

2 **SHB 2903** - S AMD - 203 (S5045.1 AMD BY #216 & 222)  
3 By Senators Heavey and McCaslin

4 ADOPTED AS AMENDED BY #216 7 #222) 3/2/00

5 Strike everything after the enacting clause and insert the  
6 following:

7 "NEW SECTION. **Sec. 1.** The legislature intends, by the enactment  
8 of this act, to provide a very limited exception to the restrictions on  
9 disclosure of intercepted communications.

10 **Sec. 2.** RCW 9.73.090 and 1989 c 271 s 205 are each amended to read  
11 as follows:

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

15 (a) Recording incoming telephone calls to police and fire stations,  
16 licensed emergency medical service providers, emergency communication  
17 centers, and poison centers;

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

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

25 (ii) The recording shall commence with an indication of the time of  
26 the beginning thereof and terminate with an indication of the time  
27 thereof;

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

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

33 (c) Sound recordings that correspond to video images recorded by  
34 video cameras mounted in law enforcement vehicles. All law enforcement  
35 officers wearing a sound recording device that makes recordings

1 corresponding to videos recorded by video cameras mounted in law  
2 enforcement vehicles must be in uniform. A sound recording device  
3 which makes a recording pursuant to this subsection (1)(c) may only be  
4 operated simultaneously with the video camera. No sound recording  
5 device may be intentionally turned off by the law enforcement officer  
6 during the operation of the video camera.

7 No sound or video recording made under this subsection (1)(c) may  
8 be duplicated and made available to the public by a law enforcement  
9 agency subject to this section until final disposition of any criminal  
10 or civil litigation which arises from the incident or incidents which  
11 were recorded. Such sound recordings shall not be divulged or used by  
12 any law enforcement agency for any commercial purpose. Any persons  
13 being recorded pursuant to this section shall be informed by the law  
14 enforcement officer that such recording is being made and the statement  
15 so informing those persons shall be included in the recording.

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  
31 by the judge or magistrate on a recording device in the custody of the  
32 judge or magistrate at the time transmitted and the recording shall be  
33 retained in the court records and reduced to writing as soon as  
34 possible thereafter.

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

1 All recordings of communications or conversations made pursuant to  
2 this subsection shall be retained for as long as any crime may be  
3 charged based on the events or communications or conversations  
4 recorded.

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

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

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

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

36 **Sec. 3.** RCW 9.73.080 and 1989 c 271 s 209 are each amended to read  
37 as follows:

1       (1) Except as otherwise provided in this chapter, any person who  
2 violates RCW 9.73.030 is guilty of a gross misdemeanor.

3       (2) Any person who knowingly alters, erases, or wrongfully  
4 discloses any recording in violation of RCW 9.73.090(1)(c) is guilty of  
5 a gross misdemeanor."

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8   ADOPTED AS AMENDED BY #216 3/2/00

9       On page 1, line 1 of the title, after "recordings;" strike the  
10 remainder of the title and insert "and amending RCW 9.73.090 and  
11 9.73.080; creating a new section; and prescribing penalties."

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