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**SENATE BILL 5455**

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**State of Washington 67th Legislature 2021 Regular Session**

**By** Senator Gildon

AN ACT Relating to retaining body worn and vehicle dashboard camera recordings; amending RCW 10.109.010, 40.14.070, and 42.56.240; adding a new section to chapter 40.14 RCW; creating a new section; and providing an expiration date.

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

NEW SECTION. **Sec.**  The legislature finds that transparency and accountability are essential to ensure trust between law enforcement and the community. In an effort to increase transparency and best serve justice, the legislature intends to expand the usage of body worn and vehicle dashboard cameras in law enforcement. The legislature recognizes the financial burden that data management and public records requests administrative costs can present for local jurisdictions. The legislature intends to develop and implement a body worn and vehicle dashboard camera data management system pilot grant program to reduce local costs, increase transparency, and advance justice.

**Sec.**  RCW 10.109.010 and 2018 c 285 s 2 are each amended to read as follows:

(1)(a) Subject to the availability of amounts appropriated for this specific purpose, law enforcement agencies participating in the pilot program created in section 4 of this act must deploy body worn cameras. An agency may deploy body worn and vehicle dashboard cameras in phases in order to develop procedures for storing, searching, and retrieving the body worn and vehicle dashboard camera recordings in its custody for the agency's operations, for pending judicial proceedings, or for public disclosure required by law.

(b) Law enforcement agencies participating in the pilot grant program must maintain body worn and vehicle dashboard camera recordings for 10 years after the recorded incident occurs. The law enforcement agency may not destroy recordings until 10 years after the recorded incident occurs.

(c) A law enforcement agency participating in the pilot grant program must retain access to and custody of its body worn and vehicle dashboard camera recordings as provided in section 4 of this act. The agency is responsible for use of the recordings for the law enforcement agency's operations and during the judicial process.

(2) A law enforcement or corrections agency that deploys body worn or vehicle dashboard cameras must establish policies regarding the use of the cameras. The policies must, at a minimum, address:

(a) When a body worn or vehicle dashboard camera must be activated and deactivated, and when a law enforcement or corrections officer has the discretion to activate and deactivate the body or vehicle dashboard worn camera;

(b) How a law enforcement or corrections officer is to respond to circumstances when it would be reasonably anticipated that a person may be unwilling or less willing to communicate with an officer who is recording the communication with a body worn or vehicle dashboard camera;

(c) How a law enforcement or corrections officer will document when and why a body worn or vehicle dashboard camera was deactivated prior to the conclusion of an interaction with a member of the public while conducting official law enforcement or corrections business;

(d) How, and under what circumstances, a law enforcement or corrections officer is to inform a member of the public that he or she is being recorded, including in situations where the person is a non-English speaker or has limited English proficiency, or where the person is deaf or hard of hearing;

(e) How officers are to be trained on body worn and vehicle dashboard camera usage and how frequently the training is to be reviewed or renewed; and

(f) Security rules to protect data collected and stored from body worn or vehicle dashboard cameras.

((~~(2)~~)) (3) A law enforcement or corrections agency that deploys body worn or vehicle dashboard cameras before June 9, 2016, must establish the policies within one hundred twenty days of June 9, 2016. A law enforcement or corrections agency that deploys body worn or vehicle dashboard cameras on or after June 9, 2016, must establish the policies before deploying body worn or vehicle dashboard cameras.

**Sec.**  RCW 40.14.070 and 2011 c 60 s 18 are each amended to read as follows:

(1)(a) County, municipal, and other local government agencies may request authority to destroy noncurrent public records having no further administrative or legal value by submitting to the division of archives and records management lists of such records on forms prepared by the division. The archivist, a representative appointed by the state auditor, and a representative appointed by the attorney general shall constitute a committee, known as the local records committee, which shall review such lists and which may veto the destruction of any or all items contained therein.

(b) A local government agency, as an alternative to submitting lists, may elect to establish a records control program based on recurring disposition schedules recommended by the agency to the local records committee. The schedules are to be submitted on forms provided by the division of archives and records management to the local records committee, which may either veto, approve, or amend the schedule. Approval of such schedule or amended schedule shall be by unanimous vote of the local records committee. Upon such approval, the schedule shall constitute authority for the local government agency to destroy the records listed thereon, after the required retention period, on a recurring basis until the schedule is either amended or revised by the committee.

