

**EHB 2789** - S AMD 633

By Senators Padden, Hargrove, Kline

ADOPTED AS AMENDED 03/07/2014

1 Strike everything after the enacting clause and insert the  
2 following:

3 NEW SECTION. **Sec. 1.** The legislature finds that technological  
4 advances have provided new, unique equipment that may be utilized for  
5 surveillance purposes. These technological advances often outpace  
6 statutory protections and can lead to inconsistent or contradictory  
7 interpretations between jurisdictions. The legislature finds that  
8 regardless of application or size, the use of these extraordinary  
9 surveillance technologies, without public debate or clear legal  
10 authority, creates uncertainty for citizens and agencies throughout  
11 Washington state. The legislature finds that extraordinary  
12 surveillance technologies do present a substantial privacy risk  
13 potentially contrary to the strong privacy protections enshrined in  
14 Article I, section 7 of the Washington state Constitution that reads  
15 "No person shall be disturbed in his private affairs, or his home  
16 invaded, without authority of law." The legislature further finds that  
17 the lack of clear statutory authority for the use of extraordinary  
18 surveillance technologies may increase liability to state and local  
19 jurisdictions. It is the intent of the legislature to provide clear  
20 standards for the lawful use of extraordinary surveillance technologies  
21 by state and local jurisdictions.

22 NEW SECTION. **Sec. 2.** The definitions in this section apply  
23 throughout this subchapter unless the context clearly requires  
24 otherwise.

25 (1)(a) "Agency" means the state of Washington, its agencies, and  
26 political subdivisions, except the Washington national guard in Title  
27 32 U.S.C. status.

28 (b) "Agency" also includes any entity or individual, whether public  
29 or private, with which any of the entities identified in (a) of this

1 subsection has entered into a contractual relationship or any other  
2 type of relationship, with or without consideration, for the operation  
3 of an extraordinary sensing device that acquires, collects, or indexes  
4 personal information to accomplish an agency function.

5 (2) "Court of competent jurisdiction" means any district court of  
6 the United States, or a court of general jurisdiction authorized by the  
7 state of Washington to issue search warrants.

8 (3) "Extraordinary sensing device" means a sensing device attached  
9 to an unmanned aircraft system.

10 (4) "Governing body" means the council, commission, board, or other  
11 controlling body of an agency in which legislative powers are vested,  
12 except that for a state agency for which there is no governing body  
13 other than the state legislature, "governing body" means the chief  
14 executive officer responsible for the governance of the agency.

15 (5) "Personal information" means all information that:

16 (a) Describes, locates, or indexes anything about a person  
17 including, but not limited to:

18 (i) His or her social security number, driver's license number,  
19 agency-issued identification number, student identification number,  
20 real or personal property holdings derived from tax returns, and the  
21 person's education, financial transactions, medical history, ancestry,  
22 religion, political ideology, or criminal or employment record; or

23 (ii) Intellectual property, trade secrets, proprietary information,  
24 or operational information;

25 (b) Affords a basis for inferring personal characteristics, such as  
26 finger and voice prints, photographs, or things done by or to such  
27 person; and the record of the person's presence, registration, or  
28 membership in an organization or activity, or admission to an  
29 institution; or

30 (c) Indexes anything about a person including, but not limited to,  
31 his or her activities, behaviors, pursuits, conduct, interests,  
32 movements, occupations, or associations.

33 (6)(a) "Sensing device" means a device capable of remotely  
34 acquiring personal information from its surroundings, using any  
35 frequency of the electromagnetic spectrum, or a sound detecting system.

36 (b) "Sensing device" does not include equipment whose sole function  
37 is to provide information directly necessary for safe air navigation or  
38 operation of a vehicle.

1 (7) "Unmanned aircraft system" means an aircraft that is operated  
2 without the possibility of human intervention from within or on the  
3 aircraft, together with associated elements, including communication  
4 links and components that control the unmanned aircraft that are  
5 required for the pilot in command to operate safely and efficiently in  
6 the national airspace system.

7 NEW SECTION. **Sec. 3.** Except as otherwise specifically authorized  
8 in this subchapter, it is unlawful for an agency to operate an  
9 extraordinary sensing device or disclose personal information about any  
10 person acquired through the operation of an extraordinary sensing  
11 device.

