
HOUSE BILL 2416

State of Washington

57th Legislature

2002 Regular Session

By Representatives Hurst, Lisk, O'Brien, Ballasiotes, Buck, Kirby, Lovick and Haigh

Read first time 01/16/2002. Referred to Committee on Select Committee on Community Security.

1 AN ACT Relating to terrorism investigations pursuant to the privacy
2 act; amending RCW 9.73.240; adding new sections to chapter 9.73 RCW;
3 creating a new section; and prescribing penalties.

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

5 NEW SECTION. **Sec. 1.** It is the intent of the legislature to
6 prevent terrorist attacks, and thereby save the lives of Washington
7 residents by providing appropriate investigative tools that facilitate
8 and promote cooperation between local, state, and federal law
9 enforcement agencies, that remove barriers to cooperation in terrorism
10 investigations, and that continue to protect the privacy rights of
11 residents of the state.

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

14 The attorney general or any deputy or assistant attorney general
15 specifically designated by the attorney general, or a prosecuting
16 attorney or any deputy or assistant prosecuting attorney specifically
17 designated by a prosecuting attorney, may authorize an application to
18 a superior court for, and the court may grant, in conformity with

1 section 3 of this act, an order authorizing the interception, by a law
2 enforcement agency having responsibility for the investigation of the
3 offense as to which the application is made, of wire, oral, or
4 electronic communications if the interception may provide evidence of
5 an act of terrorism as defined in Title 9A RCW or a conspiracy to
6 commit such an act.

7 NEW SECTION. **Sec. 3.** A new section is added to chapter 9.73 RCW
8 to read as follows:

9 (1) Each application pursuant to section 2 of this act for an order
10 authorizing the interception of a wire, oral, or electronic
11 communication shall be made in writing upon oath or affirmation to a
12 superior court and shall state the applicant's authority to make the
13 application. Each application shall include the following information:

14 (a) The identity of the investigative or law enforcement officer
15 making the application, and the officer authorizing the application;

16 (b) A full and complete statement of the facts and circumstances
17 relied upon by the applicant, to justify his or her belief that an
18 order should be issued, including (i) details as to the particular act
19 of terrorism or conspiracy to commit terrorism that has been, is being,
20 or is about to be committed, (ii) except as provided in subsection (11)
21 of this section, a particular description of the nature and location of
22 the facilities from which or the place where the communication is to be
23 intercepted, (iii) a particular description of the type of
24 communications sought to be intercepted, and (iv) the identity of the
25 person, if known, committing the offense and whose communications are
26 to be intercepted;

27 (c) A full and complete statement as to whether or not other
28 investigative procedures have been tried and failed or why they
29 reasonably appear to be unlikely to succeed if tried or to be too
30 dangerous;

31 (d) A statement of the period of time for which the interception is
32 required to be maintained. If the nature of the investigation is such
33 that the authorization of interceptions should not automatically
34 terminate when the described type of communication has been first
35 obtained, a particular description of facts establishing probable cause
36 to believe that additional communications of the same type will occur
37 thereafter;

1 (e) A full and complete statement of the facts concerning all
2 previous applications known to the individual authorizing and making
3 the application, made to any court for authorization to intercept wire,
4 oral, or electronic communications involving any of the same persons,
5 facilities, or places specified in the application, and the action
6 taken by the court on each such application; and

7 (f) Where the application is for the extension of an order, a
8 statement setting forth the results thus far obtained from the
9 interception, or a reasonable explanation of the failure to obtain
10 results.

11 (2) The court may require the applicant to furnish additional
12 testimony or documentary evidence in support of the application.

13 (3) Upon receiving the application, the court may enter an ex parte
14 order, as requested or as modified, authorizing interception of wire,
15 oral, or electronic communications, if the court determines on the
16 basis of the facts submitted by the applicant that:

17 (a) There is probable cause for belief that a person is committing
18 or conspiring to commit, has committed or conspired to commit, or is
19 about to commit or conspire to commit an act of terrorism as defined in
20 Title 9A RCW;

21 (b) There is probable cause for belief that particular
22 communications concerning the offense will be obtained through the
23 interception;

24 (c) Normal investigative procedures have been tried and have failed
25 or reasonably appear to be unlikely to succeed if tried or to be too
26 dangerous;

27 (d) Except as provided in subsection (11) of this section, there is
28 probable cause for belief that the facilities from which, or the place
29 where, the wire, oral, or electronic communications are to be
30 intercepted are being used, or are about to be used, in connection with
31 the commission of the offense, or are leased to, listed in the name of,
32 or commonly used by such person.