(2)(a) Except as otherwise provided by law, no public records shall be destroyed until approved for destruction by the local records committee. Official public records shall not be destroyed unless:

(i) The records are six or more years old;

(ii) The department of origin of the records has made a satisfactory showing to the state records committee that the retention of the records for a minimum of six years is both unnecessary and uneconomical, particularly where lesser federal retention periods for records generated by the state under federal programs have been established; or

(iii) The originals of official public records less than six years old have been copied or reproduced by any photographic, photostatic, microfilm, miniature photographic, or other process approved by the state archivist which accurately reproduces or forms a durable medium for so reproducing the original.

An automatic reduction of retention periods from seven to six years for official public records on record retention schedules existing on June 10, 1982, shall not be made, but the same shall be reviewed individually by the local records committee for approval or disapproval of the change to a retention period of six years.

The state archivist may furnish appropriate information, suggestions, and guidelines to local government agencies for their assistance in the preparation of lists and schedules or any other matter relating to the retention, preservation, or destruction of records under this chapter. The local records committee may adopt appropriate regulations establishing procedures to be followed in such matters.

Records of county, municipal, or other local government agencies, designated by the archivist as of primarily historical interest, may be transferred to a recognized depository agency.

(b)(i) Records of investigative reports prepared by any state, county, municipal, or other law enforcement agency pertaining to sex offenders contained in chapter 9A.44 RCW or sexually violent offenses as defined in RCW 71.09.020 that are not required in the current operation of the law enforcement agency or for pending judicial proceedings shall, following the expiration of the applicable schedule of the law enforcement agency's retention of the records, be transferred to the Washington association of sheriffs and police chiefs for permanent electronic retention and retrieval. Upon electronic retention of any document, the association shall be permitted to destroy the paper copy of the document.

(ii) Any sealed record transferred to the Washington association of sheriffs and police chiefs for permanent electronic retention and retrieval, including records sealed after transfer, shall be electronically retained in such a way that the record is clearly marked as sealed.

(iii) The Washington association of sheriffs and police chiefs shall be permitted to destroy both the paper copy and electronic record of any offender verified as deceased.

(c) Any record transferred to the Washington association of sheriffs and police chiefs pursuant to (b) of this subsection shall be deemed to no longer constitute a public record pursuant to RCW 42.56.010 and shall be exempt from public disclosure. Such records shall be disseminated only to criminal justice agencies as defined in RCW 10.97.030 for the purpose of determining if a sex offender met the criteria of a sexually violent predator as defined in chapter 71.09 RCW and the end-of-sentence review committee as defined by RCW 72.09.345 for the purpose of fulfilling its duties under RCW 71.09.025 and 9.95.420.

Electronic records marked as sealed shall only be accessible by criminal justice agencies as defined in RCW 10.97.030 who would otherwise have access to a sealed paper copy of the document, the end-of-sentence review committee as defined by RCW 72.09.345 for the purpose of fulfilling its duties under RCW 71.09.025 and 9.95.420, and the system administrator for the purposes of system administration and maintenance.

(d) A local law enforcement agency participating in the pilot grant program created in section 4 of this act, that retains body worn or vehicle dashboard camera recordings may destroy the recording as authorized in RCW 10.109.010. After consulting with the system administrator and attorney general, the police chief or sheriff of the agency shall determine whether a recording in the system is no longer legally required to be maintained in the data management system and whether it should be destroyed or have a different appropriate disposition.

(3) Except as otherwise provided by law, county, municipal, and other local government agencies may, as an alternative to destroying noncurrent public records having no further administrative or legal value, donate the public records to the state library, local library, historical society, genealogical society, or similar society or organization.

Public records may not be donated under this subsection unless:

(a) The records are seventy years old or more;

(b) The local records committee has approved the destruction of the public records; and

(c) The state archivist has determined that the public records have no historic interest.

NEW SECTION. **Sec.**  A new section is added to chapter 40.14 RCW to read as follows:

(1)(a) Subject to the availability of amounts appropriated for this specific purpose, the body worn and vehicle dashboard camera data management system pilot grant program is established. The Washington association of sheriffs and police chiefs is the pilot grant program's administrator. The association shall designate the police chief or sheriff of any participating jurisdiction as a local administrator.

(b) The pilot grant program is limited to four participating law enforcement agencies from two cities and two counties. Participating agencies must be from one city and one county east of the crest of the Cascade mountain range and one city and one county west of the crest of the Cascade mountain range. County participating agencies are limited to counties with a population under 2,000,000 and city participating agencies are limited to cities with a population under 500,000.

