

1 Beginning on page 1, after line 2 of the striking amendment,  
2 strike all material through "2011." on page 8, line 33 and insert the  
3 following:

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

6 (1) As part of a bona fide criminal investigation, the  
7 interception, transmission, or recording of a conversation or  
8 communication by officers may be authorized under the following  
9 circumstances:

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

12 (b) Probable cause exists to believe that the conversation or  
13 communication involves a party engaging in commercial sexual abuse of  
14 a minor under RCW 9.68A.100, promoting commercial sexual abuse of a  
15 minor under RCW 9.68A.101, or promoting travel for commercial sexual  
16 abuse of a minor under RCW 9.68A.102; and

17 (c)(i) A judge or magistrate has authorized the interception,  
18 transmission, or recording of the conversation or communication by  
19 officers. If such authorization is given by telephone, the  
20 authorization and officer's statement justifying such authorization  
21 must be electronically recorded by the judge or magistrate on a  
22 recording device in the custody of the judge or magistrate at the time  
23 transmitted and the recording must be retained in the court records  
24 and reduced to writing as soon as possible thereafter; or

25 (ii) The chief law enforcement officer of the law enforcement  
26 agency or his or her designee above the rank of first line supervisor  
27 has authorized the interception, transmission, or recording of the

1 conversation or communication by officers and determined that the  
2 nonconsenting party poses a substantial risk of flight.

3 (2) The agency's chief officer or designee authorizing an  
4 interception, transmission, or recording under subsection (1)(c)(ii)  
5 of this 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  
12 divulged;

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

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

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

20 (f) Whether there was an attempt to obtain authorization by a  
21 judge or magistrate pursuant to subsection (1)(c)(i) of this section  
22 or RCW 9.73.090(2) and, if there was such an attempt, the outcome of  
23 the attempt.

24 (3) An authorization made by a judge or magistrate under  
25 subsection (1)(c)(i) of this section is effective for not more than  
26 seven days, after which period the issuing authority may renew or  
27 continue the authorization for additional periods not to exceed seven  
28 days.

29 (4) An authorization made under subsection (1)(c)(ii) of this  
30 section is valid for no more than twenty-four hours from the time it  
31 is signed by the authorizing officer, and each authorization must  
32 independently meet all of the requirements of this section. The  
33 authorizing officer shall sign the written report required under  
34 subsection (2) of this section, certifying the exact date and time of

1 his or her signature. An authorization under subsection (1)(c)(ii) of  
2 this section may be extended not more than twice for an additional  
3 consecutive twenty-four hour period based upon the same probable cause  
4 regarding the same suspected transaction. Each such extension shall  
5 be signed by the authorizing officer.

6 (5)(a) If authorization is granted under subsection (1)(c)(ii) of  
7 this section, within twenty-four hours after the signing of an  
8 authorization that results in any interception, transmission, or  
9 recording of a conversation or communication pursuant to this section,  
10 the law enforcement agency that made the interception, transmission,  
11 or recording shall submit a report including the original  
12 authorization under subsection (1) of this section to a judge of a  
13 court having jurisdiction which report must identify:

14 (i) The persons, including the consenting party, who participated  
15 in the conversation; and

16 (ii) The date, location, and approximate time of the conversation.

17 (b) In those cases where the consenting party is a confidential  
18 informant, the name of the confidential informant need not be  
19 divulged.

20 (c) A monthly report must be filed by the law enforcement agency  
21 with the administrator for the courts indicating the number of  
22 authorizations granted, the date and time of each authorization,  
23 interceptions made, arrests resulting from an interception, and  
24 subsequent invalidations.

25 (6)(a) Within two judicial days of receipt of a report under  
26 subsection (5) of this section, the court shall make an ex parte  
27 review of the authorization and shall make a determination whether the  
28 requirements of subsection (1) of this section were met. Evidence  
29 obtained as a result of the interception, transmission, or recording  
30 need not be submitted to the court. If the court determines that any  
31 of the requirements of subsection (1) of this section were not met,  
32 the court shall order that any recording and any copies or  
33 transcriptions of the conversation or communication be destroyed.  
34 Destruction of recordings, copies, or transcriptions must be stayed

1 pending any appeal of a finding that the requirements of subsection  
2 (1) of this section were not met.

