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**SUBSTITUTE SENATE BILL 5776**

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**State of Washington 67th Legislature 2022 Regular Session**

**By** Senate Law & Justice (originally sponsored by Senators Trudeau, Dhingra, Das, Hasegawa, Keiser, Lovelett, Lovick, Nguyen, Nobles, Randall, Saldaña, and C. Wilson)

AN ACT Relating to creating the criminal justice integrated data system and a violence and death investigation resource center; amending RCW 42.56.240 and 43.103.040; adding a new section to chapter 43.70 RCW; adding a new chapter to Title 10 RCW; creating new sections; and providing effective dates.

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

NEW SECTION. **Sec.**  There is a need to dramatically improve data collection surrounding violence, domestic violence, and deaths in the state of Washington. Justice agencies in the state, including courts, law enforcement, corrections, and prosecutors, possess a wealth of data relating to the public health of Washington citizens. A centralized data repository will create data linkages between legal and public health data sets. These linkages will promote a public health response to violent crime and deaths, and give the legislature valuable tools in formulating public policy surrounding these important issues.

NEW SECTION. **Sec.**  This chapter may be known and cited as the criminal justice integrated data system act.

NEW SECTION. **Sec.**  (1) There is hereby created the criminal justice integrated data system to receive, store, secure, and maintain data and information from local governments, state agencies and departments, or volunteer nongovernmental entities.

(2) The data system shall be managed by the department of health, which may:

(a) Require contributing local governments, state agencies and departments, or volunteer nongovernmental entities to deliver data and information in a certain format and on schedules established for the criminal justice integrated data system; and

(b) Enter into or adopt a data-sharing agreement with each contributing local government, state agency and department, or volunteer nongovernmental entity. Such agreement must identify the confidentiality of the information and any conditions or restrictions on the use of the data or information.

(3) The records and data collected and stored by the criminal justice integrated data system shall be exempt from disclosure as provided in RCW 42.56.240 or by court rule. The confidentiality of all records and data collected by the criminal justice integrated data system shall comply with applicable state and federal laws governing the privacy of records, data, and personal identifiable information.

NEW SECTION. **Sec.**  (1) There is hereby created the data oversight council, to be convened and chaired by the department of health. All requests for projects, reports, and data analyses generated from the criminal justice integrated data system must be approved by the data oversight council.

(2) In addition to the chair, the data oversight council shall consist of the following members or the member's designee:

(a) The governor;

(b) The chief justice of the Washington state supreme court;

(c) The attorney general;

(d) The director of the department of corrections;

(e) The director of the department of children, youth, and families;

(f) The director of the department of social and health services;

(g) The director of the administrative office of the courts;

(h) A representative of the Washington association of prosecuting attorneys;

(i) A representative of the Washington association of sheriffs and police chiefs;

(j) A representative of the association of Washington cities;

(k) A representative of the Washington state association of counties;

(l) A representative of the office of crime victims advocacy;

(m) A representative from the Washington state institute for public policy;

(n) A representative from the office of public defense or a defense representative;

(o) A representative from the Harborview injury prevention and research center;

(p) A representative from the Washington association of coroners and medical examiners; and

(q) A representative from the Washington state association of county clerks.

(3) Members of the data oversight council shall serve without any additional compensation. All meetings of the council shall be held in compliance with the open public meetings act as provided in chapter 42.30 RCW.

(4) Any projects, reports, or data analyses in final form produced by persons authorized to conduct research and analyses under this chapter shall belong to the local government, state agency and department, or volunteer nongovernmental entity that requests or creates the report.

(5) The contributing local governments, state agencies and departments, or volunteer nongovernmental entities shall have priority in requesting any projects, reports, or data analyses to be produced by persons authorized by the data oversight council. The data oversight council may, in its discretion, deny any requested project, report, or data analysis where it determines the request is unduly burdensome, voluminous, or cost-prohibitive.

(6) Members of the data oversight council and all contributing local governments, state agencies and departments, or volunteer nongovernmental entities shall be immune from liability to any person or entity for any invasion of the right to privacy or use of records or data generated by the criminal justice integrated data system.

(7) In collaboration with contributing local governments, state agencies and departments, or volunteer nongovernmental entities and the data oversight council, the department of health may establish policies addressing the creation of reports generated through the query of records and data possessed by the criminal justice integrated data system.

