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**SUBSTITUTE SENATE BILL 5764**

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**State of Washington**

**65th Legislature**

**2017 Regular Session**

**By** Senate Higher Education (originally sponsored by Senators Wellman, Hasegawa, and Rolfes)

READ FIRST TIME 02/17/17.

1       AN ACT Relating to higher education records; reenacting and  
2 amending RCW 42.56.240; adding a new section to chapter 28B.112 RCW;  
3 and creating a new section.

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

5       NEW SECTION.   **Sec. 1.**   The legislature finds that the state,  
6 along with the federal government and the state's public colleges and  
7 universities, plays an important role in protecting college students  
8 on and off campus from violence, including sexual assault. This role  
9 includes protecting students from repeat offenders and ensuring that  
10 survivors can trust that their college or university has education  
11 record protocols that prioritize their safety on and off campus.

12       The legislature commends the final report produced by the task  
13 force established by Substitute Senate Bill No. 5719 in 2015. The  
14 task force brought together experts across a range of fields to  
15 highlight ways in which both institutions of higher education and the  
16 state can enact stronger policies around the issue of campus sexual  
17 assault. As representatives of our state's public colleges and  
18 universities said two years ago, this subject needs to be a high  
19 priority for the state and existing state law has gaps that need to  
20 be fixed. Therefore, the legislature intends to enact changes based

1 on several recommendations contained within the report to the  
2 legislature.

3 NEW SECTION. **Sec. 2.** A new section is added to chapter 28B.112  
4 RCW to read as follows:

5 (1) Survivor communications with, and records maintained by,  
6 campus-affiliated advocates, shall be confidential.

7 (2) Records maintained by a campus-affiliated advocate are not  
8 subject to public inspection and copying and are not subject to  
9 inspection or copying by an institution of higher education unless:

10 (a) The survivor consents to inspection or copying;

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

13 (c) Inspection or copying is required by federal law; or

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

16 (3) The definitions in this subsection apply throughout this  
17 section and RCW 42.56.240(16) unless the context clearly requires  
18 otherwise.

19 (a) "Campus-affiliated advocate" means a "sexual assault  
20 advocate" or "domestic violence advocate" as defined in RCW 5.60.060  
21 or a victim advocate, employed by or volunteering for an institution  
22 of higher education.

23 (b) "Survivor" means any student, faculty, staff, or  
24 administrator at an institution of higher education that believes  
25 they were a victim of a sexual assault, dating or domestic violence,  
26 or stalking.

27 **Sec. 3.** RCW 42.56.240 and 2016 c 173 s 8 and 2016 c 163 s 2 are  
28 each reenacted and amended to read as follows:

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

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

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

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

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

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

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

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

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

36 (9) Personally identifying information collected by law  
37 enforcement agencies pursuant to local security alarm system programs  
38 and vacation crime watch programs. Nothing in this subsection shall  
39 be interpreted so as to prohibit the legal owner of a residence or

1 business from accessing information regarding his or her residence or  
2 business;

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

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

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

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

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

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

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

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

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

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

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

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

4 (iv) A minor;

5 (v) The body of a deceased person;

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

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

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

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

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

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

28 (ii) Provide the incident or case number;

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

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

33 (e)(i) A person directly involved in an incident recorded by the  
34 requested body worn camera recording, an attorney representing a  
35 person directly involved in an incident recorded by the requested  
36 body worn camera recording, a person or his or her attorney who  
37 requests a body worn camera recording relevant to a criminal case  
38 involving that person, or the executive director from either the  
39 Washington state commission on African-American affairs, Asian  
40 Pacific American affairs, or Hispanic affairs, has the right to

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

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

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

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

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

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

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

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

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

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

15 (i) Nothing in this section is intended to modify the obligations  
16 of prosecuting attorneys and law enforcement under *Brady v. Maryland*,  
17 373 U.S. 83, 83 S. Ct. 1194, 10 L. Ed. 2d 215 (1963), *Kyles v.*  
18 *Whitley*, 541 U.S. 419, 115 S. Ct. 1555, 131 L. Ed.2d 490 (1995), and  
19 the relevant Washington court criminal rules and statutes.

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

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

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

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

30 (i) The survivor consents to inspection or copying;

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

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

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

36 (c) "Campus-affiliated advocate" and "survivor" have the  
37 definitions in section 2 of this act.

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