12 NEW SECTION. **Sec. 4.** (1) No state agency or state organization  
13 having jurisdiction over criminal law enforcement or regulatory  
14 violations including, but not limited to, the Washington state patrol  
15 and the department of natural resources, shall purchase an  
16 extraordinary sensing device unless moneys are expressly appropriated  
17 by the legislature for this specific purpose.

18 (2) No local agency having jurisdiction over criminal law  
19 enforcement or regulatory violations shall procure an extraordinary  
20 sensing device without the explicit approval of the governing body of  
21 such locality, given for that specific extraordinary sensing device to  
22 be used for a specific purpose.

23 NEW SECTION. **Sec. 5.** The governing body for each agency must  
24 develop and make publicly available, including on the agency web site,  
25 written policies and procedures for the use of any extraordinary  
26 sensing device procured, and provide notice and opportunity for public  
27 comment prior to adoption of the written policies and procedures.

28 NEW SECTION. **Sec. 6.** All operations of an extraordinary sensing  
29 device, by an agency, or disclosure of personal information about any  
30 person acquired through the operation of an extraordinary sensing  
31 device, by an agency, must be conducted in such a way as to minimize  
32 the collection and disclosure of personal information not authorized  
33 under this subchapter.

1        NEW SECTION.    **Sec. 7.**    An extraordinary sensing device may be  
2 operated and personal information from such operation disclosed, if the  
3 operation and collection of personal information is pursuant to a  
4 search warrant issued by a court of competent jurisdiction.

5        NEW SECTION.    **Sec. 8.**    (1) A governmental entity acting under this  
6 section may, when a warrant is sought, include in the petition a  
7 request, which the court shall grant, for an order delaying the  
8 notification for a period not to exceed ninety days if the court  
9 determines that there is a reason to believe that notification of the  
10 existence of the warrant may have an adverse result.

11        (2) An adverse result for the purposes of this section is:

12        (a) Placing the life or physical safety of an individual in danger;

13        (b) Causing a person to flee from prosecution;

14        (c) Causing the destruction of or tampering with evidence;

15        (d) Causing the intimidation of potential witnesses; or

16        (e) Jeopardizing an investigation or unduly delaying a trial.

17        (3) The governmental entity shall maintain a copy of certification.

18        (4) Extension of the delay of notification of up to ninety days  
19 each may be granted by the court upon application or by certification  
20 by a governmental entity.

21        (5) Upon expiration of the period of delay of notification under  
22 subsection (2) or (4) of this section, the governmental entity shall  
23 serve a copy of the warrant upon, or deliver it by registered or first-  
24 class mail to, the target of the warrant, together with notice that:

25        (a) States with reasonable specificity the nature of the law  
26 enforcement inquiry; and

27        (b) Informs the target of the warrant: (i) That notification was  
28 delayed; (ii) what governmental entity or court made the certification  
29 or determination pursuant to which that delay was made; and (iii) which  
30 provision of this section allowed such delay.

31        NEW SECTION.    **Sec. 9.**    (1) It is lawful for a law enforcement  
32 officer, agency employee, or authorized agent to operate an  
33 extraordinary sensing device and disclose personal information from  
34 such operation if the officer, employee, or agent reasonably determines  
35 that an emergency situation exists that:

1 (a) Does not involve criminal activity, unless exigent  
2 circumstances exist;

3 (b) Presents immediate danger of death or serious physical injury  
4 to any person; and

5 (c) Has characteristics such that operation of an extraordinary  
6 sensing device can reasonably reduce the danger of death or serious  
7 physical injury.

8 (2) It is lawful for an officer, employee, or agent to operate an  
9 extraordinary sensing device if the officer, employee, or agent does  
10 not intend to collect personal information, the operation is unlikely  
11 to accidentally collect personal information, and the operation is not  
12 for purposes of regulatory enforcement. Allowable uses under this  
13 subsection are limited to:

14 (a) Monitoring to discover, locate, observe, and prevent forest  
15 fires;

16 (b) Monitoring an environmental or weather-related catastrophe or  
17 damage from such an event;

18 (c) Surveying for wildlife management, habitat preservation, or  
19 environmental damage; and

20 (d) Surveying for the assessment and evaluation of environmental or  
21 weather-related damage, erosion, flood, or contamination.

