

SHB 1501 - S AMD 277
By Senator Padden

ADOPTED 04/20/2017

1 Strike everything after the enacting clause and insert the
2 following:

3 "NEW SECTION. **Sec. 1.** A new section is added to chapter 9.41
4 RCW to read as follows:

5 (1) A dealer shall report to the Washington association of
6 sheriffs and police chiefs information on each instance where the
7 dealer denies an application for the purchase or transfer of a
8 firearm, whether under RCW 9.41.090 or 9.41.113, or the requirements
9 of federal law, as the result of a background check or completed and
10 submitted firearm purchase or transfer application that indicates the
11 applicant is ineligible to possess a firearm under state or federal
12 law. The dealer shall report the denied application information to
13 the Washington association of sheriffs and police chiefs within five
14 days of the denial in a format as prescribed by the Washington
15 association of sheriffs and police chiefs. The reported information
16 must include the identifying information of the applicant, the date
17 of the application and denial of the application, and other
18 information or documents as prescribed by the Washington association
19 of sheriffs and police chiefs. In any case where the purchase or
20 transfer of a firearm is initially denied by the dealer as the result
21 of a background check that indicates the applicant is ineligible to
22 possess a firearm, but the purchase or transfer is subsequently
23 approved, the dealer shall report the subsequent approval to the
24 Washington association of sheriffs and police chiefs within one day
25 of the approval.

26 (2) Upon denying an application for the purchase or transfer of a
27 firearm as a result of a background check or completed and submitted
28 firearm purchase or transfer application that indicates the applicant
29 is ineligible to possess a firearm under state or federal law, the
30 dealer shall:

31 (a) Provide the applicant with a copy of a notice form generated
32 and distributed by the Washington state patrol under section 3(5) of

1 this act, informing denied applicants of their right to appeal the
2 denial; and

3 (b) Retain the original records of the attempted purchase or
4 transfer of a firearm for a period not less than six years.

5 NEW SECTION. **Sec. 2.** A new section is added to chapter 36.28A
6 RCW to read as follows:

7 (1) Subject to the availability of amounts appropriated for this
8 specific purpose, the Washington association of sheriffs and police
9 chiefs must create and maintain an electronic portal for a dealer, as
10 defined in RCW 9.41.010, to report the information as required
11 pursuant to section 1 of this act pertaining to persons who have
12 applied for the purchase or transfer of a firearm and were denied as
13 the result of a background check or completed and submitted firearm
14 purchase or transfer application that indicates the applicant is
15 ineligible to possess a firearm under state or federal law.

16 (2) Upon receipt of information from a dealer pursuant to section
17 1 of this act that a person originally denied the purchase or
18 transfer of a firearm as the result of a background check that
19 indicates the applicant is ineligible to possess a firearm has
20 subsequently been approved for the purchase or transfer, the
21 Washington association of sheriffs and police chiefs must purge any
22 record of the person's denial in its possession and inform the
23 Washington state patrol and any local law enforcement agency
24 participating in the grant program created in section 6 of this act
25 of the subsequent approval of the purchase or transfer.

26 (3) Information and records prepared, owned, used, or retained by
27 the Washington state patrol or the Washington association of sheriffs
28 and police chiefs pursuant to this act are exempt from public
29 inspection and copying under chapter 42.56 RCW.

30 (4) The Washington association of sheriffs and police chiefs must
31 destroy the information and data reported by a dealer pursuant to
32 this act upon its satisfaction that the information and data is no
33 longer necessary to carry out its duties pursuant to this act.

34 NEW SECTION. **Sec. 3.** A new section is added to chapter 43.43
35 RCW to read as follows:

36 (1) Upon receipt of the information from the Washington
37 association of sheriffs and police chiefs pursuant to section 2 of
38 this act, the Washington state patrol must incorporate the

1 information into its electronic database accessible to law
2 enforcement agencies and officers, including federally recognized
3 Indian tribes, that have a connection to the Washington state patrol
4 electronic database.

5 (2) Upon receipt of documentation that a person has appealed a
6 background check denial, the Washington state patrol shall
7 immediately remove the record of the person initially reported
8 pursuant to section 2 of this act from its electronic database
9 accessible to law enforcement agencies and officers. The Washington
10 state patrol must keep a separate record of the person's information
11 for a period of one year or until such time as the appeal has been
12 resolved. Every twelve months, the Washington state patrol shall
13 notify the person that the person must provide documentation that his
14 or her appeal is still pending or the record of the person's
15 background check denial will be put back in its electronic database
16 accessible to law enforcement agencies and officers. At any time,
17 upon receipt of documentation that a person's appeal has been
18 granted, the Washington state patrol shall remove any record of the
19 person's denied firearms purchase or transfer application from its
20 electronic database accessible to law enforcement agencies and
21 officers.

