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**SUBSTITUTE HOUSE BILL 1639**

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**State of Washington**

**64th Legislature**

**2015 Regular Session**

**By** House Public Safety (originally sponsored by Representatives Taylor, Goodman, Morris, Shea, Walkinshaw, Smith, Ryu, Appleton, Condotta, Moscoso, Kagi, Muri, Young, Scott, Schmick, G. Hunt, and Farrell)

READ FIRST TIME 02/17/15.

1 AN ACT Relating to technology-enhanced government surveillance;  
2 adding new sections to chapter 9.73 RCW; creating a new section; and  
3 prescribing penalties.

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

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

1 allow for the performance of legitimate state and local agency  
2 functions in accordance with clear standards for the lawful use of  
3 extraordinary sensing devices. Nothing in this act is intended to  
4 affect the leasehold rights of the residents of Washington state.

5 NEW SECTION. **Sec. 2.** The definitions in this section apply  
6 throughout this subchapter unless the context clearly requires  
7 otherwise.

8 (1) "Agency" means the state of Washington, its state and local  
9 agencies, political subdivisions, and their respective employees and  
10 agents, except the Washington national guard in Title 32 U.S.C.  
11 status.

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

15 (3) "Extraordinary sensing device" means a sensing device  
16 attached to or used in conjunction with an aircraft that is operated  
17 without the possibility of human intervention from within or on such  
18 aircraft, together with its associated elements.

19 (4) "Governing body" means the council, commission, board, or  
20 other controlling body of an agency in which legislative powers are  
21 vested, except that for a state agency for which there is no  
22 governing body other than the state legislature, "governing body"  
23 means the chief executive officer responsible for the governance of  
24 the agency.

25 (5) "Personal information" means any information relating to a  
26 particular identified or identifiable individual including, but not  
27 limited to, information obtained from a particular vehicle or  
28 particular residence, including the curtilage thereof, relating to  
29 that individual. The information may be in the form of, but is not  
30 limited to:

31 (a) Images obtained from any part of the electromagnetic spectrum  
32 including, but not limited to, visible, ultraviolet, and infrared  
33 light; X-rays and other radiation; and radio waves;

34 (b) Sounds of any frequency, including infrasonic, audible, and  
35 ultrasonic frequencies; or

36 (c) Scents of any type, whether or not detectable by the human  
37 nose.

38 (6)(a) "Sensing device" means a device capable of remotely  
39 acquiring personal information from its surroundings.

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

4 NEW SECTION. **Sec. 3.** (1) No state agency including, but not  
5 limited to, the Washington state patrol and the department of natural  
6 resources, shall procure an extraordinary sensing device unless  
7 moneys are expressly appropriated by the legislature for this  
8 specific purpose.

9 (2) No local agency shall procure an extraordinary sensing device  
10 without the explicit approval of the governing body of such locality,  
11 given for that specific extraordinary sensing device to be used for a  
12 specific purpose.

13 NEW SECTION. **Sec. 4.** The (1) governing body for each local  
14 agency and (2) elected or appointed official in charge for each state  
15 agency must develop and make publicly available, including on the  
16 agency web site, written policies and procedures for the use of any  
17 extraordinary sensing device procured, and provide notice and  
18 opportunity for public comment prior to adoption of the written  
19 policies and procedures. The operation of an extraordinary sensing  
20 device by an agency is prohibited unless the agency has affixed a  
21 unique identifier registration number assigned by the agency.

22 NEW SECTION. **Sec. 5.** Except as otherwise specifically  
23 authorized in this subchapter, it is unlawful for an agency to  
24 operate an extraordinary sensing device or use or disclose personal  
25 information about any person acquired through the operation of an  
26 extraordinary sensing device.

