
SECOND SUBSTITUTE HOUSE BILL 1871

State of Washington

66th Legislature

2020 Regular Session

By House Public Safety (originally sponsored by Representatives Klippert, Goodman, and Appleton; by request of Department of Corrections)

READ FIRST TIME 01/27/20.

1 AN ACT Relating to prison safety; and amending RCW 9.94.045 and
2 42.56.240.

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

4 **Sec. 1.** RCW 9.94.045 and 1979 c 121 s 4 are each amended to read
5 as follows:

6 (1) A person, other than a ((person serving a sentence in a penal
7 institution of this state)) prisoner in a state correctional
8 institution, is guilty of possession of contraband on the premises of
9 a state correctional institution in the second degree if, without
10 authorization to do so, the person:

11 (a) Knowingly possesses or has under his or her control any
12 narcotic drug or controlled substance, as defined in chapter 69.50
13 RCW, on or in the buildings, grounds, or any other real property
14 subject to the care, control, or supervision of a state correctional
15 institution; or

16 (b) Delivers or possesses with intent to deliver to a prisoner in
17 a state correctional institution any alcohol, intoxicant, or a cell
18 phone or other form of an electronic telecommunications device.

19 (2) Possession of contraband on the premises of a state
20 correctional institution in the second degree is a class C felony.

1 **Sec. 2.** RCW 42.56.240 and 2019 c 300 s 1 are each amended to
2 read as follows:

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

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

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

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

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

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

1 (6) Information contained in a local or regionally maintained
2 gang database (~~(as well as)~~), the statewide gang database referenced
3 in RCW 43.43.762, and the department of corrections' security threat
4 group database;

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

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

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

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

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

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

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

36 (14) Body worn camera recordings to the extent nondisclosure is
37 essential for the protection of any person's right to privacy as
38 described in RCW 42.56.050, including, but not limited to, the
39 circumstances enumerated in (a) of this subsection. A law enforcement

1 or corrections agency shall not disclose a body worn camera recording
2 to the extent the recording is exempt under this subsection.

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

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

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

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

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

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

19 (iii) An intimate image;

20 (iv) A minor;

21 (v) The body of a deceased person;

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

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

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

34 (c) In a court action seeking the right to inspect or copy a body
35 worn camera recording, a person who prevails against a law
36 enforcement or corrections agency that withholds or discloses all or
37 part of a body worn camera recording pursuant to (a) of this
38 subsection is not entitled to fees, costs, or awards pursuant to RCW
39 42.56.550 unless it is shown that the law enforcement or corrections
40 agency acted in bad faith or with gross negligence.

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

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

4 (ii) Provide the incident or case number;

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

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

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

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

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

38 (f)(i) A law enforcement or corrections agency responding to a
39 request to disclose body worn camera recordings may require any
40 requester not listed in (e) of this subsection to pay the reasonable

1 costs of redacting, altering, distorting, pixelating, suppressing, or
2 otherwise obscuring any portion of the body worn camera recording
3 prior to disclosure only to the extent necessary to comply with the
4 exemptions in this chapter or any applicable law.

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

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

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

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

21 (ii) "Intimate image" means an individual or individuals engaged
22 in sexual activity, including sexual intercourse as defined in RCW
23 9A.44.010 and masturbation, or an individual's intimate body parts,
24 whether nude or visible through less than opaque clothing, including
25 the genitals, pubic area, anus, or postpubescent female nipple.

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

30 (i) Nothing in this section is intended to modify the obligations
31 of prosecuting attorneys and law enforcement under *Brady v. Maryland*,
32 373 U.S. 83, 83 S. Ct. 1194, 10 L. Ed. 2d 215 (1963) (~~((7))~~); *Kyles v.*
33 *Whitley*, 541 U.S. 419, 115 S. Ct. 1555, 131 L. Ed. 2d 490 (1995)
34 (~~((7))~~); and the relevant Washington court criminal rules and statutes.

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

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

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

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

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

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

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

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

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

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

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

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