22 (3) Upon receipt of satisfactory proof that a person who was
23 reported to the Washington state patrol pursuant to section 2 of this
24 act is no longer ineligible to possess a firearm under state or
25 federal law, the Washington state patrol must remove any record of
26 the person's denied firearms purchase or transfer application from
27 its electronic database accessible to law enforcement agencies and
28 officers.

29 (4) Upon receipt of notification from the Washington association
30 of sheriffs and police chiefs that a person originally denied the
31 purchase or transfer of a firearm as the result of a background check
32 or completed and submitted firearm purchase or transfer application
33 that indicates the applicant is ineligible to possess a firearm under
34 state or federal law has subsequently been approved for the purchase
35 or transfer, the Washington state patrol must remove any record of
36 the person's denied firearms purchase or transfer application from
37 its electronic database accessible to law enforcement agencies and
38 officers within five business days.

39 (5) The Washington state patrol shall generate and distribute a
40 notice form to all firearm dealers, to be provided by the dealers to

1 applicants denied the purchase or transfer of a firearm as a result
2 of a background check that indicates the applicant is ineligible to
3 possess a firearm. The notice form must contain the following
4 statements:

5 State law requires that I transmit the following information
6 to the Washington association of sheriffs and police chiefs
7 as a result of your firearm purchase or transfer denial
8 within two days of the denial:

9 (a) Identifying information of the applicant;

10 (b) The date of the application and denial of the
11 application;

12 (c) Other information as prescribed by the Washington
13 association of sheriffs and police chiefs.

14 If you believe this denial is in error, and you do not
15 exercise your right to appeal, you may be subject to criminal
16 investigation by the Washington state patrol and/or a local
17 law enforcement agency.

18 The notice form shall also contain information directing the
19 applicant to a web site describing the process of appealing a
20 national instant criminal background check system denial through the
21 federal bureau of investigation and refer the applicant to local law
22 enforcement for information on a denial based on a state background
23 check. The notice form shall also contain a phone number for a
24 contact at the Washington state patrol to direct the person to
25 resources regarding an individual's right to appeal a background
26 check denial.

27 (6) The Washington state patrol may adopt rules as are necessary
28 to carry out the purposes of this section.

29 NEW SECTION. **Sec. 4.** A new section is added to chapter 36.28A
30 RCW to read as follows:

31 Subject to the availability of amounts appropriated for this
32 specific purpose, the Washington association of sheriffs and police
33 chiefs shall prepare an annual report on the number of denied
34 firearms sales or transfers reported pursuant to this act. The report
35 shall indicate the number of cases in which a person was denied a
36 firearms sale or transfer, the number of cases where the denied sale
37 or transfer was investigated for potential criminal prosecution, and
38 the number of cases where an arrest was made, the case was referred

1 for prosecution, and a conviction was obtained. The Washington state
2 patrol shall submit the report to the appropriate committees of the
3 legislature on or before December 31st of each year.

4 NEW SECTION. **Sec. 5.** A new section is added to chapter 36.28A
5 RCW to read as follows:

6 (1)(a) Subject to the availability of amounts appropriated for
7 this specific purpose, the Washington association of sheriffs and
8 police chiefs shall create and operate a statewide automated
9 protected person notification system to automatically notify a
10 registered person via the registered person's choice of telephone or
11 email when a respondent subject to a court order specified in (b) of
12 this subsection has attempted to purchase or acquire a firearm and
13 been denied based on a background check or completed and submitted
14 firearm purchase or transfer application that indicates the
15 respondent is ineligible to possess a firearm under state or federal
16 law. The system must permit a person to register for notification, or
17 a registered person to update the person's registration information,
18 for the statewide automated protected person notification system by
19 calling a toll-free telephone number or by accessing a public web
20 site.

21 (b) The notification requirements of this section apply to any
22 court order issued under chapter 7.92 RCW and RCW 7.90.090,
23 9A.46.080, 10.14.080, 10.99.040, 10.99.045, 26.09.050, 26.09.060,
24 26.10.040, 26.10.115, 26.26.130, 26.26.590, 26.50.060, or 26.50.070,
25 and any foreign protection order filed with a Washington court
26 pursuant to chapter 26.52 RCW, where the order prohibits the
27 respondent from possessing firearms or where by operation of law the
28 respondent is ineligible to possess firearms during the term of the
29 order. The notification requirements of this section apply even if
30 the respondent has notified the Washington state patrol that he or
31 she has appealed a background check denial under section 3 of this
32 act.