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

33 NEW SECTION. **Sec. 7.** (1) It is lawful under this section for an  
34 agency to operate an extraordinary sensing device without obtaining a  
35 warrant if the agency reasonably determines that the operation does

1 not intend to collect personal information. Allowable purposes under  
2 this subsection include, but are not limited to:

3 (a) Monitoring to discover, locate, observe, and prevent forest  
4 fires;

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

7 (c) Surveying for wildlife management, habitat preservation, or  
8 environmental damage; and

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

11 (2) No agency may make any effort to identify an individual from  
12 the information collected by the operation or to associate any  
13 information collected by the operation with a particular individual,  
14 nor shall the information be disclosed to a third party unless that  
15 party agrees to be bound by the same restrictions. These restrictions  
16 shall not apply if there is probable cause that the information is  
17 evidence of criminal activity.

18 NEW SECTION. **Sec. 8.** (1) It is lawful under this section for  
19 any agency to operate an extraordinary sensing device and disclose  
20 personal information from the operation without obtaining a warrant  
21 if:

22 (a) The agency reasonably determines that:

23 (i) An emergency situation exists that involves criminal activity  
24 and presents immediate danger of death or serious physical injury to  
25 any person;

26 (ii) The emergency situation requires operation of an  
27 extraordinary sensing device before a warrant authorizing the  
28 interception can, with due diligence, be obtained; and

29 (iii) There are grounds upon which a warrant could be entered to  
30 authorize such operation; or

31 (b) The agency reasonably determines that an emergency situation  
32 exists that:

33 (i) Does not involve criminal activity;

34 (ii) Presents immediate danger of death or serious physical  
35 injury to any person; and

36 (iii) Has characteristics such that operation of an extraordinary  
37 sensing device may reasonably reduce the danger of death or serious  
38 physical injury;

1 (c) The operation is part of a training exercise conducted on a  
2 military base and the extraordinary sensing device does not collect  
3 personal information on persons located outside the military base;

4 (d) The operation is for training, testing, or research purposes  
5 by an agency and is not intended to collect personal information  
6 without the specific written consent of any individual whose personal  
7 information is collected; or

8 (e) The operation is part of the response to an emergency or  
9 disaster for which the governor has proclaimed a state of emergency  
10 under RCW 43.06.010(12).

11 (2) Upon completion of the operation of an extraordinary sensing  
12 device pursuant to subsection (1)(b) through (e) of this section, any  
13 personal information obtained must be treated as information  
14 collected on an individual other than a target of a warrant for  
15 purposes of section 10 of this act.

16 NEW SECTION. **Sec. 9.** (1) An extraordinary sensing device may be  
17 operated by an agency and personal information from the operation  
18 disclosed, if the operation and collection of personal information is  
19 pursuant to a search warrant issued by a court of competent  
20 jurisdiction, and the operation, collection, and disclosure are  
21 compliant with the provisions of this chapter.

22 (2) Warrants may not be issued for a period greater than ten  
23 days. Extensions may be granted, but no longer than the authorizing  
24 judicial officer deems necessary to achieve the purposes for which it  
25 was granted and in no event for longer than thirty days.

26 (3) Within ten days of the execution of a search warrant, the  
27 officer executing the warrant must serve a copy of the warrant upon  
28 the target of the warrant, except if notice is delayed pursuant to  
29 this section.

30 (4) An agency acting under this section may, when a warrant is  
31 sought, include in the petition a request, which the court shall  
32 grant, for an order delaying the notification for a period not to  
33 exceed ninety days if the court determines that there is reason to  
34 believe that notification of the existence of the warrant may have an  
35 adverse result.

36 (5) An adverse result for the purposes of this section is:

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

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

- 1 (c) Causing the destruction of or tampering with evidence;  
2 (d) Causing the intimidation of potential witnesses; or  
3 (e) Jeopardizing an investigation or unduly delaying a trial.  
4 (6) The agency shall maintain a copy of the warrant.

5 (7) Extension of the delay of notification of up to ninety days  
6 each may be granted by the court upon certification by the agency  
7 that there is reason to believe that notification of the extension of  
8 the warrant may have an adverse result.