(c) The pilot grant program ends three years after the effective date of this section. The Washington association of sheriffs and police chiefs must report on preliminary findings and final results of the pilot grant program to the governor and legislature. The initial report is due July 1, 2022, and the final report is due December 1, 2024.

(d)(i) The local agency may contract for storage of the recordings or create its own server network and data management software. The local police chief or sheriff, or his or her designee, is authorized to contract with state or nonstate entities including, but not limited to, cloud-based web services and private software and technology providers for the creation, operation, and maintenance of the body worn and dashboard camera data management system.

(ii) The contract must ensure the chain of custody is not disrupted or compromised. All data must be maintained in a manner that allows for custody of the data to be traced from creation to upload into the system.

(2) Local body worn and vehicle dashboard camera data management systems must be fully integrated and serve as a local repository for all recordings produced from the body worn and vehicle dashboard cameras used by law enforcement agencies participating in the pilot grant program. The local police chief or sheriff is responsible for maintaining the system's security and data integrity. Upon successful upload of a body worn or vehicle dashboard camera recording from a local law enforcement agency to its data management system, the local system administrator or their designee manages, tracks, and responds to all legal public disclosure requests for recordings in the system including, but not limited to, making legally required redactions and releasing the recordings to the requester as required by law.

(3) The body worn and vehicle dashboard camera data management system must incorporate minimum functionality that enables:

(a) Secure long-term storage and preservation of body worn and vehicle dashboard camera recordings transferred from all participating law enforcement agencies;

(b) The local administrator to manage, track, and respond to lawful public disclosure requests regarding recordings in the data management system including making the legally required redactions prior to disclosure;

(c) Each law enforcement agency continued custody and access to view and use the data it uploads to the system;

(d) Each law enforcement agency to locate, retrieve, copy, or share the recordings in the system for agency operations, training, administrative functions, and related judicial actions using a uniform data format that protects the recordings from destruction, alteration, or further redaction, maintains chain of custody requirements, and generates audit tracking;

(e) Each participating law enforcement agency to track and update the status of recordings stored in its system with status changes in related cases or availability for public records release using a uniform labeling and tracking method;

(f) The system administrator and participating local law enforcement agencies to utilize electronic technology or technologies allowing continuous access; and

(g) The system administrator to compile data, report outcomes, and issue recommendations for increasing transparency and ensuring accuracy and fidelity of the data and information collected and reported under the pilot grant program.

(4) The pilot grant program shall be funded from the state general fund for the 2021-2023 and 2023-2025 fiscal biennia.

(5) This section expires July 1, 2025.

**Sec.**  RCW 42.56.240 and 2019 c 300 s 1 are each amended to read as follows:

The following investigative, law enforcement, and crime victim information is exempt from public inspection and copying under this chapter:

(1) Specific intelligence information and specific investigative records compiled by investigative, law enforcement, and penology agencies, and state agencies vested with the responsibility to discipline members of any profession, the nondisclosure of which is essential to effective law enforcement or for the protection of any person's right to privacy;

(2) Information revealing the identity of persons who are witnesses to or victims of crime or who file complaints with investigative, law enforcement, or penology agencies, other than the commission, if disclosure would endanger any person's life, physical safety, or property. If at the time a complaint is filed the complainant, victim, or witness indicates a desire for disclosure or nondisclosure, such desire shall govern. However, all complaints filed with the commission about any elected official or candidate for public office must be made in writing and signed by the complainant under oath;

(3) Any records of investigative reports prepared by any state, county, municipal, or other law enforcement agency pertaining to sex offenses contained in chapter 9A.44 RCW or sexually violent offenses as defined in RCW 71.09.020, which have been transferred to the Washington association of sheriffs and police chiefs for permanent electronic retention and retrieval pursuant to RCW 40.14.070(2)(b);

(4) License applications under RCW 9.41.070; copies of license applications or information on the applications may be released to law enforcement or corrections agencies;

(5) Information revealing the specific details that describe an alleged or proven child victim of sexual assault under age eighteen, or the identity or contact information of an alleged or proven child victim of sexual assault who is under age eighteen. Identifying information includes the child victim's name, addresses, location, photograph, and in cases in which the child victim is a relative, stepchild, or stepsibling of the alleged perpetrator, identification of the relationship between the child and the alleged perpetrator. Contact information includes phone numbers, email addresses, social media profiles, and user names and passwords;

