
HOUSE BILL 1639

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By Representatives Taylor, Goodman, Morris, Shea, Walkinshaw, Smith, Ryu, Appleton, Condotta, Moscoso, Kagi, Muri, Young, Scott, Schmick, G. Hunt, and Farrell

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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 or state organization
5 including, but not limited to, the Washington state patrol and the
6 department of natural resources, shall procure an extraordinary
7 sensing device unless moneys are expressly appropriated by the
8 legislature for this 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 if the agency
35 reasonably determines that the operation does not intend to collect

1 personal information. Allowable purposes under this subsection
2 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 or law enforcement officer may make any effort to
12 identify an individual from the information collected by the
13 operation or to associate any information collected by the operation
14 with a particular individual, nor shall the information be disclosed
15 to a third party unless that party agrees to be bound by the same
16 restrictions. These restrictions shall not apply if there is probable
17 cause that the information is evidence of criminal activity.

18 NEW SECTION. **Sec. 8.** (1) An extraordinary sensing device may be
19 operated and personal information from the operation disclosed, if
20 the operation and collection of personal information is pursuant to a
21 search warrant issued by a court of competent jurisdiction, and the
22 operation, collection, and disclosure are compliant with the
23 provisions of this chapter.

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

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

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

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

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

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

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

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

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

7 (6) The governmental entity shall maintain a copy of the warrant.

8 (7) Extension of the delay of notification of up to ninety days
9 each may be granted by the court upon application or by certification
10 by a governmental entity.

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

16 (a) States with reasonable specificity the nature of the law
17 enforcement inquiry; and

18 (b) Informs the target of the warrant: (i) That notification was
19 delayed; (ii) what governmental entity or court made the
20 certification or determination pursuant to which that delay was made;
21 and (iii) the provision of this section allowing the delay.

22 NEW SECTION. **Sec. 9.** (1) It is lawful under this section for
23 any agency or law enforcement officer to operate an extraordinary
24 sensing device and disclose personal information from the operation
25 if:

26 (a) The agency or officer reasonably determines that:

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

30 (ii) Requires operation of an extraordinary sensing device before
31 a warrant authorizing the interception can, with due diligence, be
32 obtained; and

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

35 (b) The agency or officer reasonably determines that an emergency
36 situation exists that:

37 (i) Does not involve criminal activity;

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

1 (iii) Has characteristics such that operation of an extraordinary
2 sensing device can reasonably reduce the danger of death or serious
3 physical injury;

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

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

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

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

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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