

---

SENATE BILL 5714

---

State of Washington

64th Legislature

2015 Regular Session

By Senators Hargrove, Kohl-Welles, Rivers, Roach, Chase, Darneille, Hasegawa, Benton, Keiser, and Rolfes

Read first time 01/29/15. Referred to Committee on Law & Justice.

1 AN ACT Relating to technology-enhanced government surveillance;  
2 adding new sections to chapter 9.73 RCW; creating a new section; and  
3 prescribing penalties.

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

5 NEW SECTION. **Sec. 1.** The legislature finds that technological  
6 advances have provided new, unique equipment that may be utilized for  
7 surveillance purposes. These technological advances often outpace  
8 statutory protections and can lead to inconsistent or contradictory  
9 interpretations between jurisdictions. The legislature finds that  
10 regardless of application or size, the use of these extraordinary  
11 surveillance technologies, without public debate or clear legal  
12 authority, creates uncertainty for citizens and agencies throughout  
13 Washington state. The legislature finds that extraordinary  
14 surveillance technologies do present a substantial privacy risk  
15 potentially contrary to the strong privacy protections enshrined in  
16 Article I, section 7 of the Washington state Constitution that reads  
17 "No person shall be disturbed in his private affairs, or his home  
18 invaded, without authority of law." The legislature further finds  
19 that the lack of clear statutory authority for the use of  
20 extraordinary surveillance technologies may increase liability to  
21 state and local jurisdictions. It is the intent of the legislature to

1 provide clear standards for the lawful use of extraordinary  
2 surveillance technologies by state and local jurisdictions.

3 NEW SECTION. **Sec. 2.** The definitions in this section apply  
4 throughout this subchapter unless the context clearly requires  
5 otherwise.

6 (1)(a) "Agency" means the state of Washington, its agencies, and  
7 political subdivisions, except the Washington national guard in Title  
8 32 U.S.C. status.

9 (b) "Agency" also includes any entity or individual, whether  
10 public or private, with which any of the entities identified in (a)  
11 of this subsection has entered into a contractual relationship or any  
12 other type of relationship, with or without consideration, for the  
13 operation of an extraordinary sensing device that acquires, collects,  
14 or indexes personal information to accomplish an agency function.

15 (2) "Court of competent jurisdiction" means any district court of  
16 the United States, or a court of general jurisdiction authorized by  
17 the state of Washington to issue search warrants.

18 (3) "Extraordinary sensing device" means a sensing device  
19 attached to an unmanned aircraft system.

20 (4) "Governing body" means the council, commission, board, or  
21 other controlling body of an agency in which legislative powers are  
22 vested, except that for a state agency for which there is no  
23 governing body other than the state legislature, "governing body"  
24 means the chief executive officer responsible for the governance of  
25 the agency.

26 (5) "Personal information" means all information that:

27 (a) Describes, locates, or indexes anything about a person  
28 including, but not limited to:

29 (i) His or her social security number, driver's license number,  
30 agency-issued identification number, student identification number,  
31 real or personal property holdings derived from tax returns, and the  
32 person's education, financial transactions, medical history,  
33 ancestry, religion, political ideology, or criminal or employment  
34 record; or

35 (ii) Intellectual property, trade secrets, proprietary  
36 information, or operational information;

37 (b) Affords a basis for inferring personal characteristics, such  
38 as finger and voice prints, photographs, or things done by or to such  
39 person; and the record of the person's presence, registration, or

1 membership in an organization or activity, or admission to an  
2 institution; or

3 (c) Indexes anything about a person including, but not limited  
4 to, his or her activities, behaviors, pursuits, conduct, interests,  
5 movements, occupations, or associations.

6 (6)(a) "Sensing device" means a device capable of remotely  
7 acquiring personal information from its surroundings, using any  
8 frequency of the electromagnetic spectrum, or a sound detecting  
9 system.

10 (b) "Sensing device" does not include equipment whose sole  
11 function is to provide information directly necessary for safe air  
12 navigation or operation of a vehicle.

