
SUBSTITUTE HOUSE BILL 1072

State of Washington

55th Legislature

1997 Regular Session

By House Committee on Law & Justice (originally sponsored by Representatives Sterk, Sheahan, Hickel and Delvin)

Read first time 1/31/97.

1 AN ACT Relating to interception, transmission, recording, or
2 disclosure of communications; amending RCW 9.73.120; adding a new
3 section to chapter 9.73 RCW; and prescribing penalties.

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

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

7 (1) As used in this section:

8 (a) "Wire communication" means any aural transfer made in whole or
9 in part through the use of facilities for the transmission of
10 communications by the aid of wire, cable, or other like connection
11 between the point of origin and the point of reception, including the
12 use of such connection in a switching station, furnished or operated by
13 any person engaged in providing or operating such facilities for the
14 transmission of intrastate, interstate, or foreign communications, and
15 such term includes any electronic storage of such communication.

16 (b) "Electronic communication" means any transfer of signs,
17 signals, writing, images, sounds, data, or intelligence of any nature
18 transmitted in whole or in part by a wire, radio, electromagnetic,
19 photoelectronic, or photo-optical system, but does not include:

- 1 (i) Any wire or oral communication;
2 (ii) Any communication made through a tone-only paging device; or
3 (iii) Any communication from a tracking device.

4 (c) "Electronic communication service" means any service that
5 provides to users thereof the ability to send or receive wire or
6 electronic communications.

7 (d) "Pen register" means a device that records or decodes
8 electronic or other impulses that identify the numbers dialed or
9 otherwise transmitted on the telephone line to which such device is
10 attached, but such term does not include any device used by a provider
11 or customer of a wire or electronic communication service for billing,
12 or recording as an incident to billing, for communications services
13 provided by such provider or any device used by a provider or customer
14 of a wire communication service for cost accounting or other like
15 purposes in the ordinary course of its business.

16 (e) "Trap and trace device" means a device that captures the
17 incoming electronic or other impulses that identify the originating
18 number of an instrument or device from which a wire or electronic
19 communication was transmitted.

20 (2) No person may install or use a pen register or trap and trace
21 device without a prior court order issued under this section except as
22 provided under subsection (6) of this section or RCW 9.73.070.

23 (3) A law enforcement officer may apply for and the superior court
24 may issue orders and extensions of orders authorizing the installation
25 and use of pen registers and trap and trace devices as provided in this
26 section. The application shall be under oath and shall include the
27 identity of the officer making the application and the identity of the
28 law enforcement agency conducting the investigation. The applicant
29 must certify that the information likely to be obtained is relevant to
30 an ongoing criminal investigation being conducted by that agency.

31 (4) If the court finds that the information likely to be obtained
32 by such installation and use is relevant to an ongoing criminal
33 investigation and finds that there is probable cause to believe that
34 the pen register or trap and trace device will lead to obtaining
35 evidence of a crime, contraband, fruits of crime, things criminally
36 possessed, weapons, or other things by means of which a crime has been
37 committed or reasonably appears about to be committed, or will lead to
38 learning the location of a person who is unlawfully restrained or
39 reasonably believed to be a witness in a criminal investigation or for

1 whose arrest there is probable cause, the court shall enter an ex parte
2 order authorizing the installation and use of a pen register or a trap
3 and trace device. The order shall specify:

4 (a) The identity, if known, of the person to whom is leased or in
5 whose name is listed the telephone line to which the pen register or
6 trap and trace device is to be attached;

7 (b) The identity, if known, of the person who is the subject of the
8 criminal investigation;

9 (c) The number and, if known, physical location of the telephone
10 line to which the pen register or trap and trace device is to be
11 attached and, in the case of a trap and trace device, the geographic
12 limits of the trap and trace order; and

13 (d) A statement of the offense to which the information likely to
14 be obtained by the pen register or trap and trace device relates.

15 The order shall direct, if the applicant has requested, the
16 furnishing of information, facilities, and technical assistance
17 necessary to accomplish the installation of the pen register or trap
18 and trace device. An order issued under this section shall authorize
19 the installation and use of a pen register or a trap and trace device
20 for a period not to exceed sixty days. Extensions of such an order may
21 be granted, but only upon a new application for an order under
22 subsection (3) of this section and upon the judicial findings required
23 by this subsection. The period of extension shall be for a period not
24 to exceed sixty days.

25 An order authorizing or approving the installation and use of a pen
26 register or a trap and trace device shall direct that the order be
27 sealed until otherwise ordered by the court and that the person owning
28 or leasing the line to which the pen register or trap and trace device
29 is attached, or who has been ordered by the court to provide assistance
30 to the applicant, not disclose the existence of the pen register or
31 trap and trace device or the existence of the investigation to the
32 listed subscriber or to any other person, unless or until otherwise
33 ordered by the court.

34 (5) Upon the request of an officer of a law enforcement agency
35 authorized to install and use a pen register under this chapter, a
36 provider of wire or electronic communication service, landlord,
37 custodian, or other person shall furnish such law enforcement officer
38 forthwith all information, facilities, and technical assistance
39 necessary to accomplish the installation of the pen register

1 unobtrusively and with a minimum of interference with the services that
2 the person so ordered by the court accords the party with respect to
3 whom the installation and use is to take place, if such assistance is
4 directed by a court order as provided in subsection (4) of this
5 section.