33 (4) Each order authorizing the interception of any wire, oral, or
34 electronic communication under this section shall specify:

35 (a) The identity of the person, if known, whose communications are
36 to be intercepted;

37 (b) The nature and location of the communications facilities as to
38 which, or the place where, authority to intercept is to be granted;

1 (c) A particular description of the type of communication sought to
2 be intercepted, and a statement of the particular offense to which it
3 relates;

4 (d) The identity of the agency authorized to intercept the
5 communications, and of the person authorizing the application; and

6 (e) The period of time during which the interception is authorized,
7 including a statement as to whether or not the interception shall
8 automatically terminate when the described communication has been first
9 obtained.

10 (5) An order authorizing the interception of a wire, oral, or
11 electronic communication under this section shall, upon request of the
12 applicant, direct that a provider of wire or electronic communication
13 service, landlord, custodian, or other person shall furnish the
14 applicant forthwith all information, facilities, and technical
15 assistance necessary to accomplish the interception unobtrusively and
16 with a minimum of interference with the services that the service
17 provider, landlord, custodian, or such other person is according the
18 person whose communications are to be intercepted. Any service
19 provider, landlord, custodian, or other person furnishing such
20 facilities or technical assistance shall be compensated by the
21 applicant for reasonable expenses incurred in providing the facilities
22 or assistance.

23 (6) No order entered under this section may authorize the
24 interception of any wire, oral, or electronic communication for any
25 period longer than is necessary to achieve the objective of the
26 authorization, nor in any event longer than thirty days. The
27 thirty-day period begins on the earlier of the day on which the
28 investigative or law enforcement officer first begins to conduct an
29 interception under the order or ten days after the order is entered.
30 Extensions of an order may be granted, but only upon application for an
31 extension made in accordance with subsection (1) of this section and
32 the court making the findings required by subsection (3) of this
33 section. The period of extension shall be no longer than the
34 authorizing court deems necessary to achieve the purposes for which it
35 is granted and in no event for longer than thirty days. Every order
36 and extension shall contain a provision that the authorization to
37 intercept shall be executed as soon as practicable, shall be conducted
38 in such a way as to minimize the interception of communications not
39 otherwise subject to interception under this section, and must

1 terminate upon attainment of the authorized objective, or in any event
2 in thirty days. In the event the intercepted communication is in a
3 code or foreign language, and an expert in that code or foreign
4 language is not reasonably available during the interception period,
5 minimization may be accomplished as soon as practicable after the
6 interception. An interception under this section may be conducted in
7 whole or in part by employees of the state or a political subdivision
8 of the state, or by an individual operating under a contract with the
9 state or a political subdivision of the state, when acting under the
10 supervision of an investigative or law enforcement officer authorized
11 to conduct the interception.

12 (7) Whenever an order authorizing interception is entered pursuant
13 to this section, the order may require reports to be made to the court
14 that issued the order showing what progress has been made toward
15 achievement of the authorized objective and the need for continued
16 interception. The reports shall be made at such intervals as the court
17 may require.

18 (8)(a) The contents of any wire, oral, or electronic communication
19 intercepted by any means authorized by this section shall, if possible,
20 be recorded on tape or wire or other comparable device. The recording
21 of the contents of any wire, oral, or electronic communication under
22 this subsection shall be done in such a way as will protect the
23 recording from editing or other alterations. Immediately upon the
24 expiration of the period of the order, or extensions thereof, the
25 recordings shall be made available to the court issuing the order and
26 shall be sealed under the court's directions. Custody of the
27 recordings shall be wherever the court orders. The recordings shall
28 not be destroyed except upon an order of the issuing court and in any
29 event shall be kept for at least ten years. Duplicate recordings may
30 be made for use, or for disclosure pursuant to the provisions of
31 section 6 (1) and (2) of this act, for investigations. The presence of
32 the seal provided for by this subsection, or a satisfactory explanation
33 for the absence thereof, shall be a prerequisite for the use or
34 disclosure of the contents of any wire, oral, or electronic
35 communication or derivative evidence under section 6(3) of this act.

