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**SUBSTITUTE HOUSE BILL 1917**

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**State of Washington**

**64th Legislature**

**2015 Regular Session**

**By** House Judiciary (originally sponsored by Representatives Hansen, Pettigrew, Ortiz-Self, and Appleton)

READ FIRST TIME 02/20/15.

1 AN ACT Relating to video and/or sound recordings made by law  
2 enforcement or corrections officers; amending RCW 9.73.090;  
3 reenacting and amending RCW 42.56.240; adding a new chapter to Title  
4 5 RCW; adding a new chapter to Title 10 RCW; creating new sections;  
5 and providing an expiration date.

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

7 NEW SECTION. **Sec. 1.** The legislature finds that technological  
8 developments present opportunities for additional truth-finding,  
9 transparency, and accountability in interactions between law  
10 enforcement or corrections officers and the public. However, the  
11 legislature wants to preserve the public's reasonable expectations of  
12 privacy with respect to such interactions; although individuals  
13 interacting with law enforcement or corrections officers carrying out  
14 their official duties have no expectation that their right to privacy  
15 prevents law enforcement or corrections officers from audio and/or  
16 video recording their interaction, those individuals do not surrender  
17 their right to privacy as it relates to the public records act. The  
18 legislature intends to promote transparency and accountability by  
19 permitting individuals who interact with law enforcement or  
20 corrections officers to access the video and/or sound recordings of  
21 these interactions while preserving the public's reasonable

1 expectation that the recordings of these interactions will not be  
2 publicly disclosed to enable voyeurism or exploitation.

3 **Sec. 2.** RCW 9.73.090 and 2011 c 336 s 325 are each amended to  
4 read as follows:

5 (1) The provisions of RCW 9.73.030 through 9.73.080 shall not  
6 apply to police, corrections, fire, emergency medical service,  
7 emergency communication center, and poison center personnel in the  
8 following instances:

9 (a) Recording incoming (~~telephone~~) calls or messages to police  
10 and fire stations, licensed emergency medical service providers,  
11 emergency communication centers, and poison centers;

12 (b) Video and/or sound recordings may be made of arrested persons  
13 by police officers responsible for making arrests or holding persons  
14 in custody before their first appearance in court. Such video and/or  
15 sound recordings shall conform strictly to the following:

16 (i) The arrested person shall be informed that such recording is  
17 being made and the statement so informing him or her shall be  
18 included in the recording;

19 (ii) The recording shall commence with an indication of the time  
20 of the beginning thereof and terminate with an indication of the time  
21 thereof;

22 (iii) At the commencement of the recording the arrested person  
23 shall be fully informed of his or her constitutional rights, and such  
24 statements informing him or her shall be included in the recording;

25 (iv) The recordings shall only be used for valid police or court  
26 activities;

27 (~~(c) ((Sound recordings that correspond to video images recorded  
28 by video cameras mounted in law enforcement vehicles. All law  
29 enforcement officers wearing a sound recording device that makes  
30 recordings corresponding to videos recorded by video cameras mounted  
31 in law enforcement vehicles must be in uniform. A sound recording  
32 device that makes a recording pursuant to this subsection (1)(c) must  
33 be operated simultaneously with the video camera when the operating  
34 system has been activated for an event. No sound recording device may  
35 be intentionally turned off by the law enforcement officer during the  
36 recording of an event. Once the event has been captured, the officer  
37 may turn off the audio recording and place the system back into "pre-  
38 event" mode))~~) Video and/or sound recordings, of any kind, made by

1 uniformed law enforcement or corrections officers while in the course  
2 of their official duties.

3 (i) No ((sound)) video and/or ((video)) sound recording, of any  
4 kind, made ((under this subsection (1)(c))) by uniformed law  
5 enforcement or corrections officers while in the course of their  
6 official duties may be ((duplicated and)) made available to the  
7 public ((by a law enforcement agency subject to this section until  
8 final disposition of any criminal or civil litigation which arises  
9 from the event or events which were recorded. Such sound recordings  
10 shall not be divulged or used by any law enforcement agency for any  
11 commercial purpose.

12 A law enforcement officer shall inform any person being recorded  
13 by sound under this subsection (1)(c) that a sound recording is being  
14 made and the statement so informing the person shall be included in  
15 the sound recording, except that the law enforcement officer is not  
16 required to inform the person being recorded if the person is being  
17 recorded under exigent circumstances. A law enforcement officer is  
18 not required to inform a person being recorded by video under this  
19 subsection (1)(c) that the person is being recorded by video))  
20 pursuant to chapter 42.56 RCW, by any jurisdiction that has deployed  
21 body cameras as of the effective date of this act, unless:

22 (A) The request for the video and/or sound recording:

23 (I) Specifically identifies the name of the person or persons  
24 involved and the incident or case number; or

25 (II) Provides the specific date, time, and location of the  
26 incident; and

27 (B) The request for the video and/or sound recording is made by:

