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HOUSE BILL 2231

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State of Washington                      56th Legislature                      1999 Regular Session

By Representative Fortunato

Read first time 02/23/1999. Referred to Committee on Judiciary.

1            AN ACT Relating to intercepting communications in police  
2 investigation of felonies; and amending RCW 9.73.090.

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

4            **Sec. 1.** RCW 9.73.090 and 1989 c 271 s 205 are each amended to read  
5 as follows:

6            (1) The provisions of RCW 9.73.030 through 9.73.080 shall not apply  
7 to police, fire, emergency medical service, emergency communication  
8 center, and poison center personnel in the following instances:

9            (a) Recording incoming telephone calls to police and fire stations,  
10 licensed emergency medical service providers, emergency communication  
11 centers, and poison centers;

12            (b) Video and/or sound recordings may be made of arrested persons  
13 by police officers responsible for making arrests or holding persons in  
14 custody before their first appearance in court. Such video and/or  
15 sound recordings shall conform strictly to the following:

16            (i) The arrested person shall be informed that such recording is  
17 being made and the statement so informing him shall be included in the  
18 recording;

1 (ii) The recording shall commence with an indication of the time of  
2 the beginning thereof and terminate with an indication of the time  
3 thereof;

4 (iii) At the commencement of the recording the arrested person  
5 shall be fully informed of his constitutional rights, and such  
6 statements informing him shall be included in the recording;

7 (iv) The recordings shall only be used for valid police or court  
8 activities.

9 (2) It shall not be unlawful for a law enforcement officer acting  
10 in the performance of the officer's official duties to intercept,  
11 record, or disclose an oral communication or conversation where the  
12 officer is a party to the communication or conversation or one of the  
13 parties to the communication or conversation has given prior consent to  
14 the interception, recording, or disclosure: PROVIDED, That prior to  
15 the interception, transmission, or recording the officer shall obtain  
16 written or telephonic authorization from a judge or magistrate, who  
17 shall approve the interception, recording, or disclosure of  
18 communications or conversations with a nonconsenting party for a  
19 reasonable and specified period of time, if there is probable cause to  
20 believe that the nonconsenting party has committed, is engaged in, or  
21 is about to commit a felony: PROVIDED HOWEVER, That if such  
22 authorization is given by telephone the authorization and officer's  
23 statement justifying such authorization must be electronically recorded  
24 by the judge or magistrate on a recording device in the custody of the  
25 judge or magistrate at the time transmitted and the recording shall be  
26 retained in the court records and reduced to writing as soon as  
27 possible thereafter.

28 Any recording or interception of a communication or conversation  
29 incident to a lawfully recorded or intercepted communication or  
30 conversation pursuant to this subsection shall be lawful and may be  
31 divulged.

32 All recordings of communications or conversations made pursuant to  
33 this subsection shall be retained for as long as any crime may be  
34 charged based on the events or communications or conversations  
35 recorded.

36 (3) Communications or conversations authorized to be intercepted,  
37 recorded, or disclosed by this section shall not be inadmissible under  
38 RCW 9.73.050.

1       (4) (~~Authorizations issued under subsection (2) of this section~~  
2 ~~shall be effective for not more than seven days, after which period the~~  
3 ~~issuing authority may renew or continue the authorization for~~  
4 ~~additional periods not to exceed seven days.~~

5       (5) ~~If the judge or magistrate determines that there is probable~~  
6 ~~cause to believe that the communication or conversation concerns the~~  
7 ~~unlawful manufacture, delivery, sale, or possession with intent to~~  
8 ~~manufacture, deliver, or sell, controlled substances as defined in~~  
9 ~~chapter 69.50 RCW, or legend drugs as defined in chapter 69.41 RCW, or~~  
10 ~~imitation controlled substances as defined in chapter 69.52 RCW,)) The  
11 judge or magistrate may authorize the interception, transmission,  
12 recording, or disclosure of communications or conversations under  
13 subsection (2) of this section even though the true name of the  
14 nonconsenting party, or the particular time and place for the  
15 interception, transmission, recording, or disclosure, is not known at  
16 the time of the request, if the authorization describes the  
17 nonconsenting party and subject matter of the communication or  
18 conversation with reasonable certainty under the circumstances. Any  
19 such communication or conversation may be intercepted, transmitted,  
20 recorded, or disclosed as authorized notwithstanding a change in the  
21 time or location of the communication or conversation after the  
22 authorization has been obtained or the presence of or participation in  
23 the communication or conversation by any additional party not named in  
24 the authorization.~~

25       Authorizations issued under ~~((this))~~ subsection (2) of this section  
26 shall be effective for not more than fourteen days, after which period  
27 the issuing authority may renew or continue the authorization for an  
28 additional period not to exceed fourteen days.

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