36 (b) Applications made and orders granted under this section shall
37 be sealed by the court. Custody of the applications and orders shall
38 be wherever the court directs. The applications and orders shall be
39 disclosed only upon a showing of good cause before a superior court and

1 shall not be destroyed except on order of the issuing or denying court,
2 and in any event shall be kept for at least ten years.

3 (c) Any violation of the provisions of this subsection may be
4 punished as contempt of the issuing or denying court.

5 (d) Within a reasonable time but not later than ninety days after
6 the termination of the period of an order or extensions thereof, the
7 issuing court shall cause to be served, on the persons named in the
8 order, and such other parties to intercepted communications as the
9 court may determine is in the interest of justice, an inventory which
10 shall include notice of (i) the fact of the entry of the order, (ii)
11 the date of the entry and the period of authorized interception, and
12 (iii) whether during that period wire, oral, or electronic
13 communications were or were not intercepted.

14 The court, upon the filing of a motion, may make available to any
15 such person or party or his or her counsel for inspection such portions
16 of the intercepted communications and orders as the court determines to
17 be in the interest of justice. On an ex parte showing of good cause to
18 the court, the serving of the inventory required by this subsection may
19 be postponed.

20 (9) The contents of any wire, oral, or electronic communication
21 intercepted pursuant to this section or evidence derived from such
22 contents shall not be received in evidence or otherwise disclosed in
23 any trial, hearing, or other proceeding in a court of this state unless
24 each party, not less than ten days before the trial, hearing, or
25 proceeding, has been furnished with a copy of the court order, and
26 accompanying application, under which the interception was authorized.
27 This ten-day period may be waived by the court upon a finding that it
28 was not possible to furnish the party with the order and application
29 ten days before the trial, hearing, or proceeding and that the party
30 will not be prejudiced by the delay in receiving such information.

31 (10)(a) An aggrieved person in any trial, hearing, or other
32 proceeding in or before any court, administrative law judge, hearing
33 officer or examiner, department, officer, agency, board, regulatory
34 body, legislative committee, or other similar authority of this state
35 or any political subdivision of this state may move to suppress the
36 contents of any wire, oral, or electronic communication intercepted
37 pursuant to this section, or evidence derived from such contents, on
38 the grounds that (i) the communication was unlawfully intercepted; (ii)
39 the order of authorization under which it was intercepted is

1 insufficient on its face; or (iii) the interception was not made in
2 conformity with the order of authorization.

3 Such a motion shall be made before the trial, hearing, or
4 proceeding unless there was no opportunity to make the motion or the
5 person was not aware of the grounds of the motion. If the motion is
6 granted, the contents of the intercepted wire, oral, or electronic
7 communication, or evidence derived from such contents, shall be treated
8 as having been obtained in violation of this section. The court or
9 person presiding, upon the filing of such a motion by the aggrieved
10 person, may make available to the aggrieved person or his or her
11 counsel for inspection such portions of the intercepted communication
12 or derivative evidence as the court or person presiding determines to
13 be in the interest of justice.

14 (b) In addition to any other right to appeal, the state or other
15 proponent of evidence that is suppressed has the right to appeal from
16 an order granting a motion to suppress made under (a) of this
17 subsection, if the attorney for the state or other proponent certifies
18 to the court or other official granting the motion that the appeal is
19 not taken for purposes of delay. Such an appeal shall be taken within
20 thirty days after the date the order was entered and shall be
21 diligently prosecuted.

22 (11) The requirements of (1)(b)(ii) and (3)(d) of this section
23 relating to the specification of the facilities from which, or the
24 place where, a communication is to be intercepted do not apply if:

25 (a) In the case of an application with respect to the interception
26 of an oral communication:

27 (i) The application is by an investigative or law enforcement
28 officer and is approved by the attorney general, a prosecuting
29 attorney, or other attorney authorized to provide such approval under
30 section 2 of this act;

31 (ii) The application contains a full and complete statement as to
32 why such specification is not practical and identifies the person
33 believed to be committing the offense and whose communications are to
34 be intercepted; and

