

HOUSE BILL REPORT

HB 1023

As Passed House:

March 7, 2023

Title: An act relating to the elimination of wire tap authorization reporting to the administrative office of the courts.

Brief Description: Eliminating wire tap authorization reporting to the administrative office of the courts.

Sponsors: Representatives Walen, Goodman, Reeves, Thai and Ormsby; by request of Administrative Office of the Courts.

Brief History:

Committee Activity:

Civil Rights & Judiciary: 1/10/23, 1/13/23 [DP].

Floor Activity:

Passed House: 3/7/23, 90-5.

Brief Summary of Bill

- Repeals certain reporting requirements concerning operation of the Privacy Act and court authorizations for the interception and recording of private communications and conversations under the Privacy Act.

HOUSE COMMITTEE ON CIVIL RIGHTS & JUDICIARY

Majority Report: Do pass. Signed by 8 members: Representatives Hansen, Chair; Farivar, Vice Chair; Cheney, Entenman, Peterson, Rude, Thai and Walen.

Minority Report: Without recommendation. Signed by 2 members: Representatives Walsh, Ranking Minority Member; Graham, Assistant Ranking Minority Member.

Staff: Edie Adams (786-7180).

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

Background:

The Washington Privacy Act restricts the interception or recording of private communications or conversations. As a general rule, it is unlawful for any person to intercept or record a private communication or conversation without first obtaining the consent of all persons participating in the communication or conversation. The Privacy Act also prohibits the installation and use of pen registers and trap and trace devices, which record telephone numbers dialed from or coming into a telephone line, as well as cell site simulator devices. There are a number of exceptions to these restrictions, including provisions allowing court orders authorizing the interception and recording of private communications or conversations or use of such devices.

No-party Consent. The interception or recording of a private communication where no party to the communication has consented is authorized only in limited circumstances. With prior judicial authorization, the police may intercept a communication without the consent of any party if there are reasonable grounds to believe evidence will be obtained that is essential to the protection of national security, the preservation of human life, or the prevention of arson or riot. Initial authorizations under this circumstance can last up to 15 days.

One-party Consent. If at least one party to a communication has consented, the police may get prior judicial authorization for an interception upon a showing of probable cause that the communication will reveal evidence of a felony. An authorization in this circumstance is limited to seven days. If there is probable cause to believe the communication involves a controlled substances offense, the court may authorize the interception even though the true name of the nonconsenting party, or the particular time and place for the interception, is not known if the authorization describes the nonconsenting party and subject matter of the communication with reasonable certainty. Initial authorizations in this circumstance can last up to 14 days.

Pen Registers, Trap and Trace Devices, and Cell Site Simulator Devices. A court may authorize the installation and use of a pen register, trap and trace device, or cell site simulator device if the court finds that the information likely to be gained is relevant to an ongoing criminal investigation and there is probable cause to believe that the device will lead to evidence of a crime, contraband, fruits of crime, items criminally possessed, weapons, or things by means of which a crime has been committed or reasonably appears about to be committed. A court authorization is valid for an initial period not to exceed 60 days.

Reporting Requirements. Judges of the superior courts are required to annually report on authorizations issued under the Privacy Act to the Administrative Office of the Courts (AOC), including authorizations for pen registers and trap and trace devices. The annual report must include information on: the number of applications made and authorizations issued; the periods of the authorizations; the number and duration of renewed

authorizations; the crimes in connection with which the communications were sought; and the names of the applicants.

Superior court judges must also report to the AOC specified information relating to requests for authorizations to intercept and record communications where one party has consented within 30 days after expiration of the authorization. These reports must include specified information relating to the authorization, including the offense specified in the authorization; the law enforcement officer and agency for whom it was made; and whether an arrest resulted from the communication that was the subject of the authorization.

In addition, the Chief Justice of the Washington Supreme Court must annually report to the Governor and the Legislature on operation of the Privacy Act, including recommended improvements to effectuate the purposes of the act and assure and protect individual rights.

Summary of Bill:

The provision is repealed that requires reports to the AOC from superior court judges concerning the operation of and judicial authorizations issued under the Privacy Act, as well as the annual report from the Chief Justice of the Washington Supreme Court on operation of and recommended improvements to the Privacy Act.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) This is request legislation from the AOC to eliminate reporting requirements that are not currently accessed or used. There is no central way for courts to collect the information for these reports. On average it has taken 100 hours of court staff time each year, which is a significant drain on resources. The information in the annual report is vague and not that useful. The originating agency will still be required to maintain information on their authorizations, which will still be available through a records request, and there are other checks and balances under the Privacy Act. Removing the reporting requirements will allow courts to use their resources more efficiently.

(Opposed) None.

Persons Testifying: Representative Amy Walen, prime sponsor; and Brittany Gregory, Administrative Office of the Courts.

Persons Signed In To Testify But Not Testifying: None.