13 (7) "Unmanned aircraft system" means an aircraft that is operated  
14 without the possibility of human intervention from within or on the  
15 aircraft, together with associated elements, including communication  
16 links and components that control the unmanned aircraft that are  
17 required for the pilot in command to operate safely and efficiently  
18 in the national airspace system.

19 NEW SECTION. **Sec. 3.** Except as otherwise specifically  
20 authorized in this subchapter, it is unlawful for an agency to  
21 operate an extraordinary sensing device or disclose personal  
22 information about any person acquired through the operation of an  
23 extraordinary sensing device.

24 NEW SECTION. **Sec. 4.** (1) No state agency or state organization  
25 having jurisdiction over criminal law enforcement or regulatory  
26 violations including, but not limited to, the Washington state patrol  
27 and the department of natural resources, shall purchase an  
28 extraordinary sensing device unless moneys are expressly appropriated  
29 by the legislature for this specific purpose.

30 (2) No local agency having jurisdiction over criminal law  
31 enforcement or regulatory violations shall procure an extraordinary  
32 sensing device without the explicit approval of the governing body of  
33 such locality, given for that specific extraordinary sensing device  
34 to be used for a specific purpose.

35 NEW SECTION. **Sec. 5.** The governing body for each agency must  
36 develop and make publicly available, including on the agency web  
37 site, written policies and procedures for the use of any

1 extraordinary sensing device procured, and provide notice and  
2 opportunity for public comment prior to adoption of the written  
3 policies and procedures.

4 NEW SECTION. **Sec. 6.** All operations of an extraordinary sensing  
5 device, by an agency, or disclosure of personal information about any  
6 person acquired through the operation of an extraordinary sensing  
7 device, by an agency, must be conducted in such a way as to minimize  
8 the collection and disclosure of personal information not authorized  
9 under this subchapter.

10 NEW SECTION. **Sec. 7.** An extraordinary sensing device may be  
11 operated and personal information from such operation disclosed, if  
12 the operation and collection of personal information is pursuant to a  
13 search warrant issued by a court of competent jurisdiction.

14 NEW SECTION. **Sec. 8.** (1) A governmental entity acting under  
15 this section may, when a warrant is sought, include in the petition a  
16 request, which the court shall grant, for an order delaying the  
17 notification for a period not to exceed ninety days if the court  
18 determines that there is a reason to believe that notification of the  
19 existence of the warrant may have an adverse result.

20 (2) An adverse result for the purposes of this section is:

21 (a) Placing the life or physical safety of an individual in  
22 danger;

23 (b) Causing a person to flee from prosecution;

24 (c) Causing the destruction of or tampering with evidence;

25 (d) Causing the intimidation of potential witnesses; or

26 (e) Jeopardizing an investigation or unduly delaying a trial.

27 (3) The governmental entity shall maintain a copy of  
28 certification.

29 (4) Extension of the delay of notification of up to ninety days  
30 each may be granted by the court upon application or by certification  
31 by a governmental entity.

32 (5) Upon expiration of the period of delay of notification under  
33 subsection (2) or (4) of this section, the governmental entity shall  
34 serve a copy of the warrant upon, or deliver it by registered or  
35 first- class mail to, the target of the warrant, together with notice  
36 that:

1 (a) States with reasonable specificity the nature of the law  
2 enforcement inquiry; and

3 (b) Informs the target of the warrant: (i) That notification was  
4 delayed; (ii) what governmental entity or court made the  
5 certification or determination pursuant to which that delay was made;  
6 and (iii) which provision of this section allowed such delay.

7 NEW SECTION. **Sec. 9.** (1) It is lawful for a law enforcement  
8 officer, agency employee, or authorized agent to operate an  
9 extraordinary sensing device and disclose personal information from  
10 such operation if the officer, employee, or agent reasonably  
11 determines that an emergency situation exists that:

12 (a) Does not involve criminal activity, unless exigent  
13 circumstances exist;

14 (b) Presents immediate danger of death or serious physical injury  
15 to any person; and

16 (c) Has characteristics such that operation of an extraordinary  
17 sensing device can reasonably reduce the danger of death or serious  
18 physical injury.