(6) Information contained in a local or regionally maintained gang database as well as the statewide gang database referenced in RCW 43.43.762;

(7) Data from the electronic sales tracking system established in RCW 69.43.165;

(8) Information submitted to the statewide unified sex offender notification and registration program under RCW 36.28A.040(6) by a person for the purpose of receiving notification regarding a registered sex offender, including the person's name, residential address, and email address;

(9) Personally identifying information collected by law enforcement agencies pursuant to local security alarm system programs and vacation crime watch programs. Nothing in this subsection shall be interpreted so as to prohibit the legal owner of a residence or business from accessing information regarding his or her residence or business;

(10) The felony firearm offense conviction database of felony firearm offenders established in RCW 43.43.822;

(11) The identity of a state employee or officer who has in good faith filed a complaint with an ethics board, as provided in RCW 42.52.410, or who has in good faith reported improper governmental action, as defined in RCW 42.40.020, to the auditor or other public official, as defined in RCW 42.40.020;

(12) The following security threat group information collected and maintained by the department of corrections pursuant to RCW 72.09.745: (a) Information that could lead to the identification of a person's security threat group status, affiliation, or activities; (b) information that reveals specific security threats associated with the operation and activities of security threat groups; and (c) information that identifies the number of security threat group members, affiliates, or associates;

(13) The global positioning system data that would indicate the location of the residence of an employee or worker of a criminal justice agency as defined in RCW 10.97.030;

(14) Body worn camera recordings to the extent nondisclosure is essential for the protection of any person's right to privacy as described in RCW 42.56.050, including, but not limited to, the circumstances enumerated in (a) of this subsection. A law enforcement or corrections agency or a local administrator of the body worn and vehicle dashboard camera data management system created in section 4 of this act shall not disclose a body worn camera recording to the extent the recording is exempt under this subsection.

(a) Disclosure of a body worn camera recording is presumed to be highly offensive to a reasonable person under RCW 42.56.050 to the extent it depicts:

(i)(A) Any areas of a medical facility, counseling, or therapeutic program office where:

(I) A patient is registered to receive treatment, receiving treatment, waiting for treatment, or being transported in the course of treatment; or

(II) Health care information is shared with patients, their families, or among the care team; or

(B) Information that meets the definition of protected health information for purposes of the health insurance portability and accountability act of 1996 or health care information for purposes of chapter 70.02 RCW;

(ii) The interior of a place of residence where a person has a reasonable expectation of privacy;

(iii) An intimate image;

(iv) A minor;

(v) The body of a deceased person;

(vi) The identity of or communications from a victim or witness of an incident involving domestic violence as defined in RCW 10.99.020 or sexual assault as defined in RCW 70.125.030, or disclosure of intimate images as defined in RCW 9A.86.010. If at the time of recording the victim or witness indicates a desire for disclosure or nondisclosure of the recorded identity or communications, such desire shall govern; or

(vii) The identifiable location information of a community-based domestic violence program as defined in RCW 70.123.020, or emergency shelter as defined in RCW 70.123.020.

(b) The presumptions set out in (a) of this subsection may be rebutted by specific evidence in individual cases.

(c) In a court action seeking the right to inspect or copy a body worn camera recording, a person who prevails against a law enforcement or corrections agency that withholds or discloses all or part of a body worn camera recording pursuant to (a) of this subsection is not entitled to fees, costs, or awards pursuant to RCW 42.56.550 unless it is shown that the law enforcement or corrections agency acted in bad faith or with gross negligence.

(d) A request for body worn camera recordings must:

(i) Specifically identify a name of a person or persons involved in the incident;

(ii) Provide the incident or case number;

(iii) Provide the date, time, and location of the incident or incidents; or

(iv) Identify a law enforcement or corrections officer involved in the incident or incidents.

(e)(i) A person directly involved in an incident recorded by the requested body worn camera recording, an attorney representing a person directly involved in an incident recorded by the requested body worn camera recording, a person or his or her attorney who requests a body worn camera recording relevant to a criminal case involving that person, or the executive director from either the Washington state commission on African American affairs, Asian Pacific American affairs, or Hispanic affairs, has the right to obtain the body worn camera recording, subject to any exemption under this chapter or any applicable law. In addition, an attorney who represents a person regarding a potential or existing civil cause of action involving the denial of civil rights under the federal or state Constitution, or a violation of a United States department of justice settlement agreement, has the right to obtain the body worn camera recording if relevant to the cause of action, subject to any exemption under this chapter or any applicable law. The attorney must explain the relevancy of the requested body worn camera recording to the cause of action and specify that he or she is seeking relief from redaction costs under this subsection (14)(e).