35 (iii) The court finds that such specification is not practical; and

36 (b) In the case of an application with respect to a wire or
37 electronic communication:

38 (i) The application is by an investigative or law enforcement
39 officer and is approved by the attorney general, a prosecuting

1 attorney, or other attorney authorized to provide such approval under
2 section 2 of this act;

3 (ii) The application identifies the person believed to be
4 committing the offense and whose communications are to be intercepted
5 and the applicant makes a showing that there is probable cause to
6 believe that the person's actions could have the effect of thwarting
7 interception from a specified facility;

8 (iii) The court finds that such showing has been adequately made;
9 and

10 (iv) The order authorizing the interception is limited to
11 interception only for such time as it is reasonable to presume that the
12 person identified in the application is reasonably proximate to the
13 instrument through which such communication will be transmitted.

14 (12) An interception of a communication under an order with respect
15 to which the requirements of (1)(b)(ii) and (3)(d) of this section do
16 not apply by reason of subsection (11)(a) of this section shall not
17 begin until the facilities from which, or the place where, the
18 communication is to be intercepted is ascertained by the person
19 implementing the interception order. A provider of wire or electronic
20 communication service that has received an order as provided for in
21 subsection (11)(b) of this section may move the court to modify or
22 quash the order on the ground that its assistance with respect to the
23 interception cannot be performed in a timely or reasonable fashion.
24 The court, upon notice to the government, shall decide such a motion
25 expeditiously.

26 NEW SECTION. **Sec. 4.** A new section is added to chapter 9.73 RCW
27 to read as follows:

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

33 (a) At least one party to the conversation or communication has
34 consented to the interception, transmission, or recording;

35 (b) Probable cause exists to believe that the conversation or
36 communication involves an act of terrorism as defined in Title 9A RCW
37 or a conspiracy to commit such an act; and

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

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

7 (a) The circumstances that meet the requirements of subsection (1)
8 of this section;

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

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

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

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

19 (f) Whether there was an attempt to obtain authorization pursuant
20 to RCW 9.73.090(2) and, if there was such an attempt, the outcome of
21 the attempt.

22 (3) An authorization under this section is valid in all
23 jurisdictions within Washington state and for the interception of
24 communications from additional persons if the persons are brought into
25 the conversation or transaction by the nonconsenting party or if the
26 nonconsenting party or such additional persons cause or invite the
27 consenting party to enter another jurisdiction.

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

31 (5) An authorization made under this section is valid for no more
32 than twenty-four hours from the time it is signed by the authorizing
33 officer, and each authorization shall independently meet all of the
34 requirements of this section. The authorizing officer shall sign the
35 written report required under subsection (2) of this section,
36 certifying the exact date and time of his or her signature. An
37 authorization under this section may be extended not more than twice
38 for an additional consecutive twenty-four hour period based upon the

1 same probable cause regarding the same suspected transaction. Each
2 such extension shall be signed by the authorizing officer.

3 (6) Within fifteen days after the signing of an authorization that
4 results in any interception, transmission, or recording of a
5 conversation or communication pursuant to this section, the law
6 enforcement agency which made the interception, transmission, or
7 recording shall submit a report including the original authorization
8 under subsection (2) of this section to a judge of a court having
9 jurisdiction which report shall identify (a) the persons, including the
10 consenting party, who participated in the conversation, and (b) the
11 date, location, and approximate time of the conversation.

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

14 A monthly report shall be filed by the law enforcement agency with
15 the administrator for the courts indicating the number of
16 authorizations granted, the date and time of each authorization,
17 interceptions made, arrests resulting from an interception, and
18 subsequent invalidations.

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

29 (b) Absent a continuation under (c) of this subsection, six months
30 following a determination under (a) of this subsection that probable
31 cause did not exist, the court shall cause a notice to be mailed to the
32 last known address of any nonconsenting party to the conversation or
33 communication that was the subject of the authorization. The notice
34 shall indicate the date, time, and place of any interception,
35 transmission, or recording made pursuant to the authorization. The
36 notice shall also identify the agency that sought the authorization and
37 shall indicate that a review under (a) of this subsection resulted in
38 a determination that the authorization was made in violation of this
39 section.