19 (2) It is lawful for an officer, employee, or agent to operate an  
20 extraordinary sensing device if the officer, employee, or agent does  
21 not intend to collect personal information, the operation is unlikely  
22 to accidentally collect personal information, and the operation is  
23 not for purposes of regulatory enforcement. Allowable uses under this  
24 subsection are limited to:

25 (a) Monitoring to discover, locate, observe, and prevent forest  
26 fires;

27 (b) Monitoring an environmental or weather-related catastrophe or  
28 damage from such an event;

29 (c) Surveying for wildlife management, habitat preservation, or  
30 environmental damage; and

31 (d) Surveying for the assessment and evaluation of environmental  
32 or weather-related damage, erosion, flood, or contamination.

33 (3) It is lawful for an officer, employee, or agent to operate an  
34 extraordinary sensing device as part of a training exercise conducted  
35 on a military base if the extraordinary sensing device does not  
36 collect personal information on persons located outside the military  
37 base.

38 (4) It is lawful for an officer, employee, or agent to operate an  
39 extraordinary sensing device if the operation is for training,

1 testing, or research purposes by an agency and does not collect  
2 personal information without the specific written consent of any  
3 individual whose personal information is collected.

4 (5) It is lawful for an officer, employee, or agent to operate an  
5 extraordinary sensing device if the operation is part of the response  
6 to an emergency or disaster for which the governor has proclaimed a  
7 state of emergency under RCW 43.06.010(12).

8 (6) Upon completion of the operation of an extraordinary sensing  
9 device pursuant to this section, any personal information obtained  
10 must be treated as information collected on an individual other than  
11 a target for purposes of section 13 of this act.

12 NEW SECTION. **Sec. 10.** The department of enterprise services  
13 shall convene a work group comprised of four legislators and a  
14 representative of the governor. The work group will submit a report  
15 to the legislature by December 1, 2015, proposing standards for the  
16 use of extraordinary sensing devices for regulatory enforcement  
17 purposes. No state agency or state organization having jurisdiction  
18 over regulatory violations shall operate extraordinary sensing  
19 devices for regulatory enforcement purposes until the legislature has  
20 approved of standards for this purpose.

21 NEW SECTION. **Sec. 11.** Operation of an extraordinary sensing  
22 device by an agency is prohibited unless the agency has affixed a  
23 unique identifier registration number assigned by the agency.

24 NEW SECTION. **Sec. 12.** Whenever any personal information from an  
25 extraordinary sensing device has been acquired, no part of such  
26 personal information and no evidence derived therefrom may be  
27 received in evidence in any trial, hearing, or other proceeding in or  
28 before any court, grand jury, department, officer, agency, regulatory  
29 body, legislative committee, or other authority of the state or a  
30 political subdivision thereof if the collection or disclosure of that  
31 personal information would be in violation of this subchapter.

32 NEW SECTION. **Sec. 13.** (1) Personal information collected during  
33 the operation of an extraordinary sensing device authorized by and  
34 consistent with this subchapter may not be used, copied, or disclosed  
35 for any purpose after the conclusion of the operation, unless there  
36 is probable cause that the personal information is evidence of

1 criminal activity. Nothing in this act is intended to expand or  
2 contract the obligations of an agency to disclose public records as  
3 provided in chapter 42.56 RCW. The personal information of the person  
4 who is the target of a warrant must be destroyed within thirty days  
5 after the applicable period of limitations for the criminal activity,  
6 as provided in RCW 9A.04.080, if the person has not been charged.

7 (2) The personal information of a person who is not the target of  
8 a warrant that is collected incidentally during the operation of an  
9 extraordinary sensing device must be destroyed within ten days after  
10 it is collected if it can be destroyed without destroying evidence  
11 that may be relevant to a pending criminal investigation or case.

12 (3) There is a presumption that personal information is not  
13 evidence of criminal activity if that personal information is not  
14 used in a criminal prosecution within one year of collection.

15 NEW SECTION. **Sec. 14.** Any person who knowingly violates this  
16 subchapter is subject to legal action for damages, to be brought by  
17 any other person claiming that a violation of this subchapter has  
18 injured his or her business, his or her person, or his or her  
19 reputation. A person so injured is entitled to actual damages. In  
20 addition, the individual is entitled to reasonable attorneys' fees  
21 and other costs of litigation.