**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~~)) 18, or the identity or contact information of an alleged or proven child victim of sexual assault who is under age ((~~eighteen~~)) 18. 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 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~~)) 60 days and thereafter may destroy the records 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; and

(19) Records and information received by the department of health from any local government, state agency and department, or volunteer nongovernmental entity for purposes of entry into the criminal justice integrated data system pursuant to section 3 of this act and all records created by persons authorized to research and analyze information entered into the criminal justice integrated data system, regardless of whether such records were previously exempted from disclosure or redacted pursuant to state or federal law or court order. This exemption does not apply to projects, reports, and data analyses approved for release by the data oversight council and issued by persons authorized to conduct research and analyses as set forth in section 4 of this act. Records and information relating to the management of the criminal justice integrated data system shall not be exempt from disclosure except as otherwise provided by law.

NEW SECTION. **Sec.**  A new section is added to chapter 43.70 RCW to read as follows:

(1) The violence and death investigation resource center is established within the department. The resource center shall:

(a) Collect and analyze vital statistics on violence and deaths in the state to identify localized and statewide trends;

(b) Survey medical examiners and coroners in the state to identify the critical needs of the offices;

(c) Develop systems to facilitate information and data sharing between medical examiner and coroner offices; and

(d) Develop best practices for death investigation in the state.

(2) A forensic pathologist or a former forensic pathologist must serve as the director of the resource center.

(3) The resource center staff must include a data manager, and the department shall provide additional staff support as needed.

(4) The director of the resource center shall serve as a member of the Washington state forensic investigations council, established under chapter 43.103 RCW.

(5) The resource center shall submit an annual report to the legislature detailing the center's work, including trends in violence and deaths from the previous year, and providing recommendations to support medical examiner and coroner offices and improve death investigations in the state.

(6) The department may adopt any rules necessary to implement this section.

**Sec.**  RCW 43.103.040 and 2010 c 143 s 1 are each amended to read as follows:

The council shall consist of ((~~thirteen~~)) 14 members who shall be selected as follows: One county coroner; one county prosecutor; one county prosecutor who also serves as ex officio county coroner; one county medical examiner; one county sheriff; one chief of police; the chief of the state patrol; two members of a county legislative authority; one pathologist who is currently in private practice; two members of a city legislative authority; the director of the violence and death investigation resource center established in section 6 of this act; and one attorney whose practice of law includes significant experience representing clients charged with criminal offenses.

The governor shall appoint members to the council from among the nominees submitted for each position as follows: The Washington association of county officials shall submit two nominees each for the coroner position and the medical examiner position; the Washington state association of counties shall submit two nominees each for the two county legislative authority positions; the association of Washington cities shall submit two nominees each for the two city legislative authority positions; the Washington association of prosecuting attorneys shall submit two nominees each for the county prosecutor-ex officio county coroner and for the county prosecutor position; the Washington association of sheriffs and police chiefs shall submit two nominees each for the county sheriff position and the chief of police position; the Washington association of pathologists shall submit two nominees for the private pathologist position; the department of health shall submit one nominee for the director of the violence and death investigation resource center position; and the Washington association of criminal defense lawyers and the Washington defender association shall jointly submit two nominees for the criminal defense attorney position, one of whom must actively manage or have significant experience in managing a public or private criminal defense agency or association, the other must have experience in cases involving DNA or other forensic evidence.

NEW SECTION. **Sec.**  The legislature acknowledges while medical school enrollment has climbed, forensic pathology has seen steep declines in residency rotations and in the number of individuals seeking national certification. The Washington state institute for public policy shall conduct a study of the critical shortage of board-certified forensic pathologists and recommend to the legislature what steps the state can take to foster a robust forensic pathology community. The study shall cover issues related to Conrad 30/J-1 visa waivers and measures to encourage enrollment in the University of Washington and Washington State University forensic pathology residency programs. The Washington state institute for public policy shall report its findings and recommendations to the governor and the appropriate committees of the legislature by December 1, 2022.

NEW SECTION. **Sec.**  Sections 1 through 4 of this act constitute a new chapter in Title 10 RCW.

NEW SECTION. **Sec.**  Section 3 of this act takes effect January 1, 2025.

NEW SECTION. **Sec.**  Section 4 of this act takes effect January 1, 2024.

NEW SECTION. **Sec.**  Section 6 of this act takes effect January 1, 2023.

NEW SECTION. **Sec.**  If specific funding for the purposes of this act, referencing this act by bill or chapter number, is not provided by June 30, 2022, in the omnibus appropriations act, this act is null and void.

**--- END ---**