
HOUSE BILL 1602

State of Washington

68th Legislature

2023 Regular Session

By Representatives Graham, Sandlin, McEntire, Schmidt, Mosbrucker, Volz, Christian, and Eslick

Read first time 01/26/23. Referred to Committee on Community Safety, Justice, & Reentry.

1 AN ACT Relating to intercepting, recording, or disclosing
2 communications or conversations involving certain criminal conduct;
3 and amending RCW 9.73.090.

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

5 **Sec. 1.** RCW 9.73.090 and 2011 c 336 s 325 are each amended to
6 read as follows:

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

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

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

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

1 (ii) The recording shall commence with an indication of the time
2 of 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 or her constitutional rights, and such
6 statements informing him or her shall be included in the recording;

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

9 (c) Sound recordings that correspond to video images recorded by
10 video cameras mounted in law enforcement vehicles. All law
11 enforcement officers wearing a sound recording device that makes
12 recordings corresponding to videos recorded by video cameras mounted
13 in law enforcement vehicles must be in uniform. A sound recording
14 device that makes a recording pursuant to this subsection (1)(c) must
15 be operated simultaneously with the video camera when the operating
16 system has been activated for an event. No sound recording device may
17 be intentionally turned off by the law enforcement officer during the
18 recording of an event. Once the event has been captured, the officer
19 may turn off the audio recording and place the system back into "pre-
20 event" mode.

21 No sound or video recording made under this subsection (1)(c) may
22 be duplicated and made available to the public by a law enforcement
23 agency subject to this section until final disposition of any
24 criminal or civil litigation which arises from the event or events
25 which were recorded. Such sound recordings shall not be divulged or
26 used by any law enforcement agency for any commercial purpose.

27 A law enforcement officer shall inform any person being recorded
28 by sound under this subsection (1)(c) that a sound recording is being
29 made and the statement so informing the person shall be included in
30 the sound recording, except that the law enforcement officer is not
31 required to inform the person being recorded if the person is being
32 recorded under exigent circumstances. A law enforcement officer is
33 not required to inform a person being recorded by video under this
34 subsection (1)(c) that the person is being recorded by video.

35 (2) (a) It shall not be unlawful for a law enforcement officer
36 acting in the performance of the officer's official duties to
37 intercept, record, or disclose an oral communication or conversation
38 where the officer is a party to the communication or conversation or
39 one of the parties to the communication or conversation has given
40 prior consent to the interception, recording, or disclosure:

1 PROVIDED, That, except as provided in (b) of this subsection, prior
2 to the interception, transmission, or recording the officer shall
3 obtain written or telephonic authorization from a judge or
4 magistrate, who shall approve the interception, recording, or
5 disclosure of communications or conversations with a nonconsenting
6 party for a reasonable and specified period of time, if there is
7 probable cause to believe that the nonconsenting party has committed,
8 is engaged in, or is about to commit a felony: PROVIDED HOWEVER, That
9 if such authorization is given by telephone the authorization and
10 officer's statement justifying such authorization must be
11 electronically recorded by the judge or magistrate on a recording
12 device in the custody of the judge or magistrate at the time
13 transmitted and the recording shall be retained in the court records
14 and reduced to writing as soon as possible thereafter.

15 (b) A law enforcement officer acting in the performance of the
16 officer's official duties does not need authorization from a judge or
17 magistrate to intercept, record, or disclose an oral communication or
18 conversation when:

19 (i) The officer is a party to the communication or conversation
20 or one of the parties to the communication or conversation has given
21 prior consent to the interception, recording, or disclosure; and

22 (ii) There is reasonable suspicion that the communication or
23 conversation concerns any of the following offenses that has
24 occurred, is occurring, or is about to occur:

25 (A) Trafficking in the first or second degree as defined in RCW
26 9A.40.100;

27 (B) Commercial sexual abuse of a minor as defined in RCW
28 9.68A.100;

29 (C) Promoting commercial sexual abuse of a minor as defined in
30 RCW 9.68A.101; or

31 (D) Manufacture, delivery, sale, or possession with intent to
32 manufacture, deliver, or sell controlled substances as defined in
33 chapter 69.50 RCW, legend drugs as defined in chapter 69.41 RCW, or
34 imitation controlled substances as defined in chapter 69.52 RCW.

35 (c) Any recording or interception of a communication or
36 conversation incident to a lawfully recorded or intercepted
37 communication or conversation pursuant to this subsection shall be
38 lawful and may be divulged.

39 All recordings of communications or conversations made pursuant
40 to this subsection shall be retained for as long as any crime may be

1 charged based on the events or communications or conversations
2 recorded.

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

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

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

30 ~~Authorizations issued under this subsection shall be effective~~
31 ~~for not more than fourteen days, after which period the issuing~~
32 ~~authority may renew or continue the authorization for an additional~~
33 ~~period not to exceed fourteen days.))~~

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