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SENATE BILL 5320

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State of Washington                      55th Legislature                      1997 Regular Session

By Senators McCaslin, Haugen and Hargrove

Read first time 01/23/97. Referred to Committee on Law & Justice.

1            AN ACT Relating to interception, transmission, recording, or  
2 disclosure of communications; adding a new section to chapter 9.73 RCW;  
3 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 reason to believe that the pen register or trap  
34 and trace device will lead to obtaining evidence of a crime,  
35 contraband, fruits of crime, things criminally possessed, weapons, or  
36 other things by means of which a crime has been committed or reasonably  
37 appears about to be committed, or will lead to learning the location of  
38 a person who is unlawfully restrained or reasonably believed to be a  
39 witness in a criminal investigation or for whose arrest there is

1 probable cause, the court shall enter an ex parte order authorizing the  
2 installation and use of a pen register or a trap and trace device. The  
3 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) 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 an emergency

1 situation exists that involves immediate danger of death or serious  
2 bodily injury to any person that requires the installation and use of  
3 a pen register or a trap and trace device before an order authorizing  
4 such installation and use can, with due diligence, be obtained, and  
5 there are grounds upon which an order could be entered under this  
6 chapter to authorize such installation and use, may have installed and  
7 use a pen register or trap and trace device if, within forty-eight  
8 hours after the installation has occurred, or begins to occur, an order  
9 approving the installation or use is issued in accordance with  
10 subsection (4) of this section. In the absence of an authorizing  
11 order, such use shall immediately terminate when the information sought  
12 is obtained, when the application for the order is denied or when  
13 forty-eight hours have lapsed since the installation of the pen  
14 register or trap and trace device, whichever is earlier. If an order  
15 approving the installation or use is not obtained within forty-eight  
16 hours, any information obtained is not admissible as evidence in any  
17 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.

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