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**SUBSTITUTE HOUSE BILL 2876**

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**State of Washington                      59th Legislature                      2006 Regular Session**

**By** House Committee on Judiciary (originally sponsored by Representatives Ericksen, Wood, Dunn, Armstrong and Ericks; by request of Washington State Patrol)

READ FIRST TIME 1/31/06.

1            AN ACT Relating to sound and video recordings by law enforcement  
2 officers; and amending RCW 9.73.090.

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

4            **Sec. 1.** RCW 9.73.090 and 2000 c 195 s 2 are each amended to read  
5 as follows:

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

9            (a) Recording incoming telephone calls to police and fire stations,  
10 licensed emergency medical service providers, emergency communication  
11 centers, and poison centers;

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

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

1 (ii) The recording shall commence with an indication of the time of  
2 the beginning thereof and terminate with an indication of the time  
3 thereof;

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

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

9 (c) Sound recordings that correspond to video images recorded by  
10 video cameras mounted in law enforcement vehicles. All law enforcement  
11 officers wearing a sound recording device that makes recordings  
12 corresponding to videos recorded by video cameras mounted in law  
13 enforcement vehicles must be in uniform. A sound recording device  
14 (~~which~~) that makes a recording pursuant to this subsection (1)(c)  
15 (~~may only~~) must be operated simultaneously with the video camera when  
16 the operating system has been activated for an event. No sound  
17 recording device may be intentionally turned off by the law enforcement  
18 officer during the (~~operation of the video camera~~) recording of an  
19 event. Once the event has been captured, the officer may turn off the  
20 audio recording and place the system back into "pre-event" mode.

21 No sound or video recording made under this subsection (1)(c) may  
22 be duplicated and made available to the public by a law enforcement  
23 agency subject to this section until final disposition of any criminal  
24 or civil litigation which arises from the (~~incident or incidents~~)  
25 event or events which were recorded. Such sound recordings shall not  
26 be divulged or used by any law enforcement agency for any commercial  
27 purpose.

28 A law enforcement officer shall inform any person being recorded by  
29 sound under this subsection (1)(c) that a sound recording is being made  
30 and the statement so informing the person shall be included in the  
31 sound recording, except that the law enforcement officer is not  
32 required to inform the person being recorded if the person is being  
33 recorded under exigent circumstances. A law enforcement officer is not  
34 required to inform a person being recorded by video under this  
35 subsection (1)(c) that the person is being recorded by video.

36 (2) It shall not be unlawful for a law enforcement officer acting  
37 in the performance of the officer's official duties to intercept,  
38 record, or disclose an oral communication or conversation where the

1 officer is a party to the communication or conversation or one of the  
2 parties to the communication or conversation has given prior consent to  
3 the interception, recording, or disclosure: PROVIDED, That prior to  
4 the interception, transmission, or recording the officer shall obtain  
5 written or telephonic authorization from a judge or magistrate, who  
6 shall approve the interception, recording, or disclosure of  
7 communications or conversations with a nonconsenting party for a  
8 reasonable and specified period of time, if there is probable cause to  
9 believe that the nonconsenting party has committed, is engaged in, or  
10 is about to commit a felony: PROVIDED HOWEVER, That if such  
11 authorization is given by telephone the authorization and officer's  
12 statement justifying such authorization must be electronically recorded  
13 by the judge or magistrate on a recording device in the custody of the  
14 judge or magistrate at the time transmitted and the recording shall be  
15 retained in the court records and reduced to writing as soon as  
16 possible thereafter.

17 Any recording or interception of a communication or conversation  
18 incident to a lawfully recorded or intercepted communication or  
19 conversation pursuant to this subsection shall be lawful and may be  
20 divulged.

21 All recordings of communications or conversations made pursuant to  
22 this subsection shall be retained for as long as any crime may be  
23 charged based on the events or communications or conversations  
24 recorded.

25 (3) Communications or conversations authorized to be intercepted,  
26 recorded, or disclosed by this section shall not be inadmissible under  
27 RCW 9.73.050.

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

32 (5) If the judge or magistrate determines that there is probable  
33 cause to believe that the communication or conversation concerns the  
34 unlawful manufacture, delivery, sale, or possession with intent to  
35 manufacture, deliver, or sell, controlled substances as defined in  
36 chapter 69.50 RCW, or legend drugs as defined in chapter 69.41 RCW, or  
37 imitation controlled substances as defined in chapter 69.52 RCW, the  
38 judge or magistrate may authorize the interception, transmission,

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

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

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