
SENATE BILL 5905

State of Washington 52nd Legislature 1991 Regular Session

By Senators Nelson, Owen, Amondson, McCaslin and Stratton.

Read first time March 4, 1991. Referred to Committee on Law & Justice.

1 AN ACT Relating to intercepting, transmitting, or recording
2 conversations concerning sexual abuse of children; amending RCW
3 9.73.090; adding a new section to chapter 9.73 RCW; creating a new
4 section; and prescribing penalties.

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

6 NEW SECTION. **Sec. 1.** Due to the heinous nature of sexual
7 abuse of children and the difficulty in securing evidence against
8 perpetrators, the legislature finds that conversations regarding
9 illegal sexual contact with minors should be intercepted, transmitted,
10 and recorded in certain circumstances without prior judicial approval
11 in order to enhance prosecution of sexual offenses against children,
12 and that the interception and transmission can be done without
13 violating the constitutional guarantees of privacy.

1 NEW SECTION. **Sec. 2.** A new section is added to chapter 9.73 RCW
2 to read as follows:

3 (1) As part of a bona fide criminal investigation, the chief law
4 enforcement officer of a law enforcement agency or his or her designee
5 above the rank of first line supervisor may authorize the interception,
6 transmission, or recording of a conversation or communication by
7 officers under the following circumstances:

8 (a) At least one party to the conversation or communication has
9 consented to the interception, transmission, or recording: PROVIDED,
10 That if the consenting party is a minor, the minor's parent, guardian,
11 or guardian ad litem has also consented to the interception,
12 transmission, or recording;

13 (b) Probable cause exists to believe that the conversation or
14 communication involves the rape of a child, child molestation, sexual
15 misconduct with a minor, or indecent liberties as defined in chapter
16 9A.44 RCW, or incest as defined in chapter 9A.64 RCW; and

17 (c) A written report has been completed as required by subsection
18 (2) of this section.

19 (2) The agency's chief officer or designee authorizing an
20 interception, transmission, or recording under subsection (1) of this
21 section, shall prepare and sign a written report at the time of
22 authorization indicating:

23 (a) The circumstances that meet the requirements of subsection (1)
24 of this section;

25 (b) The names of the authorizing and consenting parties, except
26 that in those cases where the consenting party is a confidential
27 informant, the name of the confidential informant need not be divulged;

28 (c) The names of the officers authorized to intercept, transmit,
29 and record the conversation or communication;

1 (d) The identity of the particular person or persons, if known, who
2 may have committed or may commit the offense;

3 (e) The details of the particular offense or offenses that may have
4 been or may be committed and the expected date, location, and
5 approximate time of the conversation or communication; and

6 (f) Whether there was an attempt to obtain authorization pursuant
7 to RCW 9.73.090(2) and, if there was such an attempt, the outcome of
8 the attempt.

9 (3) An authorization under this section is valid in all
10 jurisdictions within Washington state and for the interception of
11 communications from additional persons if the persons are brought into
12 the conversation or transaction by the nonconsenting party or if the
13 nonconsenting party or such additional persons cause or invite the
14 consenting party to enter another jurisdiction.

15 (4) The recording of any conversation or communication under this
16 section shall be done in such a manner that protects the recording from
17 editing or other alterations.

18 (5) An authorization made under this section is valid for no more
19 than twenty-four hours from the time it is signed by the authorizing
20 officer, and each authorization shall independently meet all of the
21 requirements of this section. The authorizing officer shall sign the
22 written report required under subsection (2) of this section,
23 certifying the exact date and time of his or her signature. An
24 authorization under this section may be extended not more than twice
25 for an additional consecutive twenty-four hour period based upon the
26 same probable cause regarding the same suspected transaction. Each
27 such extension shall be signed by the authorizing officer.

28 (6) Within fifteen days after the signing of an authorization that
29 results in any interception, transmission, or recording of a
30 conversation or communication pursuant to this section, the law

1 enforcement agency which made the interception, transmission, or
2 recording shall submit a report including the original authorization
3 under subsection (2) of this section to a judge of a court having
4 jurisdiction which report shall identify (a) the persons, including the
5 consenting party, who participated in the conversation, and (b) the
6 date, location, and approximate time of the conversation.

7 In those cases where the consenting party is a confidential
8 informant, the name of the confidential informant need not be divulged.

9 A monthly report shall be filed by the law enforcement agency with
10 the administrator for the courts indicating the number of
11 authorizations granted, the date and time of each authorization,
12 interceptions made, arrests resulting from an interception, and
13 subsequent invalidations.

14 (7) (a) Within two judicial days of receipt of a report under
15 subsection (6) of this section, the court shall make an ex parte review
16 of the authorization, but not of the evidence, and shall make a
17 determination whether the requirements of subsection (1) of this
18 section were met. If the court determines that any of the requirements
19 of subsection (1) of this section were not met, the court shall order
20 that any recording and any copies or transcriptions of the conversation
21 or communication be destroyed. Destruction of recordings, copies, or
22 transcriptions shall be stayed pending any appeal of a finding that the
23 requirements of subsection (1) of this section were not met.

24 (b) Absent a continuation under (c) of this subsection, six months
25 following a determination under (a) of this subsection that probable
26 cause did not exist, the court shall cause a notice to be mailed to the
27 last known address of any nonconsenting party to the conversation or
28 communication that was the subject of the authorization. The notice
29 shall indicate the date, time, and place of any interception,
30 transmission, or recording made pursuant to the authorization. The

1 notice shall also identify the agency that sought the authorization and
2 shall indicate that a review under (a) of this subsection resulted in
3 a determination that the authorization was made in violation of this
4 section.