28 (I) A person directly involved in the incident recorded by the  
29 requested video and/or sound recording, or an attorney representing  
30 an individual directly involved in the incident recorded by the  
31 requested video and/or sound recording, upon a certification under  
32 penalty of perjury, by the person requesting disclosure, that the  
33 person requesting disclosure does not intend to use the recording to  
34 intimidate, threaten, abuse, or harass any individual on the  
35 recording; or

36 (II) Any other person upon a court order finding, by clear and  
37 convincing evidence, that: The public interest in the disclosure of  
38 the video and/or sound recording significantly outweighs the privacy  
39 interests of the person or persons whose image or sound is contained  
40 in the recording; the person requesting the video and/or sound

1 recording gave each nonlaw enforcement or corrections officer whose  
2 image or sound is contained in the recording notice of the requested  
3 disclosure in the best manner practicable under the circumstances,  
4 including individual notice to every person who can be identified  
5 through reasonable effort; and each person whose image or sound is  
6 contained in the recording had reasonable opportunity to obtain an  
7 order from the court to enjoin all or some of the intended  
8 disclosure. Law enforcement agencies must provide information  
9 sufficient to enable the giving of notice, where available, so long  
10 as that would not interfere with ongoing investigations.

11 (ii) Law enforcement or corrections agencies responding to  
12 requests to disclose video and/or sound recordings made under (c)(i)  
13 of this subsection may require any person requesting a video and/or  
14 sound recording to identify himself or herself to ensure compliance  
15 with (c)(i) of this subsection.

16 (iii) A law enforcement or corrections agency responding to a  
17 request for video and/or sound recording under (c)(i) of this  
18 subsection may require the requester to pay the costs of redacting  
19 any portion of the video and/or sound recording before disclosure.

20 (iv) Video and/or sound recordings, of any kind, made by  
21 uniformed law enforcement or corrections officers while in the course  
22 of their official duties may be used by jurisdictions that have  
23 deployed body cameras as of the effective date of this act for  
24 officer accountability, evidentiary purposes, and any other use not  
25 prohibited by law.

26 (2) It shall not be unlawful for a law enforcement officer acting  
27 in the performance of the officer's official duties to intercept,  
28 record, or disclose ~~((an))~~ a private oral communication or  
29 conversation ~~((where the officer is a party to the communication or~~  
30 ~~conversation or one of the parties to the communication or~~  
31 ~~conversation has given prior consent to the interception, recording,~~  
32 ~~or disclosure))~~ in situations where the law enforcement officer's  
33 presence is concealed to one or more parties to the private  
34 communication or conversation: PROVIDED, That prior to the  
35 interception, transmission, or recording the officer shall obtain  
36 written or telephonic authorization from a judge or magistrate, who  
37 shall approve the interception, recording, or disclosure of  
38 communications or conversations with a nonconsenting party for a  
39 reasonable and specified period of time, if there is probable cause  
40 to believe that the nonconsenting party has committed, is engaged in,

1 or is about to commit a felony: PROVIDED HOWEVER, That if such  
2 authorization is given by telephone the authorization and officer's  
3 statement justifying such authorization must be electronically  
4 recorded by the judge or magistrate on a recording device in the  
5 custody of the judge or magistrate at the time transmitted and the  
6 recording shall be retained in the court records and reduced to  
7 writing as soon as possible thereafter.

8 Any recording or interception of a communication or conversation  
9 incident to a lawfully recorded or intercepted communication or  
10 conversation pursuant to this subsection shall be lawful and may be  
11 divulged.

12 All recordings of communications or conversations made pursuant  
13 to this subsection shall be retained for as long as any crime may be  
14 charged based on the events or communications or conversations  
15 recorded.

16 (3) Communications or conversations authorized to be intercepted,  
17 recorded, or disclosed by this section shall not be inadmissible  
18 under RCW 9.73.050.

19 (4) Authorizations issued under subsection (2) of this section  
20 shall be effective for not more than seven days, after which period  
21 the issuing authority may renew or continue the authorization for  
22 additional periods not to exceed seven days.

23 (5) If the judge or magistrate determines that there is probable  
24 cause to believe that the communication or conversation referenced in  
25 subsection (2) of this section concerns the unlawful manufacture,  
26 delivery, sale, or possession with intent to manufacture, deliver, or  
27 sell, controlled substances as defined in chapter 69.50 RCW, or  
28 legend drugs as defined in chapter 69.41 RCW, or imitation controlled  
29 substances as defined in chapter 69.52 RCW, the judge or magistrate  
30 may authorize the interception, transmission, recording, or  
31 disclosure of communications or conversations under subsection (2) of  
32 this section even though the true name of the nonconsenting party, or  
33 the particular time and place for the interception, transmission,  
34 recording, or disclosure, is not known at the time of the request, if  
35 the authorization describes the nonconsenting party and subject  
36 matter of the communication or conversation with reasonable certainty  
37 under the circumstances. Any such communication or conversation may  
38 be intercepted, transmitted, recorded, or disclosed as authorized  
39 notwithstanding a change in the time or location of the communication  
40 or conversation after the authorization has been obtained or the

1 presence of or participation in the communication or conversation by  
2 any additional party not named in the authorization.