33 (2) An appointed or elected official, public employee, or public
34 agency as defined in RCW 4.24.470, or combination of units of
35 government and its employees, as provided in RCW 36.28A.010, are
36 immune from civil liability for damages for any release of
37 information or the failure to release information related to the
38 statewide automated protected person notification system in this
39 section, so long as the release or failure to release was without

1 gross negligence. The immunity provided under this subsection applies
2 to the release of relevant and necessary information to other public
3 officials, public employees, or public agencies, and to the general
4 public.

5 (3) Information and records prepared, owned, used, or retained by
6 the Washington association of sheriffs and police chiefs pursuant to
7 this act, including information a person submits to register and
8 participate in the statewide automated protected person notification
9 system, are exempt from public inspection and copying under chapter
10 42.56 RCW.

11 NEW SECTION. **Sec. 6.** A new section is added to chapter 36.28A
12 RCW to read as follows:

13 (1) Subject to the availability of amounts appropriated for this
14 specific purpose, the Washington association of sheriffs and police
15 chiefs shall establish a grant program for local law enforcement
16 agencies to conduct criminal investigations regarding persons who
17 illegally attempted to purchase or transfer a firearm within their
18 jurisdiction.

19 (2) Each grant applicant must be required to submit reports to
20 the Washington association of sheriffs and police chiefs that
21 indicate the number of cases in which a person was denied a firearms
22 sale or transfer, the number of cases where the denied sale or
23 transfer was investigated for potential criminal prosecution, and the
24 number of cases where an arrest was made, the case was referred for
25 prosecution, and a conviction was obtained.

26 (3) Information and records prepared, owned, used, or retained by
27 the Washington association of sheriffs and police chiefs pursuant to
28 this act are exempt from public inspection and copying under chapter
29 42.56 RCW.

30 **Sec. 7.** RCW 42.56.240 and 2016 c 173 s 8 and 2016 c 163 s 2 are
31 each reenacted and amended to read as follows:

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

35 (1) Specific intelligence information and specific investigative
36 records compiled by investigative, law enforcement, and penology
37 agencies, and state agencies vested with the responsibility to
38 discipline members of any profession, the nondisclosure of which is

1 essential to effective law enforcement or for the protection of any
2 person's right to privacy;

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

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

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

22 (5) Information revealing the identity of child victims of sexual
23 assault who are under age eighteen. Identifying information means the
24 child victim's name, address, location, photograph, and in cases in
25 which the child victim is a relative or stepchild of the alleged
26 perpetrator, identification of the relationship between the child and
27 the alleged perpetrator;

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

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

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

38 (9) Personally identifying information collected by law
39 enforcement agencies pursuant to local security alarm system programs
40 and vacation crime watch programs. Nothing in this subsection shall

1 be interpreted so as to prohibit the legal owner of a residence or
2 business from accessing information regarding his or her residence or
3 business;

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

6 (11) The identity of a state employee or officer who has in good
7 faith filed a complaint with an ethics board, as provided in RCW
8 42.52.410, or who has in good faith reported improper governmental
9 action, as defined in RCW 42.40.020, to the auditor or other public
10 official, as defined in RCW 42.40.020;

11 (12) The following security threat group information collected
12 and maintained by the department of corrections pursuant to RCW
13 72.09.745: (a) Information that could lead to the identification of a
14 person's security threat group status, affiliation, or activities;
15 (b) information that reveals specific security threats associated
16 with the operation and activities of security threat groups; and (c)
17 information that identifies the number of security threat group
18 members, affiliates, or associates;

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

22 (14) Body worn camera recordings to the extent nondisclosure is
23 essential for the protection of any person's right to privacy as
24 described in RCW 42.56.050, including, but not limited to, the
25 circumstances enumerated in (a) of this subsection. A law enforcement
26 or corrections agency shall not disclose a body worn camera recording
27 to the extent the recording is exempt under this subsection.

