

CERTIFICATION OF ENROLLMENT

SUBSTITUTE HOUSE BILL 1501

65th Legislature
2017 Regular Session

Passed by the House April 21, 2017
Yeas 83 Nays 13

Speaker of the House of Representatives

Passed by the Senate April 20, 2017
Yeas 49 Nays 0

President of the Senate

Approved

Governor of the State of Washington

CERTIFICATE

I, Bernard Dean, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **SUBSTITUTE HOUSE BILL 1501** as passed by House of Representatives and the Senate on the dates hereon set forth.

Chief Clerk

FILED

**Secretary of State
State of Washington**

SUBSTITUTE HOUSE BILL 1501

AS AMENDED BY THE SENATE

Passed Legislature - 2017 Regular Session

State of Washington 65th Legislature 2017 Regular Session

By House Judiciary (originally sponsored by Representatives Hansen, Hayes, Kagi, Smith, Tharinger, Clibborn, and Muri)

READ FIRST TIME 02/17/17.

1 AN ACT Relating to protecting law enforcement and the public from
2 persons who illegally attempt to obtain firearms; reenacting and
3 amending RCW 42.56.240; adding a new section to chapter 9.41 RCW;
4 adding new sections to chapter 36.28A RCW; and adding a new section
5 to chapter 43.43 RCW.

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

7 NEW SECTION. **Sec. 1.** A new section is added to chapter 9.41 RCW
8 to read as follows:

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

1 information or documents as prescribed by the Washington association
2 of sheriffs and police chiefs. In any case where the purchase or
3 transfer of a firearm is initially denied by the dealer as the result
4 of a background check that indicates the applicant is ineligible to
5 possess a firearm, but the purchase or transfer is subsequently
6 approved, the dealer shall report the subsequent approval to the
7 Washington association of sheriffs and police chiefs within one day
8 of the approval.

9 (2) Upon denying an application for the purchase or transfer of a
10 firearm as a result of a background check or completed and submitted
11 firearm purchase or transfer application that indicates the applicant
12 is ineligible to possess a firearm under state or federal law, the
13 dealer shall:

14 (a) Provide the applicant with a copy of a notice form generated
15 and distributed by the Washington state patrol under section 3(5) of
16 this act, informing denied applicants of their right to appeal the
17 denial; and

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

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

22 (1) Subject to the availability of amounts appropriated for this
23 specific purpose, the Washington association of sheriffs and police
24 chiefs must create and maintain an electronic portal for a dealer, as
25 defined in RCW 9.41.010, to report the information as required
26 pursuant to section 1 of this act pertaining to persons who have
27 applied for the purchase or transfer of a firearm and were denied as
28 the result of a background check or completed and submitted firearm
29 purchase or transfer application that indicates the applicant is
30 ineligible to possess a firearm under state or federal law.

31 (2) Upon receipt of information from a dealer pursuant to section
32 1 of this act that a person originally denied the purchase or
33 transfer of a firearm as the result of a background check that
34 indicates the applicant is ineligible to possess a firearm has
35 subsequently been approved for the purchase or transfer, the
36 Washington association of sheriffs and police chiefs must purge any
37 record of the person's denial in its possession and inform the
38 Washington state patrol and any local law enforcement agency

1 participating in the grant program created in section 6 of this act
2 of the subsequent approval of the purchase or transfer.

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

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

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

13 (1) Upon receipt of the information from the Washington
14 association of sheriffs and police chiefs pursuant to section 2 of
15 this act, the Washington state patrol must incorporate the
16 information into its electronic database accessible to law
17 enforcement agencies and officers, including federally recognized
18 Indian tribes, that have a connection to the Washington state patrol
19 electronic database.

20 (2) Upon receipt of documentation that a person has appealed a
21 background check denial, the Washington state patrol shall
22 immediately remove the record of the person initially reported
23 pursuant to section 2 of this act from its electronic database
24 accessible to law enforcement agencies and officers. The Washington
25 state patrol must keep a separate record of the person's information
26 for a period of one year or until such time as the appeal has been
27 resolved. Every twelve months, the Washington state patrol shall
28 notify the person that the person must provide documentation that his
29 or her appeal is still pending or the record of the person's
30 background check denial will be put back in its electronic database
31 accessible to law enforcement agencies and officers. At any time,
32 upon receipt of documentation that a person's appeal has been
33 granted, the Washington state patrol shall remove any record of the
34 person's denied firearms purchase or transfer application from its
35 electronic database accessible to law enforcement agencies and
36 officers.