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

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

8 (a) The court finds that the requirements of subsection (1) of this
9 section were met and the evidence is used in prosecuting an offense
10 identified in subsection (1)(b) of this section; or

11 (b) The evidence is admitted with the permission of the person
12 whose communication or conversation was intercepted, transmitted, or
13 recorded; or

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

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

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

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

29 (10) Any person who intentionally intercepts, transmits, or records
30 or who intentionally authorizes the interception, transmission, or
31 recording of a conversation or communication in violation of this
32 section is guilty of a class C felony punishable according to chapter
33 9A.20 RCW.

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

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

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

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

10 (1) This section applies to pen registers and traps and traces as
11 defined in section 7 of this act when used to obtain information
12 regarding an act of terrorism as defined in Title 9A RCW or a
13 conspiracy to commit such an act.

14 (2) An investigative or law enforcement officer may seek and the
15 superior court may issue orders and extensions of orders authorizing
16 the installation or application and use of pen registers and traps and
17 traces as provided in this section. The request for an order shall be
18 under oath and shall include the identity of the officer seeking the
19 order and the identity of the law enforcement agency conducting the
20 investigation. The officer must certify that the information likely to
21 be obtained is relevant to an ongoing criminal investigation of
22 terrorism being conducted by that agency.

23 (3) If the court finds that the information likely to be obtained
24 by such installation or application and use is relevant to an ongoing
25 criminal investigation of terrorism and finds that there is probable
26 cause to believe that the pen register or trap and trace will lead to
27 obtaining evidence of terrorism, contraband, fruits of crime, things
28 criminally possessed, weapons, or other things by means of which an act
29 of terrorism or conspiracy to commit such an act has been committed or
30 reasonably appears about to be committed, or will lead to learning the
31 location of a person who is unlawfully restrained or reasonably
32 believed to be a witness in an investigation of such an act or
33 conspiracy or for whose arrest there is probable cause, the court shall
34 enter an ex parte order authorizing the installation or application and
35 use of a pen register or a trap and trace. The order shall specify:

36 (a) The identity, if known, of the person to whom is leased or in
37 whose name is listed the telephone line or other instrument or facility

1 to which the pen register or trap and trace is to be attached or
2 applied;

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

5 (c) The attributes of the communications to which the order
6 applies, including the number or other identifier and, if known, the
7 location of the telephone line or other instrument or facility to which
8 the pen register or trap and trace is to be attached or applied, and,
9 in the case of a trap and trace, the geographic limits of the trap and
10 trace; and

11 (d) A statement of the act of terrorism or conspiracy to commit
12 such an act to which the information likely to be obtained by the pen
13 register or trap and trace relates.

14 The order shall direct, if the applicant has requested, the
15 furnishing of information, facilities, and technical assistance
16 necessary to accomplish the installation of the pen register or trap
17 and trace. An order issued under this section shall authorize the
18 installation or application and use of a pen register or a trap and
19 trace for a period not to exceed sixty days. An extension of the
20 original order may only be granted upon: A new request for an order
21 under subsection (2) of this section; and a showing that there is a
22 probability that the information or items sought under this subsection
23 are more likely to be obtained under the extension than under the
24 original order. No extension beyond the first extension shall be
25 granted unless: There is a showing that there is a high probability
26 that the information or items sought under this subsection are much
27 more likely to be obtained under the second or subsequent extension
28 than under the original order; and there are extraordinary
29 circumstances such as a direct and immediate danger of death or serious
30 bodily injury to a law enforcement officer. The period of extension
31 shall be for a period not to exceed sixty days.

32 An order authorizing or approving the installation or application
33 and use of a pen register or a trap and trace shall direct that the
34 order be sealed until otherwise ordered by the court and that the
35 person owning or leasing the line or other facility to which the pen
36 register or trap and trace is attached or applied, or who has been
37 ordered by the court to provide assistance to the applicant, not
38 disclose the existence of the pen register or trap and trace or the

1 existence of the investigation to the listed subscriber or to any other
2 person, unless or until otherwise ordered by the court.

3 (4) Upon the presentation of an order, entered under subsection (3)
4 of this section, by an officer of a law enforcement agency authorized
5 to install or apply and use a pen register under this chapter, a
6 provider of wire or electronic communication service, landlord,
7 custodian, or other person shall furnish such law enforcement officer
8 forthwith all information, facilities, and technical assistance
9 necessary to accomplish the installation or application of the pen
10 register unobtrusively and with a minimum of interference with the
11 services that the person so ordered by the court accords the party with
12 respect to whom the installation or application and use is to take
13 place, if such assistance is directed by a court order as provided in
14 subsection (3) of this section.