(ii) A law enforcement or corrections agency responding to requests under this subsection (14)(e) may not require the requesting individual to pay costs of any redacting, altering, distorting, pixelating, suppressing, or otherwise obscuring any portion of a body worn camera recording.

(iii) A law enforcement or corrections agency may require any person requesting a body worn camera recording pursuant to this subsection (14)(e) to identify himself or herself to ensure he or she is a person entitled to obtain the body worn camera recording under this subsection (14)(e).

(f)(i) A law enforcement or corrections agency responding to a request to disclose body worn camera recordings may require any requester not listed in (e) of this subsection to pay the reasonable costs of redacting, altering, distorting, pixelating, suppressing, or otherwise obscuring any portion of the body worn camera recording prior to disclosure only to the extent necessary to comply with the exemptions in this chapter or any applicable law.

(ii) An agency that charges redaction costs under this subsection (14)(f) must use redaction technology that provides the least costly commercially available method of redacting body worn camera recordings, to the extent possible and reasonable.

(iii) In any case where an agency charges a requestor for the costs of redacting a body worn camera recording under this subsection (14)(f), the time spent on redaction of the recording shall not count towards the agency's allocation of, or limitation on, time or costs spent responding to public records requests under this chapter, as established pursuant to local ordinance, policy, procedure, or state law.

(g) For purposes of this subsection (14):

(i) "Body worn camera recording" means a video and/or sound recording that is made by a body worn camera attached to the uniform or eyewear of a law enforcement or corrections officer while in the course of his or her official duties; and

(ii) "Intimate image" means an individual or individuals engaged in sexual activity, including sexual intercourse as defined in RCW 9A.44.010 and masturbation, or an individual's intimate body parts, whether nude or visible through less than opaque clothing, including the genitals, pubic area, anus, or postpubescent female nipple.

(h) Nothing in this subsection shall be construed to restrict access to body worn camera recordings as otherwise permitted by law for official or recognized civilian and accountability bodies or pursuant to any court order.

(i) Nothing in this section is intended to modify the obligations of prosecuting attorneys and law enforcement under *Brady v. Maryland,* 373 U.S. 83, 83 S. Ct. 1194, 10 L. Ed. 2d 215 (1963), *Kyles v. Whitley*, 541 U.S. 419, 115 S. Ct. 1555, 131 L. Ed.2d 490 (1995), and the relevant Washington court criminal rules and statutes.

(j) A law enforcement or corrections agency must retain body worn camera recordings for at least sixty days and thereafter may destroy the ((~~records in accordance with the applicable records retention schedule~~)) recordings:

(i) For agencies participating in the pilot grant program created in section 4 of this act, after successful upload to its body worn and vehicle dashboard camera data management system created pursuant to section 4 of this act; and

(ii) For agencies not participating in the pilot grant program, in accordance with the applicable records retention schedule;

(15) Any records and information contained within the statewide sexual assault kit tracking system established in RCW 43.43.545;

(16)(a) Survivor communications with, and survivor records maintained by, campus-affiliated advocates.

(b) Nothing in this subsection shall be construed to restrict access to records maintained by a campus-affiliated advocate in the event that:

(i) The survivor consents to inspection or copying;

(ii) There is a clear, imminent risk of serious physical injury or death of the survivor or another person;

(iii) Inspection or copying is required by federal law; or

(iv) A court of competent jurisdiction mandates that the record be available for inspection or copying.

(c) "Campus-affiliated advocate" and "survivor" have the definitions in RCW 28B.112.030;

(17) Information and records prepared, owned, used, or retained by the Washington association of sheriffs and police chiefs and information and records prepared, owned, used, or retained by the Washington state patrol pursuant to chapter 261, Laws of 2017; and

(18) Any and all audio or video recordings of child forensic interviews as defined in chapter 26.44 RCW. Such recordings are confidential and may only be disclosed pursuant to a court order entered upon a showing of good cause and with advance notice to the child's parent, guardian, or legal custodian. However, if the child is an emancipated minor or has attained the age of majority as defined in RCW 26.28.010, advance notice must be to the child. Failure to disclose an audio or video recording of a child forensic interview as defined in chapter 26.44 RCW is not grounds for penalties or other sanctions available under this chapter.

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