5 (c) An authorizing agency may obtain six-month extensions to the
6 notice requirement of (b) of this subsection in cases of active,
7 ongoing criminal investigations that might be jeopardized by sending
8 the notice.

9 (8) In any subsequent judicial proceeding, evidence obtained
10 through the interception or recording of a conversation or
11 communication pursuant to this section shall be admissible only if:

12 (a) The court finds that the requirements of subsection (1) of this
13 section were met and the evidence is used in prosecuting an offense
14 listed in subsection (1)(b) of this section; or

15 (b) The evidence is admitted with the permission of the person
16 whose communication or conversation was intercepted, transmitted, or
17 recorded; or

18 (c) The evidence is admitted in a prosecution for a "serious
19 violent offense" as defined in RCW 9.94A.030 in which a party who
20 consented to the interception, transmission, or recording was a victim
21 of the offense; or

22 (d) The evidence is admitted in a civil suit for personal injury or
23 wrongful death arising out of the same incident, in which a party who
24 consented to the interception, transmission, or recording was a victim
25 of a serious violent offense as defined in RCW 9.94A.030.

26 Nothing in this subsection bars the admission of testimony of a
27 party or eyewitness to the intercepted, transmitted, or recorded
28 conversation or communication when that testimony is unaided by
29 information obtained solely by violation of RCW 9.73.030.

1 (9) Any determination of invalidity of an authorization under this
2 section shall be reported by the court to the office of the
3 administrator for the courts.

4 (10) Any person who intentionally intercepts, transmits, or records
5 or who intentionally authorizes the interception, transmission, or
6 recording of a conversation or communication in violation of this
7 section, is guilty of a class C felony punishable according to chapter
8 9A.20 RCW.

9 (11) An authorizing agency is liable for twenty-five thousand
10 dollars in exemplary damages, in addition to any other damages
11 authorized by this chapter or by other law, to a person whose
12 conversation or communication was intercepted, transmitted, or recorded
13 pursuant to an authorization under this section if:

14 (a) In a review under subsection (7) of this section, or in a
15 suppression of evidence proceeding, it has been determined that the
16 authorization was made without the probable cause required by
17 subsection (1)(b) of this section; and

18 (b) The authorization was also made without a reasonable suspicion
19 that the conversation or communication would involve the unlawful acts
20 identified in subsection (1)(b) of this section.

21 **Sec. 3.** RCW 9.73.090 and 1989 c 271 s 205 are each amended to read
22 as follows:

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

26 (a) Recording incoming telephone calls to police and fire stations,
27 licensed emergency medical service providers, emergency communication
28 centers, and poison centers;

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

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

8 (ii) The recording shall commence with an indication of the time of
9 the beginning thereof and terminate with an indication of the time
10 thereof;

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

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

16 (2) It shall not be unlawful for a law enforcement officer acting
17 in the performance of the officer's official duties to intercept,
18 record, or disclose an oral communication or conversation where the
19 officer is a party to the communication or conversation or one of the
20 parties to the communication or conversation has given prior consent to
21 the interception, recording, or disclosure: PROVIDED, That prior to
22 the interception, transmission, or recording the officer shall obtain
23 written or telephonic authorization from a judge or magistrate, who
24 shall approve the interception, recording, or disclosure of
25 communications or conversations with a nonconsenting party for a
26 reasonable and specified period of time, if there is probable cause to
27 believe that the nonconsenting party has committed, is engaged in, or
28 is about to commit a felony: PROVIDED HOWEVER, That if such
29 authorization is given by telephone the authorization and officer's
30 statement justifying such authorization must be electronically recorded

1 by the judge or magistrate on a recording device in the custody of the
2 judge or magistrate at the time transmitted and the recording shall be
3 retained in the court records and reduced to writing as soon as
4 possible thereafter.

5 Any recording or interception of a communication or conversation
6 incident to a lawfully recorded or intercepted communication or
7 conversation pursuant to this subsection shall be lawful and may be
8 divulged.

9 All recordings of communications or conversations made pursuant to
10 this subsection shall be retained for as long as any crime may be
11 charged based on the events or communications or conversations
12 recorded.

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

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

20 (5) If the judge or magistrate determines that there is probable
21 cause to believe that the communication or conversation concerns (a)
22 the unlawful manufacture, delivery, sale, or possession with intent to
23 manufacture, deliver, or sell, controlled substances as defined in
24 chapter 69.50 RCW, or legend drugs as defined in chapter 69.41 RCW, or
25 imitation controlled substances as defined in chapter 69.52 RCW((7));
26 or (b) the rape of a child, child molestation, sexual misconduct with
27 a minor, indecent liberties as defined in RCW 9A.44.100, or incest as
28 defined in RCW 9A.64.020; the judge or magistrate may authorize the
29 interception, transmission, recording, or disclosure of communications
30 or conversations under subsection (2) of this section even though the

1 true name of the nonconsenting party, or the particular time and place
2 for the interception, transmission, recording, or disclosure, is not
3 known at the time of the request, if the authorization describes the
4 nonconsenting party and subject matter of the communication or
5 conversation with reasonable certainty under the circumstances. Any
6 such communication or conversation may be intercepted, transmitted,
7 recorded, or disclosed as authorized notwithstanding a change in the
8 time or location of the communication or conversation after the
9 authorization has been obtained or the presence of or participation in
10 the communication or conversation by any additional party not named in
11 the authorization.

12 Authorizations issued under this subsection shall be effective for
13 not more than fourteen days, after which period the issuing authority
14 may renew or continue the authorization for an additional period not to
15 exceed fourteen days.