15 Upon the request of an officer of a law enforcement agency
16 authorized to receive the results of a trap and trace under this
17 chapter, a provider of a wire or electronic communication service,
18 landlord, custodian, or other person shall install or apply the trap
19 and trace forthwith on the appropriate line or other facility and shall
20 furnish such law enforcement officer all additional information,
21 facilities, and technical assistance including installation or
22 application and operation of the device unobtrusively and with a
23 minimum of interference with the services that the person so ordered by
24 the court accords the party with respect to whom the installation or
25 application and use is to take place, if such installation or
26 application and assistance is directed by a court order as provided in
27 subsection (3) of this section. Unless otherwise ordered by the court,
28 the results of the trap and trace shall be furnished to the officer of
29 a law enforcement agency, designated in the court order, at reasonable
30 intervals during regular business hours for the duration of the order.

31 A provider of a wire or electronic communication service, landlord,
32 custodian, or other person who furnishes facilities or technical
33 assistance pursuant to this subsection shall be reasonably compensated
34 by the law enforcement agency that requests the facilities or
35 assistance for such reasonable expenses incurred in providing such
36 facilities and assistance.

37 No cause of action shall lie in any court against any provider of
38 a wire or electronic communication service, its officers, employees,
39 agents, or other specified persons for providing information,

1 facilities, or assistance in accordance with the terms of a court order
2 under this section. A good faith reliance on a court order under this
3 section, a request pursuant to this section, a legislative
4 authorization, or a statutory authorization is a complete defense
5 against any civil or criminal action brought under this chapter or any
6 other law.

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

1 (b) A law enforcement agency that authorizes the installation or
2 application of a pen register or trap and trace under this subsection
3 (5) shall file a monthly report with the administrator for the courts.
4 The report shall indicate the number of authorizations made, the date
5 and time of each authorization, whether a court authorization was
6 sought within forty-eight hours, and whether a subsequent court
7 authorization was granted.

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

10 (1)(a) Any investigative or law enforcement officer who, by any
11 means authorized by this section or section 3 or 4 of this act, has
12 obtained knowledge of the contents of any wire, oral, or electronic
13 communication, or evidence derived from such contents, may disclose
14 such contents or derivative evidence to another investigative or law
15 enforcement officer, including an investigative or law enforcement
16 officer of another state, to the extent that such disclosure is
17 appropriate to the proper performance of the official duties of the
18 officer making or receiving the disclosure; or

19 (b) Any investigative or law enforcement officer who, by any means
20 authorized by this section or section 5 of this act, has obtained
21 information from a pen register or trap and trace, or evidence derived
22 from such information, may disclose such contents or derivative
23 evidence to another investigative or law enforcement officer, including
24 an investigative or law enforcement officer of another state, to the
25 extent that such disclosure is appropriate to the proper performance of
26 the official duties of the officer making or receiving the disclosure.

27 (2)(a) Any investigative or law enforcement officer who, by any
28 means authorized by this section or section 3 or 4 of this act, has
29 obtained knowledge of the contents of any wire, oral, or electronic
30 communication, or evidence derived from such contents, may use such
31 contents or derivative evidence to the extent such use is appropriate
32 to the proper performance of his or her official duties.

33 (b) Any investigative or law enforcement officer who, by any means
34 authorized by this section or section 5 of this act, has obtained
35 information from a pen register or trap and trace, or evidence derived
36 from such information, may use such information or derivative evidence
37 to the extent such use is appropriate to the proper performance of his
38 or her official duties.

1 (3)(a) Any person who, by any means authorized by this section or
2 section 3 or 4 of this act, has received any information concerning the
3 contents of a wire, oral, or electronic communication, or evidence
4 derived from such contents, intercepted in accordance with section 3 or
5 4 of this act, may disclose such contents or derivative evidence while
6 giving testimony under oath or affirmation in any proceeding held under
7 the authority of this state or any political subdivision of this state.