9 (8) Upon expiration of the period of delay of notification under  
10 subsection (4) or (7) of this section, the agency shall serve a copy  
11 of the warrant upon, or deliver it by registered or first-class mail  
12 to the target of the warrant, together with notice that:

13 (a) States with reasonable specificity the nature of the law  
14 enforcement inquiry; and

15 (b) Informs the target of the warrant: (i) That notification was  
16 delayed; (ii) what agency or court made the certification or  
17 determination pursuant to which that delay was made; and (iii) the  
18 provision of this section allowing the delay.

19 NEW SECTION. **Sec. 10.** (1) Personal information collected during  
20 the operation of an extraordinary sensing device authorized under  
21 sections 7 through 9 of this act may not be used, copied, or  
22 disclosed for any purpose after conclusion of the operation for which  
23 the extraordinary sensing device was authorized, unless there is  
24 probable cause that the personal information is evidence of criminal  
25 activity.

26 (2) Personal information must be deleted, within thirty days if  
27 the personal information was collected on a target of a warrant  
28 authorizing the operation of the extraordinary sensing device and  
29 within ten days for other personal information, after there is no  
30 longer probable cause that the personal information is evidence of  
31 criminal activity that may be prosecuted. The foregoing shall only  
32 apply to the extent the personal information can be destroyed without  
33 destroying other evidence relevant to a pending criminal  
34 investigation or case. There is a presumption that personal  
35 information is not evidence of criminal activity if that personal  
36 information is not used in a criminal prosecution within one year of  
37 collection.

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

9        NEW SECTION.    **Sec. 12.** Any person who knowingly violates this  
10 subchapter is subject to legal action for damages, to be brought by  
11 any other person claiming that a violation of this subchapter has  
12 injured his or her business, his or her person, or his or her  
13 reputation. In addition, the individual is entitled to reasonable  
14 attorneys' fees and other costs of litigation.

15        NEW SECTION.    **Sec. 13.** Any use of an extraordinary sensing  
16 device must fully comply with all federal aviation administration  
17 requirements and guidelines. Compliance with the terms of this  
18 subchapter is mandatory and supplemental to compliance with federal  
19 aviation administration requirements and guidelines.

20        NEW SECTION.    **Sec. 14.** (1) For a state or local agency having  
21 jurisdiction over criminal law or regulatory violation enforcement,  
22 the agency must maintain records of each use of an extraordinary  
23 sensing device and each state agency, for any calendar year in which  
24 an agency has used an extraordinary sensing device, must prepare an  
25 annual report including, at a minimum in each case, the following:

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

28        (b) The number of criminal or regulatory investigations aided by  
29 the use and how the use was helpful to the investigation;

30        (c) The number of uses of an extraordinary sensing device for  
31 reasons other than criminal or regulatory investigations and how the  
32 use was helpful;

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

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

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

1 (g) The number of warrants requested, issued, and extended; and  
2 (h) Additional information and analysis the governing body deems  
3 useful.

4 (2) For a state or local agency other than that in subsection (1)  
5 of this section, the agency must maintain records of each use of an  
6 extraordinary sensing device and each state agency, for any calendar  
7 year in which an agency has used an extraordinary sensing device,  
8 must prepare an annual report including, at a minimum in each case,  
9 the following:

10 (a) The types of extraordinary sensing devices used, the purposes  
11 for which each type of extraordinary sensing device was used, the  
12 circumstances under which use was authorized, and the name of the  
13 officer or official who authorized the use;

14 (b) Whether deployment of the device was imperceptible to the  
15 public;

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

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

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

23 (f) An individual point of contact for citizen complaints and  
24 concerns.

25 (3) The annual reports required pursuant to this section must be  
26 filed electronically to the office of financial management, who must  
27 compile the results and submit them electronically to the relevant  
28 committees of the legislature by September 1st of each year,  
29 beginning in 2016.

30 NEW SECTION. **Sec. 15.** Sections 2 through 14 of this act are  
31 each added to chapter 9.73 RCW and codified with the subchapter  
32 heading of "extraordinary sensing devices."

33 NEW SECTION. **Sec. 16.** If any provision of this act or its  
34 application to any person or circumstance is held invalid, the  
35 remainder of the act or the application of the provision to other  
36 persons or circumstances is not affected.

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