6 Upon the request of an officer of a law enforcement agency
7 authorized to receive the results of a trap and trace device under this
8 chapter, a provider of a wire or electronic communication service,
9 landlord, custodian, or other person shall install such device
10 forthwith on the appropriate line and shall furnish such law
11 enforcement officer all additional information, facilities, and
12 technical assistance including installation and operation of the device
13 unobtrusively and with a minimum of interference with the services that
14 the person so ordered by the court accords the party with respect to
15 whom the installation and use is to take place, if such installation
16 and assistance is directed by a court order as provided in subsection
17 (4) of this section. Unless otherwise ordered by the court, the
18 results of the trap and trace device shall be furnished to the officer
19 of a law enforcement agency, designated in the court order, at
20 reasonable intervals during regular business hours for the duration of
21 the order.

22 A provider of a wire or electronic communication service, landlord,
23 custodian, or other person who furnishes facilities or technical
24 assistance pursuant to this subsection shall be reasonably compensated
25 by the law enforcement agency that requests the facilities or
26 assistance for such reasonable expenses incurred in providing such
27 facilities and assistance.

28 No cause of action shall lie in any court against any provider of
29 a wire or electronic communication service, its officers, employees,
30 agents, or other specified persons for providing information,
31 facilities, or assistance in accordance with the terms of a court order
32 under this section. A good faith reliance on a court order under this
33 section, a request pursuant to this section, a legislative
34 authorization, or a statutory authorization is a complete defense
35 against any civil or criminal action brought under this chapter or any
36 other law.

37 (6)(a) Notwithstanding any other provision of this chapter, a law
38 enforcement officer and a prosecuting attorney or deputy prosecuting
39 attorney who jointly and reasonably determine that there is probable

1 cause to believe that an emergency situation exists that involves
2 immediate danger of death or serious bodily injury to any person that
3 requires the installation and use of a pen register or a trap and trace
4 device before an order authorizing such installation and use can, with
5 due diligence, be obtained, and there are grounds upon which an order
6 could be entered under this chapter to authorize such installation and
7 use, may have installed and use a pen register or trap and trace device
8 if, within forty-eight hours after the installation has occurred, or
9 begins to occur, an order approving the installation or use is issued
10 in accordance with subsection (4) of this section. In the absence of
11 an authorizing order, such use shall immediately terminate when the
12 information sought is obtained, when the application for the order is
13 denied or when forty-eight hours have lapsed since the installation of
14 the pen register or trap and trace device, whichever is earlier. If an
15 order approving the installation or use is not obtained within forty-
16 eight hours, any information obtained is not admissible as evidence in
17 any legal proceeding. The knowing installation or use by any law
18 enforcement officer of a pen register or trap and trace device pursuant
19 to this subsection without application for the authorizing order within
20 forty-eight hours of the installation shall constitute a violation of
21 this chapter and be punishable as a gross misdemeanor. A provider of
22 a wire or electronic service, landlord, custodian, or other person who
23 furnished facilities or technical assistance pursuant to this
24 subsection shall be reasonably compensated by the law enforcement
25 agency that requests the facilities or assistance for such reasonable
26 expenses incurred in providing such facilities and assistance.

27 (b) A law enforcement agency that authorizes the installation of a
28 pen register or trap and trace device under this subsection (6) shall
29 file a monthly report with the administrator for the courts. The
30 report shall indicate the number of authorizations made, the date and
31 time of each authorization, whether a court authorization was sought
32 within forty-eight hours, and whether a subsequent court authorization
33 was granted.

34 **Sec. 2.** RCW 9.73.120 and 1989 c 271 s 207 are each amended to read
35 as follows:

36 (1) Within thirty days after the expiration of an authorization or
37 an extension or renewal thereof issued pursuant to RCW 9.73.090(2) as

1 now or hereafter amended, the issuing or denying judge shall make a
2 report to the administrator for the courts stating that:

3 (a) An authorization, extension or renewal was applied for;

4 (b) The kind of authorization applied for;

5 (c) The authorization was granted as applied for, was modified, or
6 was denied;

7 (d) The period of recording authorized by the authorization and the
8 number and duration of any extensions or renewals of the authorization;

9 (e) The offense specified in the authorization or extension or
10 renewal of authorization;

11 (f) The identity of the person authorizing the application and of
12 the investigative or law enforcement officer and agency for whom it was
13 made;

14 (g) Whether an arrest resulted from the communication which was the
15 subject of the authorization; and

16 (h) The character of the facilities from which or the place where
17 the communications were to be recorded.

18 (2) In addition to reports required to be made by applicants
19 pursuant to federal law, all judges of the superior court authorized to
20 issue authority pursuant to this chapter shall make annual reports on
21 the operation of this chapter to the administrator for the courts. The
22 reports made under this subsection must include information on
23 authorizations for the installation and use of pen registers and trap
24 and trace devices under section 1 of this act. The reports by the
25 judges shall contain (a) the number of applications made; (b) the
26 number of authorizations issued; (c) the respective periods of such
27 authorizations; (d) the number and duration of any renewals thereof;
28 (e) the crimes in connection with which the communications or
29 conversations were sought; (f) the names of the applicants; and (g)
30 such other and further particulars as the administrator for the courts
31 may require, except that the administrator for the courts shall not
32 require the reporting of information that might lead to the disclosure
33 of the identity of a confidential informant.

34 The chief justice of the supreme court shall annually report to the
35 governor and the legislature on such aspects of the operation of this
36 chapter as he deems appropriate including any recommendations he may
37 care to make as to legislative changes or improvements to effectuate

1 the purposes of this chapter and to assure and protect individual
2 rights.

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