8 (b) Any person who, by any means authorized by this section or
9 section 5 of this act, has received information obtained from a pen
10 register or trap and trace or evidence derived from such information,
11 may disclose such information or derivative evidence while giving
12 testimony under oath or affirmation in any proceeding held under the
13 authority of this state or any political subdivision of this state.

14 (4)(a) When an investigative or law enforcement officer, while
15 engaged in intercepting wire, oral, or electronic communications in the
16 manner authorized in section 3 or 4 of this act, intercepts wire, oral,
17 or electronic communications relating to an offense other than an
18 offense specified in the order of authorization, the contents of the
19 communications, and evidence derived from the contents, may be
20 disclosed or used as provided in subsections (1) and (2) of this
21 section. Such contents and derivative evidence may be used under
22 subsection (3) of this section when authorized by a superior court
23 where the court finds on subsequent application that the contents were
24 otherwise intercepted in accordance with the provisions of section 3 or
25 4 of this act. Such application shall be made as soon as practicable.

26 (b) When an investigative or law enforcement officer, while engaged
27 in obtaining information by any means authorized by section 5 of this
28 act, obtains information from a pen register or trap and trace relating
29 to an offense other than an offense specified in the authorizing order,
30 the information and evidence derived from it may be disclosed or used
31 as provided in subsections (1) and (2) of this section. Such
32 information and derivative evidence may be used under subsection (3) of
33 this section when authorized by a superior court where the court finds
34 on subsequent application that the information was otherwise obtained
35 in accordance with section 5 of this act. Such application shall be
36 made as soon as practicable.

37 (5)(a) Any investigative or law enforcement officer, or attorney
38 for the state or any political subdivision of the state, who by any
39 means authorized by this section or section 3 or 4 of this act has

1 obtained knowledge of the contents of any wire, oral, or electronic
2 communication, or evidence derived from such contents, may also
3 disclose such contents or derivative evidence to any federal
4 intelligence, protective, immigration, national defense, or national
5 security official to the extent that such contents or derivative
6 evidence includes foreign intelligence or counterintelligence, as
7 defined in section 3 of the National Security Act of 1947, 50 U.S.C.
8 Sec. 401(a), or foreign intelligence information, as defined in
9 subsection (19) of 18 U.S.C. Sec. 2510, to assist the official who is
10 to receive that information in the performance of his or her official
11 duties. Any federal official who receives information pursuant to this
12 provision may use that information only as necessary in the conduct of
13 that person's official duties subject to any limitations on the
14 unauthorized disclosure of such information.

15 (b) Any investigative or law enforcement officer, or attorney for
16 the state or any political subdivision of the state, who by any means
17 authorized by this section or section 5 of this act has obtained
18 information from a pen register or trap and trace or evidence derived
19 from such information, may also disclose such information or derivative
20 evidence to any federal intelligence, protective, immigration, national
21 defense, or national security official to the extent that such
22 information or derivative evidence includes foreign intelligence or
23 counterintelligence, as defined in section 3 of the National Security
24 Act of 1947, 50 U.S.C. Sec. 401(a), or foreign intelligence
25 information, as defined in subsection (19) of 18 U.S.C. Sec. 2510, to
26 assist the official who is to receive that information in the
27 performance of his or her official duties. Any federal official who
28 receives information pursuant to this provision may use that
29 information only as necessary in the conduct of that person's official
30 duties subject to any limitations on the unauthorized disclosure of
31 such information.

32 (6) Any federal investigative or law enforcement officer who
33 obtains information regarding an act of terrorism as defined in Title
34 9A RCW or a conspiracy to commit such an act, from the contents of a
35 wire, oral, or electronic communication or obtains such information
36 from the installation or application of a pen register or trap and
37 trace, or obtains any evidence derived from such information, may
38 disclose such information or derivative evidence while giving testimony
39 under oath or affirmation in any proceeding held under the authority of

1 this state or any political subdivision of this state, if such
2 information or derivative evidence was obtained in compliance with
3 federal law.

4 NEW SECTION. **Sec. 7.** A new section is added to chapter 9.73 RCW
5 to read as follows:

6 As used in sections 2 through 6 of this act, the following terms
7 have the following meanings:

8 (1) "Aggrieved person" means a person who was a party to any
9 intercepted wire, oral, or electronic communication or a person against
10 whom the interception was directed.

