; adding a new section to chapter 9.73 RCW; creating a  
3      new section; and prescribing penalties.

4      BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5            NEW SECTION.    **Sec. 1.** The legislature finds that investigating and  
6      prosecuting sex crimes against minors would be greatly enhanced by  
7      making one party consent recording more available to police detectives,  
8      with procedures that are similar to those used in major drug  
9      investigations, so that police can employ one party consent recordings  
10     under procedures that they are familiar with and that have been  
11     employed successfully and without abuse by police in major drug  
12     investigations since May 7, 1989. The legislature finds that one party  
13     consent recordings in many cases would produce the best evidence of the  
14     truth or falsity of a minor's accusations, spare minors who have been  
15     victims of sex crimes the ordeal of testifying and facing their  
16     victimizer, reduce the likelihood that a minor victim will be put on  
17     trial as a defense tactic, and reduce the likelihood that an innocent  
18     person will be prosecuted.

1        NEW SECTION.    **Sec. 2.**    A new section is added to chapter 9.73 RCW  
2 to read as follows:

3        (1) As part of a bona fide criminal investigation, the chief law  
4 enforcement officer of a law enforcement agency or his or her designee  
5 may authorize the interception, transmission, or recording of  
6 conversations or communications by officers under the following  
7 circumstances:

8        (a) At least one party to the conversation or communication has  
9 consented to the interception, transmission, or recording; or a parent,  
10 guardian ad litem, or guardian has consented to the interception,  
11 transmission, or recording on behalf of a party to the conversation who  
12 is less than twelve years of age. Consent is not required from a  
13 parent, guardian ad litem, or guardian who is reasonably believed by  
14 the investigating law enforcement agency to be a subject of the  
15 investigation;

16        (b) Probable cause exists to believe that the conversation or  
17 communication involves a sex offense committed against a minor. For  
18 purposes of this section, a minor is a person who was under the age of  
19 eighteen years at the time of the alleged crime, and a sex offense is  
20 any crime defined in RCW 9.94A.030(33); and

21        (c) A written report has been completed as required by subsection  
22 (2) of this section.

23        (2) The agency's chief officer or designee authorizing an  
24 interception, transmission, or recording under subsection (1) of this  
25 section, shall prepare and sign a written report at the time of  
26 authorization indicating:

27        (a) The circumstances that meet the requirements of subsection (1)  
28 of this section;

29        (b) The names of the authorizing and consenting parties;

30        (c) The names of the officers authorized to intercept, transmit,  
31 and record the conversation or communication;

32        (d) The identity of the particular person or persons, if known, who  
33 may have committed or may commit the offense; and

34        (e) The details of the particular offense or offenses that may have  
35 been or may be committed and the expected date, location, and  
36 approximate time of the conversation or communication.

37        (3) An authorization under this section is valid in all  
38 jurisdictions within Washington state and for the interception of  
39 communications from additional persons if the persons are brought into

1 the conversation or transaction by the nonconsenting party or if the  
2 nonconsenting party or such additional persons cause or invite the  
3 consenting party to enter another jurisdiction.

4 (4) The recording of any conversation or communication under this  
5 section shall be done in such a manner that protects the recording from  
6 editing or other alterations.

7 (5) An authorization made under this section is valid for no more  
8 than seven days from the time it is signed by the authorizing officer,  
9 and each authorization shall independently meet all of the requirements  
10 of this section. The authorizing officer shall sign the written report  
11 required under subsection (2) of this section, certifying the exact  
12 date and time of his or her signature. An authorization under this  
13 section may be extended not more than twice for additional consecutive  
14 seven-day periods based upon the same probable cause regarding the same  
15 suspected crime. Each such extension shall be signed by the  
16 authorizing officer.

17 (6) Evidence obtained through the interception, transmission, or  
18 recording of a conversation or communication pursuant to this section  
19 shall be inadmissible in any civil or criminal case in all courts of  
20 general or limited jurisdiction in this state unless:

21 (a) The court finds that the requirements of subsection (1) of this  
22 section were met; or

23 (b) The evidence is admitted with the permission of any  
24 nonconsenting person whose communication or conversation was  
25 intercepted, transmitted, or recorded.

26 Nothing in this subsection bars the admission of testimony of a  
27 party or witness to the intercepted, transmitted, or recorded  
28 conversation or communication when that testimony is unaided by  
29 information obtained solely by violation of RCW 9.73.030.

30 (7) Any determination of invalidity of an authorization under this  
31 section shall be reported by the court to the office of the  
32 administrator for the courts.

33 (8) The law enforcement agency shall forward the written report  
34 authorizing interception or recording to the nonconsenting party within  
35 six months of the date that criminal charges have been declined and the  
36 investigation is not being actively investigated.

37 (9) Any person who intentionally intercepts, transmits, or records  
38 or who intentionally authorizes the interception, transmission, or  
39 recording of a conversation or communication in violation of this

1 section, is guilty of a class C felony punishable according to chapter  
2 9A.20 RCW.

3 (10) An authorizing agency is liable for twenty-five thousand  
4 dollars in exemplary damages, in addition to any other damages  
5 authorized by this chapter or by other law, to a person whose  
6 conversation or communication was intercepted, transmitted, or recorded  
7 pursuant to an authorization under this section if:

8 (a) In a suppression of evidence proceeding it has been determined  
9 that the authorization was made without the probable cause required by  
10 subsection (1)(b) of this section; and

11 (b) The authorization was also made without a reasonable suspicion  
12 that the conversation or communication would involve the unlawful acts  
13 identified in subsection (1)(b) of this section.

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