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

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

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

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

38 (B) Information that meets the definition of protected health
39 information for purposes of the health insurance portability and

1 accountability act of 1996 or health care information for purposes of
2 chapter 70.02 RCW;

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

5 (iii) An intimate image as defined in RCW 9A.86.010;

6 (iv) A minor;

7 (v) The body of a deceased person;

8 (vi) The identity of or communications from a victim or witness
9 of an incident involving domestic violence as defined in RCW
10 10.99.020 or sexual assault as defined in RCW 70.125.030, or
11 disclosure of intimate images as defined in RCW 9A.86.010. If at the
12 time of recording the victim or witness indicates a desire for
13 disclosure or nondisclosure of the recorded identity or
14 communications, such desire shall govern; or

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

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

20 (c) In a court action seeking the right to inspect or copy a body
21 worn camera recording, a person who prevails against a law
22 enforcement or corrections agency that withholds or discloses all or
23 part of a body worn camera recording pursuant to (a) of this
24 subsection is not entitled to fees, costs, or awards pursuant to RCW
25 42.56.550 unless it is shown that the law enforcement or corrections
26 agency acted in bad faith or with gross negligence.

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

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

30 (ii) Provide the incident or case number;

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

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

35 (e)(i) A person directly involved in an incident recorded by the
36 requested body worn camera recording, an attorney representing a
37 person directly involved in an incident recorded by the requested
38 body worn camera recording, a person or his or her attorney who
39 requests a body worn camera recording relevant to a criminal case
40 involving that person, or the executive director from either the

1 Washington state commission on African-American affairs, Asian
2 Pacific American affairs, or Hispanic affairs, has the right to
3 obtain the body worn camera recording, subject to any exemption under
4 this chapter or any applicable law. In addition, an attorney who
5 represents a person regarding a potential or existing civil cause of
6 action involving the denial of civil rights under the federal or
7 state Constitution, or a violation of a United States department of
8 justice settlement agreement, has the right to obtain the body worn
9 camera recording if relevant to the cause of action, subject to any
10 exemption under this chapter or any applicable law. The attorney must
11 explain the relevancy of the requested body worn camera recording to
12 the cause of action and specify that he or she is seeking relief from
13 redaction costs under this subsection (14)(e).

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

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

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

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

35 (iii) In any case where an agency charges a requestor for the
36 costs of redacting a body worn camera recording under this subsection
37 (14)(f), the time spent on redaction of the recording shall not count
38 towards the agency's allocation of, or limitation on, time or costs
39 spent responding to public records requests under this chapter, as

1 established pursuant to local ordinance, policy, procedure, or state
2 law.

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

4 (i) "Body worn camera recording" means a video and/or sound
5 recording that is made by a body worn camera attached to the uniform
6 or eyewear of a law enforcement or corrections officer from a covered
7 jurisdiction while in the course of his or her official duties and
8 that is made on or after June 9, 2016, and prior to July 1, 2019; and

9 (ii) "Covered jurisdiction" means any jurisdiction that has
10 deployed body worn cameras as of June 9, 2016, regardless of whether
11 or not body worn cameras are being deployed in the jurisdiction on
12 June 9, 2016, including, but not limited to, jurisdictions that have
13 deployed body worn cameras on a pilot basis.

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

18 (i) Nothing in this section is intended to modify the obligations
19 of prosecuting attorneys and law enforcement under *Brady v. Maryland*,
20 373 U.S. 83, 83 S. Ct. 1194, 10 L. Ed. 2d 215 (1963), *Kyles v.*
21 *Whitley*, 541 U.S. 419, 115 S. Ct. 1555, 131 L. Ed.2d 490 (1995), and
22 the relevant Washington court criminal rules and statutes.

23 (j) A law enforcement or corrections agency must retain body worn
24 camera recordings for at least sixty days and thereafter may destroy
25 the records; (~~and~~)

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

28 (16) Information and records prepared, owned, used, or retained
29 by the Washington association of sheriffs and police chiefs and
30 information and records prepared, owned, used, or retained by the
31 Washington state patrol pursuant to this act.

32 NEW SECTION. **Sec. 8.** If any provision of this act or its
33 application to any person or circumstance is held invalid, the
34 remainder of the act or the application of the provision to other
35 persons or circumstances is not affected."

ADOPTED 04/20/2017

1 On page 1, line 2 of the title, after "firearms;" strike the
2 remainder of the title and insert "reenacting and amending RCW
3 42.56.240; adding a new section to chapter 9.41 RCW; adding new
4 sections to chapter 36.28A RCW; and adding a new section to chapter
5 43.43 RCW."

EFFECT: Makes technical changes to correct internal references. Clarifies that notice to victims is provided even if the appeal is pending. Provides that the dealer must report when the application indicates that the person is prohibited from possessing a firearm. Dealers must report within five days. The Washington state patrol must remove information within five business days. Adds a severability clause.

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