11 (2) "Computer" means an electronic, magnetic, optical,
12 electrochemical, or other high speed data processing device performing
13 logical, arithmetic, or storage functions, and includes any data
14 storage facility or communications facility directly related to or
15 operating in conjunction with such device, but such term does not
16 include an automated typewriter or typesetter, a portable handheld
17 calculator, or other similar device.

18 (3) "Contents," when used with respect to any wire, oral, or
19 electronic communication, includes any information concerning the
20 substance, purport, or meaning of that communication.

21 (4) "Electronic communication" means any transfer of signs,
22 signals, writing, images, sounds, data, or intelligence of any nature
23 transmitted in whole or in part by a wire, radio, electromagnetic,
24 photoelectronic, or photooptical system, but does not include:

25 (a) Any wire or oral communication;

26 (b) Any communication made through a tone-only paging device;

27 (c) Any communication from a tracking device;

28 (d) Electronic funds transfer information stored by a financial
29 institution in an electronic communication system used for the
30 electronic storage and transfer of funds.

31 (5) "Electronic communication service" means any service which
32 provides users the ability to send or receive wire or electronic
33 communications.

34 (6) "Electronic communication system" means any wire, radio,
35 electromagnetic, photooptical, or photoelectronic facilities for the
36 transmission of wire or electronic communications, and any computer
37 facilities or related electronic equipment for the electronic storage
38 of such communications.

1 (7) "Electronic storage" means (a) any temporary, intermediate
2 storage of a wire or electronic communication incidental to the
3 electronic transmission thereof; and (b) any storage of such
4 communication by an electronic communication service for purposes of
5 backup protection of such communication.

6 (8) "Investigative or law enforcement officer" means any officer of
7 the United States or of this state or a political subdivision of this
8 state, who is empowered by law to conduct investigations of or make
9 arrest for criminal offenses enumerated in the United States Code of
10 laws of this state, and any attorney authorized by law to prosecute or
11 participate in the prosecution of such offenses.

12 (9) "Oral communication" means any oral communication uttered by a
13 person exhibiting an expectation that such communication is not subject
14 to interception under circumstances justifying such expectation, but
15 such term does not include any electronic communication.

16 (10) "Pen register" means a device which records or decodes
17 dialing, routing, addressing, or signaling information transmitted by
18 an instrument or facility from which a wire or electronic communication
19 is transmitted if the device does not record or decode the contents of
20 any communication, but the term does not include any device used by a
21 provider or customer of a wire or electronic communication service for
22 billing, or recording as an incident to billing, for communications
23 services provided by such provider or any device used by a provider or
24 customer of a wire communication service for cost accounting or other
25 like purposes in the ordinary course of its business.

26 (11) "Trap and trace" means a device or process which captures the
27 incoming electronic or other impulses which identify the originating
28 number or other dialing, routing, addressing, and signaling information
29 reasonably likely to identify the source of a wire or electronic
30 communication, but which device or process does not capture the
31 contents of any communication.

32 (12) "User" means any person or entity who (a) uses an electronic
33 communication service; and (b) is duly authorized by the provider of
34 such service to engage in such use.

35 (13) "Wire communication" means any transfer of the human voice
36 made in whole or in part through the use of facilities for the
37 transmission of communications by the aid of wire, cable, or other like
38 connection between the point of origin and the point of reception,
39 including the use of such connection in a switching station, furnished

1 or operated by any person engaged in providing or operating such
2 facilities for the transmission of intrastate, interstate, or foreign
3 communications.

4 **Sec. 8.** RCW 9.73.240 and 1989 c 271 s 206 are each amended to read
5 as follows:

6 (1) The attorney general shall have concurrent authority and power
7 with the prosecuting attorneys to investigate violations of RCW
8 9.73.200 through 9.73.230 (~~or RCW~~), 9.73.090, or sections 2 through
9 6 of this act and initiate and conduct prosecutions of any violations
10 upon request of any of the following:

11 (a) The person who was the nonconsenting party to the intercepted,
12 transmitted, or recorded conversation or communication; or

13 (b) The county prosecuting attorney of the jurisdiction in which
14 the offense has occurred.

15 (2) The request shall be communicated in writing to the attorney
16 general.

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