

2 **SHB 2903** - S AMD - 278
3 By Senators Heavey and Stevens

4 ADOPTED 3/7/00

5 Strike everything after the enacting clause and insert the
6 following:

7 "NEW SECTION. **Sec. 1.** The legislature intends, by the enactment
8 of this act, to provide a very limited exception to the restrictions on
9 disclosure of intercepted communications.

10 **Sec. 2.** RCW 9.73.090 and 1989 c 271 s 205 are each amended to read
11 as follows:

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

15 (a) Recording incoming telephone calls to police and fire stations,
16 licensed emergency medical service providers, emergency communication
17 centers, and poison centers;

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

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

25 (ii) The recording shall commence with an indication of the time of
26 the beginning thereof and terminate with an indication of the time
27 thereof;

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

31 (iv) The recordings shall only be used for valid police or court
32 activities;

33 (c) Sound recordings that correspond to video images recorded by
34 video cameras mounted in law enforcement vehicles. All law enforcement
35 officers wearing a sound recording device that makes recordings

1 corresponding to videos recorded by video cameras mounted in law
2 enforcement vehicles must be in uniform. A sound recording device
3 which makes a recording pursuant to this subsection (1)(c) may only be
4 operated simultaneously with the video camera. No sound recording
5 device may be intentionally turned off by the law enforcement officer
6 during the operation of the video camera.

7 No sound or video recording made under this subsection (1)(c) may
8 be duplicated and made available to the public by a law enforcement
9 agency subject to this section until final disposition of any criminal
10 or civil litigation which arises from the incident or incidents which
11 were recorded. Such sound recordings shall not be divulged or used by
12 any law enforcement agency for any commercial purpose.

13 A law enforcement officer shall inform any person being recorded by
14 sound under this subsection (1)(c) that a sound recording is being made
15 and the statement so informing the person shall be included in the
16 sound recording, except that the law enforcement officer is not
17 required to inform the person being recorded if the person is being
18 recorded under exigent circumstances. A law enforcement officer is not
19 required to inform a person being recorded by video under this
20 subsection (1)(c) that the person is being recorded by video.

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

1 Any recording or interception of a communication or conversation
2 incident to a lawfully recorded or intercepted communication or
3 conversation pursuant to this subsection shall be lawful and may be
4 divulged.

5 All recordings of communications or conversations made pursuant to
6 this subsection shall be retained for as long as any crime may be
7 charged based on the events or communications or conversations
8 recorded.

9 (3) Communications or conversations authorized to be intercepted,
10 recorded, or disclosed by this section shall not be inadmissible under
11 RCW 9.73.050.

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

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

36 Authorizations issued under this subsection shall be effective for
37 not more than fourteen days, after which period the issuing authority
38 may renew or continue the authorization for an additional period not to
39 exceed fourteen days.

1 **Sec. 3.** RCW 9.73.080 and 1989 c 271 s 209 are each amended to read
2 as follows:

3 (1) Except as otherwise provided in this chapter, any person who
4 violates RCW 9.73.030 is guilty of a gross misdemeanor.

5 (2) Any person who knowingly alters, erases, or wrongfully
6 discloses any recording in violation of RCW 9.73.090(1)(c) is guilty of
7 a gross misdemeanor."

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11 On page 1, line 1 of the title, after "recordings;" strike the
12 remainder of the title and insert "amending RCW 9.73.090 and 9.73.080;
13 creating a new section; and prescribing penalties."

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