3 Authorizations issued under this subsection shall be effective  
4 for not more than fourteen days, after which period the issuing  
5 authority may renew or continue the authorization for an additional  
6 period not to exceed fourteen days.

7 **Sec. 3.** RCW 42.56.240 and 2013 c 315 s 2, 2013 c 190 s 7, and  
8 2013 c 183 s 1 are 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) The statewide gang database referenced in RCW 43.43.762;

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; ((and))

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

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; ((and))

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; and

33 (13) Video and/or sound recordings made by law enforcement or  
34 corrections officers of jurisdictions that have deployed body cameras  
35 as of the effective date of this act while in the course of their  
36 official duties pursuant to RCW 9.73.090.

37 NEW SECTION. **Sec. 4.** A failure to record, maintain, or provide  
38 video and/or sound recordings made by jurisdictions that have  
39 deployed body cameras as of the effective date of this act and

1 pursuant to RCW 9.73.090 may not be used to argue for derivative  
2 suppression of any witness testimony as to the unrecorded event, or  
3 any other evidence lawfully obtained.

4 NEW SECTION. **Sec. 5.** A law enforcement agency that equips its  
5 officers with body worn cameras by the effective date of this act  
6 must establish policies regarding the use of the cameras. The  
7 policies must, at a minimum, address:

8 (1) When a body worn camera must be activated and deactivated,  
9 and when an officer has the discretion to activate and deactivate the  
10 body worn camera;

11 (2) Circumstances when a person may be unwilling to communicate  
12 with an officer who is recording the communication with a body worn  
13 camera; and

14 (3) How the officer will document when and why a body worn camera  
15 was deactivated prior to the conclusion of an interaction with a  
16 member of the public while conducting official law enforcement  
17 business.

18 NEW SECTION. **Sec. 6.** (1) The legislature shall convene a task  
19 force with the following voting members to examine law enforcement  
20 agencies' use of vehicle-mounted and body worn cameras:

21 (a) One member from each of the two largest caucuses of the  
22 senate, appointed by the president of the senate;

23 (b) One member from each of the two largest caucuses in the house  
24 of representatives, appointed by the speaker of the house of  
25 representatives;

26 (c) A representative from the governor's office;

27 (d) A representative from the Washington association of  
28 prosecuting attorneys;

29 (e) A representative of the Washington association of criminal  
30 defense lawyers;

31 (f) A representative from the American civil liberties union of  
32 Washington;

33 (g) A representative from the Washington association of sheriffs  
34 and police chiefs;

35 (h) A representative from the Washington coalition for open  
36 government;

37 (i) A representative from the Washington state commission on  
38 African American affairs;

1 (j) A representative from the Washington state commission on  
2 Asian Pacific American affairs;

3 (k) A representative from the Washington state commission on  
4 Hispanic affairs; and

5 (1) A citizen member.

6 (2) The task force shall choose two cochairs from among its  
7 legislative members.

8 (3) The task force shall undertake a thorough review of law  
9 enforcement agencies' use of vehicle-mounted and body worn cameras,  
10 including implications for police accountability, privacy,  
11 surveillance, and disproportionate impact, and make recommendations  
12 for a legislative framework that promotes police oversight while  
13 protecting privacy and limiting surveillance. The review shall  
14 include, but is not limited to:

15 (a) Appropriate requirements for law enforcement agencies'  
16 operation of vehicle-mounted and body worn cameras including, but not  
17 limited to, regulations for when recording devices may be turned on  
18 and turned off and notice and consent requirements for use of the  
19 cameras;

20 (b) Appropriate restrictions on the use of information collected  
21 from vehicle-mounted and body worn cameras; and

22 (c) Appropriate limitations on disclosure of information  
23 collected from vehicle-mounted and body worn cameras to the public.

24 (4) Staff support for the task force shall be provided by senate  
25 committee services and the house of representatives office of program  
26 research.

27 (5) Legislative members of the task force may be reimbursed for  
28 travel expenses in accordance with RCW 44.04.120. Nonlegislative  
29 members, except those representing an employer or organization, are  
30 entitled to be reimbursed for travel expenses as provided in RCW  
31 43.03.050 and 43.03.060.

32 (6) The expenses of the task force shall be paid jointly by the  
33 senate and the house of representatives. Task force expenditures are  
34 subject to approval by the senate facilities and operations committee  
35 and the house executive rules committee, or their successor  
36 committees.

37 (7) The task force shall report its findings and recommendations  
38 to the governor and the appropriate committees of the legislature by  
39 December 1, 2015.

40 (8) This section expires June 1, 2016.

1        NEW SECTION.    **Sec. 7.**    Section 4 of this act constitutes a new  
2 chapter in Title 5 RCW.

3        NEW SECTION.    **Sec. 8.**    Section 5 of this act constitutes a new  
4 chapter in Title 10 RCW.

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