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SENATE BILL 6066

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State of Washington                      62nd Legislature                      2012 Regular Session

By Senators Kline, Nelson, Murray, Shin, and Kohl-Welles

Read first time 01/11/12. Referred to Committee on Judiciary.

1            AN ACT Relating to video and audio recording 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 2011 c 336 s 325 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 or her shall be included  
18 in the 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 or her constitutional rights, and such  
6 statements informing him or her 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 or worn by law  
11 enforcement officers. All law enforcement officers wearing a sound  
12 recording device that makes recordings corresponding to videos recorded  
13 by video cameras mounted in law enforcement vehicles or worn by law  
14 enforcement officers must be in uniform. A sound recording device that  
15 makes a recording pursuant to this subsection (1)(c) must be operated  
16 simultaneously with the video camera when the operating system has been  
17 activated for an event. No sound recording device may be intentionally  
18 turned off by the law enforcement officer during the 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 event or events which were  
25 recorded. Such sound recordings shall not be divulged or used by any  
26 law enforcement agency for any commercial purpose.

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

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

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

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

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

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

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

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

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

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

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