3 (b) Absent a continuation under (c) of this subsection, six months  
4 following a determination under (a) of this subsection that probable  
5 cause did not exist, the court shall cause a notice to be mailed to  
6 the last known address of any nonconsenting party to the conversation  
7 or communication that was the subject of the authorization. The  
8 notice must indicate the date, time, and place of any interception,  
9 transmission, or recording made pursuant to the authorization. The  
10 notice must also identify the agency that sought the authorization and  
11 must indicate that a review under (a) of this subsection resulted in a  
12 determination that the authorization was made in violation of this  
13 section.

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

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

24 (8) The recording of any conversation or communication under this  
25 section must be done in such a manner that protects the recording from  
26 editing or other alterations.

27 (9)(a) In any subsequent judicial proceeding, evidence obtained  
28 through the interception or recording of a conversation or  
29 communication pursuant to this section is admissible only if:

30 (i) The court finds that the requirements of subsection (1) of  
31 this section were met and the evidence is used in prosecuting  
32 commercial sexual abuse of a minor under RCW 9.68A.100, promoting  
33 commercial sexual abuse of a minor under RCW 9.68A.101, or promoting  
34 travel for commercial sexual abuse of a minor under RCW 9.68A.102;

1 (ii) The evidence is admitted with the permission of the person  
2 whose communication or conversation was intercepted, transmitted, or  
3 recorded;

4 (iii) The evidence is admitted in a prosecution for a serious  
5 violent offense as defined in RCW 9.94A.030 in which a party who  
6 consented to the interception, transmission, or recording was a victim  
7 of the offense; or

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

12 (b) Nothing in this subsection bars the admission of testimony of  
13 a party or eyewitness to the intercepted, transmitted, or recorded  
14 conversation or communication when that testimony is unaided by  
15 information obtained solely by violation of RCW 9.73.030.

16 (10) Any determination of invalidity of an authorization under  
17 this section must be reported by the court to the administrative  
18 office of the courts.

19 (11) Any person who intentionally intercepts, transmits, or  
20 records or who intentionally authorizes the interception,  
21 transmission, or recording of a conversation or communication in  
22 violation of this section, is guilty of a class C felony punishable  
23 according to chapter 9A.20 RCW.

24 (12) An authorizing agency is liable for twenty-five thousand  
25 dollars in exemplary damages, in addition to any other damages  
26 authorized by this chapter or by other law, to a person whose  
27 conversation or communication was intercepted, transmitted, or  
28 recorded pursuant to an authorization under this section if:

29 (a) In a review under subsection (6) of this section, or in a  
30 suppression of evidence proceeding, it has been determined that the  
31 authorization was made without the probable cause required by  
32 subsection (1) of this section; and

33 (b) The authorization was also made without a reasonable suspicion  
34 that the conversation or communication would involve commercial sexual

1 abuse of a minor under RCW 9.68A.100, promoting commercial sexual  
2 abuse of a minor under RCW 9.68A.101, or promoting travel for  
3 commercial sexual abuse of a minor under RCW 9.68A.102.

4  
5 **Sec. 2.** RCW 9.73.240 and 1989 c 271 s 206 are each amended to  
6 read as follows:

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

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

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

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

18

**EFFECT:** (1) Authorizes law enforcement to record a  
communication if: (a) At least one party consents; (b) there is  
probable cause to believe the communication involves Commercial  
Sexual Abuse of a Minor, Promoting Commercial Sexual Abuse of a  
Minor, or Promoting Travel for Commercial Sexual Abuse of a Minor;  
and (c) the recording is authorized by a judge or, if the  
nonconsenting party poses a substantial risk of flight, the chief  
law enforcement officer.

(2) Provides that authorization granted by a judge is valid for  
seven days, while authorization granted by the chief law enforcement  
officer is valid for 24 hours.

(3) Requires that if authorization is granted due to flight risk  
that the officer submit a report to a judge within 24 hours for  
review of probable cause.

(4) Provides that evidence obtained as a result of the recording  
need not be submitted to the judge.

(5) Provides other procedures consistent with the statute  
authorizing recording of communications regarding drug offenses with  
one-party consent.

(6) Authorizes the Attorney General to investigate violations of  
the section.

(7) Removes the delayed effective date.

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