37 (3) Upon receipt of satisfactory proof that a person who was
38 reported to the Washington state patrol pursuant to section 2 of this
39 act is no longer ineligible to possess a firearm under state or

1 federal law, the Washington state patrol must remove any record of
2 the person's denied firearms purchase or transfer application from
3 its electronic database accessible to law enforcement agencies and
4 officers.

5 (4) Upon receipt of notification from the Washington association
6 of sheriffs and police chiefs that a person originally denied the
7 purchase or transfer of a firearm as the result of a background check
8 or completed and submitted firearm purchase or transfer application
9 that indicates the applicant is ineligible to possess a firearm under
10 state or federal law has subsequently been approved for the purchase
11 or transfer, the Washington state patrol must remove any record of
12 the person's denied firearms purchase or transfer application from
13 its electronic database accessible to law enforcement agencies and
14 officers within five business days.

15 (5) The Washington state patrol shall generate and distribute a
16 notice form to all firearm dealers, to be provided by the dealers to
17 applicants denied the purchase or transfer of a firearm as a result
18 of a background check that indicates the applicant is ineligible to
19 possess a firearm. The notice form must contain the following
20 statements:

21 State law requires that I transmit the following information
22 to the Washington association of sheriffs and police chiefs
23 as a result of your firearm purchase or transfer denial
24 within two days of the denial:

25 (a) Identifying information of the applicant;

26 (b) The date of the application and denial of the
27 application;

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

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

34 The notice form shall also contain information directing the
35 applicant to a web site describing the process of appealing a
36 national instant criminal background check system denial through the
37 federal bureau of investigation and refer the applicant to local law
38 enforcement for information on a denial based on a state background
39 check. The notice form shall also contain a phone number for a

1 contact at the Washington state patrol to direct the person to
2 resources regarding an individual's right to appeal a background
3 check denial.

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

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

8 Subject to the availability of amounts appropriated for this
9 specific purpose, the Washington association of sheriffs and police
10 chiefs shall prepare an annual report on the number of denied
11 firearms sales or transfers reported pursuant to this act. The report
12 shall indicate the number of cases in which a person was denied a
13 firearms sale or transfer, the number of cases where the denied sale
14 or transfer was investigated for potential criminal prosecution, and
15 the number of cases where an arrest was made, the case was referred
16 for prosecution, and a conviction was obtained. The Washington state
17 patrol shall submit the report to the appropriate committees of the
18 legislature on or before December 31st of each year.

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

21 (1)(a) Subject to the availability of amounts appropriated for
22 this specific purpose, the Washington association of sheriffs and
23 police chiefs shall create and operate a statewide automated
24 protected person notification system to automatically notify a
25 registered person via the registered person's choice of telephone or
26 email when a respondent subject to a court order specified in (b) of
27 this subsection has attempted to purchase or acquire a firearm and
28 been denied based on a background check or completed and submitted
29 firearm purchase or transfer application that indicates the
30 respondent is ineligible to possess a firearm under state or federal
31 law. The system must permit a person to register for notification, or
32 a registered person to update the person's registration information,
33 for the statewide automated protected person notification system by
34 calling a toll-free telephone number or by accessing a public web
35 site.

36 (b) The notification requirements of this section apply to any
37 court order issued under chapter 7.92 RCW and RCW 7.90.090,
38 9A.46.080, 10.14.080, 10.99.040, 10.99.045, 26.09.050, 26.09.060,

1 26.10.040, 26.10.115, 26.26.130, 26.26.590, 26.50.060, or 26.50.070,
2 and any foreign protection order filed with a Washington court
3 pursuant to chapter 26.52 RCW, where the order prohibits the
4 respondent from possessing firearms or where by operation of law the
5 respondent is ineligible to possess firearms during the term of the
6 order. The notification requirements of this section apply even if
7 the respondent has notified the Washington state patrol that he or
8 she has appealed a background check denial under section 3 of this
9 act.

10 (2) An appointed or elected official, public employee, or public
11 agency as defined in RCW 4.24.470, or combination of units of
12 government and its employees, as provided in RCW 36.28A.010, are
13 immune from civil liability for damages for any release of
14 information or the failure to release information related to the
15 statewide automated protected person notification system in this
16 section, so long as the release or failure to release was without
17 gross negligence. The immunity provided under this subsection applies
18 to the release of relevant and necessary information to other public
19 officials, public employees, or public agencies, and to the general
20 public.