22 (3) It is lawful for an officer, employee, or agent to operate an  
23 extraordinary sensing device as part of a training exercise conducted  
24 on a military base if the extraordinary sensing device does not collect  
25 personal information on persons located outside the military base.

26 (4) It is lawful for an officer, employee, or agent to operate an  
27 extraordinary sensing device if the operation is for training, testing,  
28 or research purposes by an agency and does not collect personal  
29 information without the specific written consent of any individual  
30 whose personal information is collected.

31 (5) It is lawful for an officer, employee, or agent to operate an  
32 extraordinary sensing device if the operation is part of the response  
33 to an emergency or disaster for which the governor has proclaimed a  
34 state of emergency under RCW 43.06.010(12).

35 (6) Upon completion of the operation of an extraordinary sensing  
36 device pursuant to this section, any personal information obtained must  
37 be treated as information collected on an individual other than a  
38 target for purposes of section 13 of this act.

1        NEW SECTION.    **Sec. 10.**    Operation of an extraordinary sensing  
2 device by an agency is prohibited unless the agency has affixed a  
3 unique identifier registration number assigned by the agency.

4        NEW SECTION.    **Sec. 11.**    Whenever any personal information from an  
5 extraordinary sensing device has been acquired, no part of such  
6 personal information and no evidence derived therefrom may be received  
7 in evidence in any trial, hearing, or other proceeding in or before any  
8 court, grand jury, department, officer, agency, regulatory body,  
9 legislative committee, or other authority of the state or a political  
10 subdivision thereof if the collection or disclosure of that personal  
11 information would be in violation of this subchapter.

12        NEW SECTION.    **Sec. 12.**    (1) Personal information collected during  
13 the operation of an extraordinary sensing device authorized by and  
14 consistent with this subchapter may not be used, copied, or disclosed  
15 for any purpose after the conclusion of the operation, unless there is  
16 probable cause that the personal information is evidence of criminal  
17 activity. The personal information of the person who is the target of  
18 a warrant must be destroyed within thirty days after the applicable  
19 period of limitations for the criminal activity, as provided in RCW  
20 9A.04.080, if the person has not been charged.

21        (2) The personal information of a person who is not the target of  
22 a warrant that is collected incidentally during the operation of an  
23 extraordinary sensing device must be destroyed within ten days after it  
24 is collected if it can be destroyed without destroying evidence that  
25 may be relevant to a pending criminal investigation or case.

26        (3) There is a presumption that personal information is not  
27 evidence of criminal activity if that personal information is not used  
28 in a criminal prosecution within one year of collection.

29        NEW SECTION.    **Sec. 13.**    Any person who knowingly violates this  
30 subchapter is subject to legal action for damages, to be brought by any  
31 other person claiming that a violation of this subchapter has injured  
32 his or her business, his or her person, or his or her reputation. A  
33 person so injured is entitled to actual damages. In addition, the  
34 individual is entitled to reasonable attorneys' fees and other costs of  
35 litigation.

1        NEW SECTION.    **Sec. 14.** Any use of an extraordinary sensing device  
2 must fully comply with all federal aviation administration requirements  
3 and guidelines. Compliance with the terms of this subchapter is  
4 mandatory and supplemental to compliance with federal aviation  
5 administration requirements and guidelines. Nothing in this chapter  
6 shall be construed to limit the state's ability to establish and  
7 operate a test range for the integration of unmanned aviation vehicles  
8 into the national airspace.

9        NEW SECTION.    **Sec. 15.** (1) For a state agency having jurisdiction  
10 over criminal law enforcement including, but not limited to, the  
11 Washington state patrol, the agency must maintain records of each use  
12 of an extraordinary sensing device and, for any calendar year in which  
13 an agency has used an extraordinary sensing device, prepare an annual  
14 report including, at a minimum, the following:

15        (a) The number of uses of an extraordinary sensing device organized  
16 by types of incidents and types of justification for use;

17        (b) The number of crime investigations aided by the use and how the  
18 use was helpful to the investigation;

19        (c) The number of uses of an extraordinary sensing device for  
20 reasons other than criminal investigations and how the use was helpful;

21        (d) The frequency and type of data collected for individuals or  
22 areas other than targets;

23        (e) The total cost of the extraordinary sensing device;

24        (f) The dates when personal information and other data was deleted  
25 or destroyed in compliance with the act;

26        (g) The number of warrants requested, issued, and extended; and

27        (h) Additional information and analysis the governing body deems  
28 useful.