22 NEW SECTION. **Sec. 15.** Any use of an extraordinary sensing  
23 device must fully comply with all federal aviation administration  
24 requirements and guidelines. Compliance with the terms of this  
25 subchapter is mandatory and supplemental to compliance with federal  
26 aviation administration requirements and guidelines. Nothing in this  
27 chapter shall be construed to limit the state's ability to establish  
28 and operate a test range for the integration of unmanned aviation  
29 vehicles into the national airspace.

30 NEW SECTION. **Sec. 16.** (1) For a state agency having  
31 jurisdiction over criminal law enforcement including, but not limited  
32 to, the Washington state patrol, the agency must maintain records of  
33 each use of an extraordinary sensing device and, for any calendar  
34 year in which an agency has used an extraordinary sensing device,  
35 prepare an annual report including, at a minimum, the following:

36 (a) The number of uses of an extraordinary sensing device  
37 organized by types of incidents and types of justification for use;

1 (b) The number of crime investigations aided by the use and how  
2 the use was helpful to the investigation;

3 (c) The number of uses of an extraordinary sensing device for  
4 reasons other than criminal investigations and how the use was  
5 helpful;

6 (d) The frequency and type of data collected for individuals or  
7 areas other than targets;

8 (e) The total cost of the extraordinary sensing device;

9 (f) The dates when personal information and other data was  
10 deleted or destroyed in compliance with the act;

11 (g) The number of warrants requested, issued, and extended; and

12 (h) Additional information and analysis the governing body deems  
13 useful.

14 (2) For a state agency other than that in subsection (1) of this  
15 section, the agency must maintain records of each use of an  
16 extraordinary sensing device and, for any calendar year in which an  
17 agency has used an extraordinary sensing device, prepare an annual  
18 report including, at a minimum, the following:

19 (a) The types of extraordinary sensing devices used, the purposes  
20 for which each type of extraordinary sensing device was used, the  
21 circumstances under which use was authorized, and the name of the  
22 officer or official who authorized the use;

23 (b) Whether deployment of the device was imperceptible to the  
24 public;

25 (c) The specific kinds of personal information that the  
26 extraordinary sensing device collected about individuals;

27 (d) The length of time for which any personal information  
28 collected by the extraordinary sensing device was retained;

29 (e) The specific steps taken to mitigate the impact on an  
30 individual's privacy, including protections against unauthorized use  
31 and disclosure and a data minimization protocol; and

32 (f) An individual point of contact for citizen complaints and  
33 concerns.

34 (3) For a local agency having jurisdiction over criminal law  
35 enforcement or regulatory violations, the agency must maintain  
36 records of each use of an extraordinary sensing device including, at  
37 a minimum, the following:

38 (a) The number of uses of an extraordinary sensing device  
39 organized by types of incidents and types of justification for use;



1 (b) The number of investigations aided by the use and how the use  
2 was helpful to the investigation;

3 (c) The number of uses of an extraordinary sensing device for  
4 reasons other than criminal investigations and how the use was  
5 helpful;

6 (d) The frequency and type of data collected for individuals or  
7 areas other than targets;

8 (e) The total cost of the extraordinary sensing device;

9 (f) The dates when personal information and other data was  
10 deleted or destroyed in compliance with the act;

11 (g) The number of warrants requested, issued, and extended; and

12 (h) Additional information and analysis the governing body deems  
13 useful.

14 (4) The annual reports required pursuant to subsections (1) and  
15 (2) of this section must be filed electronically to the office of  
16 financial management, who must compile the results and submit them  
17 electronically to the relevant committees of the legislature by  
18 September 1st of each year, beginning in 2016.

19 NEW SECTION. **Sec. 17.** Sections 2 through 16 of this act are  
20 each added to chapter 9.73 RCW and codified with the subchapter  
21 heading of "extraordinary sensing devices."

22 NEW SECTION. **Sec. 18.** If any provision of this act or its  
23 application to any person or circumstance is held invalid, the  
24 remainder of the act or the application of the provision to other  
25 persons or circumstances is not affected.

--- END ---