21 (3) Information and records prepared, owned, used, or retained by
22 the Washington association of sheriffs and police chiefs pursuant to
23 this act, including information a person submits to register and
24 participate in the statewide automated protected person notification
25 system, are exempt from public inspection and copying under chapter
26 42.56 RCW.

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

29 (1) Subject to the availability of amounts appropriated for this
30 specific purpose, the Washington association of sheriffs and police
31 chiefs shall establish a grant program for local law enforcement
32 agencies to conduct criminal investigations regarding persons who
33 illegally attempted to purchase or transfer a firearm within their
34 jurisdiction.

35 (2) Each grant applicant must be required to submit reports to
36 the Washington association of sheriffs and police chiefs that
37 indicate the number of cases in which a person was denied a firearms
38 sale or transfer, the number of cases where the denied sale or
39 transfer was investigated for potential criminal prosecution, and the

1 number of cases where an arrest was made, the case was referred for
2 prosecution, and a conviction was obtained.

3 (3) Information and records prepared, owned, used, or retained by
4 the Washington association of sheriffs and police chiefs pursuant to
5 this act are exempt from public inspection and copying under chapter
6 42.56 RCW.

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

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

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

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

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

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

37 (5) Information revealing the identity of child victims of sexual
38 assault who are under age eighteen. Identifying information means the
39 child victim's name, address, location, photograph, and in cases in

1 which the child victim is a relative or stepchild of the alleged
2 perpetrator, identification of the relationship between the child and
3 the alleged perpetrator;

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

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

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

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

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

22 (11) The identity of a state employee or officer who has in good
23 faith filed a complaint with an ethics board, as provided in RCW
24 42.52.410, or who has in good faith reported improper governmental
25 action, as defined in RCW 42.40.020, to the auditor or other public
26 official, as defined in RCW 42.40.020;

27 (12) The following security threat group information collected
28 and maintained by the department of corrections pursuant to RCW
29 72.09.745: (a) Information that could lead to the identification of a
30 person's security threat group status, affiliation, or activities;
31 (b) information that reveals specific security threats associated
32 with the operation and activities of security threat groups; and (c)
33 information that identifies the number of security threat group
34 members, affiliates, or associates;

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

38 (14) Body worn camera recordings to the extent nondisclosure is
39 essential for the protection of any person's right to privacy as
40 described in RCW 42.56.050, including, but not limited to, the

1 circumstances enumerated in (a) of this subsection. A law enforcement
2 or corrections agency shall not disclose a body worn camera recording
3 to the extent the recording is exempt under this subsection.

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

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

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

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

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

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

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

21 (iv) A minor;

22 (v) The body of a deceased person;

23 (vi) The identity of or communications from a victim or witness
24 of an incident involving domestic violence as defined in RCW
25 10.99.020 or sexual assault as defined in RCW 70.125.030, or
26 disclosure of intimate images as defined in RCW 9A.86.010. If at the
27 time of recording the victim or witness indicates a desire for
28 disclosure or nondisclosure of the recorded identity or
29 communications, such desire shall govern; or

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

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

35 (c) In a court action seeking the right to inspect or copy a body
36 worn camera recording, a person who prevails against a law
37 enforcement or corrections agency that withholds or discloses all or
38 part of a body worn camera recording pursuant to (a) of this
39 subsection is not entitled to fees, costs, or awards pursuant to RCW

1 42.56.550 unless it is shown that the law enforcement or corrections
2 agency acted in bad faith or with gross negligence.

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

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

6 (ii) Provide the incident or case number;

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

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

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

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

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

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

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

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

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

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

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

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

34 (i) Nothing in this section is intended to modify the obligations
35 of prosecuting attorneys and law enforcement under *Brady v. Maryland*,
36 373 U.S. 83, 83 S. Ct. 1194, 10 L. Ed. 2d 215 (1963), *Kyles v.*
37 *Whitley*, 541 U.S. 419, 115 S. Ct. 1555, 131 L. Ed.2d 490 (1995), and
38 the relevant Washington court criminal rules and statutes.

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

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

6 (16) Information and records prepared, owned, used, or retained
7 by the Washington association of sheriffs and police chiefs and
8 information and records prepared, owned, used, or retained by the
9 Washington state patrol pursuant to this act.

10 NEW SECTION. **Sec. 8.** If any provision of this act or its
11 application to any person or circumstance is held invalid, the
12 remainder of the act or the application of the provision to other
13 persons or circumstances is not affected.

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