29        (2) For a state agency other than that in subsection (1) of this  
30 section, the agency must maintain records of each use of an  
31 extraordinary sensing device and, for any calendar year in which an  
32 agency has used an extraordinary sensing device, prepare an annual  
33 report including, at a minimum, the following:

34        (a) The types of extraordinary sensing devices used, the purposes  
35 for which each type of extraordinary sensing device was used, the  
36 circumstances under which use was authorized, and the name of the  
37 officer or official who authorized the use;

1 (b) Whether deployment of the device was imperceptible to the  
2 public;

3 (c) The specific kinds of personal information that the  
4 extraordinary sensing device collected about individuals;

5 (d) The length of time for which any personal information collected  
6 by the extraordinary sensing device was retained;

7 (e) The specific steps taken to mitigate the impact on an  
8 individual's privacy, including protections against unauthorized use  
9 and disclosure and a data minimization protocol; and

10 (f) An individual point of contact for citizen complaints and  
11 concerns.

12 (3) For a local agency having jurisdiction over criminal law  
13 enforcement or regulatory violations, the agency must maintain records  
14 of each use of an extraordinary sensing device including, at a minimum,  
15 the following:

16 (a) The number of uses of an extraordinary sensing device organized  
17 by types of incidents and types of justification for use;

18 (b) The number of investigations aided by the use and how the use  
19 was helpful to the investigation;

20 (c) The number of uses of an extraordinary sensing device for  
21 reasons other than criminal investigations and how the use was helpful;

22 (d) The frequency and type of data collected for individuals or  
23 areas other than targets;

24 (e) The total cost of the extraordinary sensing device;

25 (f) The dates when personal information and other data was deleted  
26 or destroyed in compliance with the act;

27 (g) The number of warrants requested, issued, and extended; and

28 (h) Additional information and analysis the governing body deems  
29 useful.

30 (4) The annual reports required pursuant to subsections (1) and (2)  
31 of this section must be filed electronically to the office of financial  
32 management, who must compile the results and submit them electronically  
33 to the relevant committees of the legislature by September 1st of each  
34 year, beginning in 2015.

35 NEW SECTION. **Sec. 16.** Sections 2 through 15 of this act are each  
36 added to chapter 9.73 RCW and codified with the subchapter heading of  
37 "extraordinary sensing devices."



1        NEW SECTION.    **Sec. 17.**    If any provision of this act or its  
2 application to any person or circumstance is held invalid, the  
3 remainder of the act or the application of the provision to other  
4 persons or circumstances is not affected."

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By Senators Padden, Hargrove, Kline

**ADOPTED AS AMENDED 03/07/2014**

5        On page 1, line 1 of the title, after "surveillance;" strike the  
6 remainder of the title and insert "adding new sections to chapter 9.73  
7 RCW; creating a new section; and prescribing penalties."

EFFECT:        (1) "Biometric identification system" is not defined.  
"Extraordinary sensing device" means a sensing device attached to an  
unmanned system, not the unmanned aircraft system itself and includes  
sound sensing devices.    "Agency" excludes the Washington national  
guard.

(2) Allows state agencies, including the WSP and DNR, with criminal  
and regulatory enforcement jurisdiction only to purchase drones if  
specifically appropriated.

(3) The search warrant may authorize the use of a biometric  
identification system.

(4) An extraordinary sensing device may be operated and collection  
of personal information from the operation disclosed if the operation  
and collection of personal information is pursuant to a search warrant  
issued by a court of competent jurisdiction. All additional affidavit  
requirements are removed.

(5) The personal information obtained on the target of a warrant  
must be destroyed within 30 days after the applicable period of  
limitations for the crime instead of 30 days after probable cause is  
not found. The personal information for a person not the target of a  
warrant collected incidentally must be destroyed within 10 days after  
collection if it can be destroyed without destroying relevant evidence.

(6) No further legislation is required before a drone may be used  
for investigation or regulatory enforcement.

(7) The identifier registration number does not have to be viewable  
by the public while the device is in use.

(8) The law is not to be construed to limit the state's ability to

establish and operate a test range for integration of drones into national airspace.

(9) Publication of policies must be posted on the agency web site.

(10) Damages are limited to actual damages, not liquidated damages.

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