

HB 1505 - S COMM AMD

By Committee on Law & Justice

ADOPTED 04/16/2019

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

3 **"Sec. 1.** RCW 42.56.240 and 2018 c 285 s 1 and 2018 c 171 s 7 are
4 each reenacted and amended to read as follows:

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

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

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

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

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

1 (5) Information revealing the specific details that describe an
2 alleged or proven child victim of sexual assault under age eighteen,
3 or the identity or contact information of an alleged or proven child
4 victim((s)) of sexual assault who ((are)) is under age eighteen.
5 Identifying information ((means)) includes the child victim's name,
6 addresses, location, photograph, and in cases in which the child
7 victim is a relative ((or)), stepchild, or stepsibling of the alleged
8 perpetrator, identification of the relationship between the child and
9 the alleged perpetrator. Contact information includes phone numbers,
10 email addresses, social media profiles, and usernames and passwords;

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

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

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

21 (9) Personally identifying information collected by law
22 enforcement agencies pursuant to local security alarm system programs
23 and vacation crime watch programs. Nothing in this subsection shall
24 be interpreted so as to prohibit the legal owner of a residence or
25 business from accessing information regarding his or her residence or
26 business;

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

29 (11) The identity of a state employee or officer who has in good
30 faith filed a complaint with an ethics board, as provided in RCW
31 42.52.410, or who has in good faith reported improper governmental
32 action, as defined in RCW 42.40.020, to the auditor or other public
33 official, as defined in RCW 42.40.020;

34 (12) The following security threat group information collected
35 and maintained by the department of corrections pursuant to RCW
36 72.09.745: (a) Information that could lead to the identification of a
37 person's security threat group status, affiliation, or activities;
38 (b) information that reveals specific security threats associated
39 with the operation and activities of security threat groups; and (c)

1 information that identifies the number of security threat group
2 members, affiliates, or associates;

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

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

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

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

17 (I) A patient is registered to receive treatment, receiving
18 treatment, waiting for treatment, or being transported in the course
19 of treatment; or

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

22 (B) Information that meets the definition of protected health
23 information for purposes of the health insurance portability and
24 accountability act of 1996 or health care information for purposes of
25 chapter 70.02 RCW;

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

28 (iii) An intimate image;

29 (iv) A minor;

30 (v) The body of a deceased person;

31 (vi) The identity of or communications from a victim or witness
32 of an incident involving domestic violence as defined in RCW
33 10.99.020 or sexual assault as defined in RCW 70.125.030, or
34 disclosure of intimate images as defined in RCW 9A.86.010. If at the
35 time of recording the victim or witness indicates a desire for
36 disclosure or nondisclosure of the recorded identity or
37 communications, such desire shall govern; or

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

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

3 (c) In a court action seeking the right to inspect or copy a body
4 worn camera recording, a person who prevails against a law
5 enforcement or corrections agency that withholds or discloses all or
6 part of a body worn camera recording pursuant to (a) of this
7 subsection is not entitled to fees, costs, or awards pursuant to RCW
8 42.56.550 unless it is shown that the law enforcement or corrections
9 agency acted in bad faith or with gross negligence.

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

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

13 (ii) Provide the incident or case number;

14 (iii) Provide the date, time, and location of the incident or
15 incidents; or

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

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

37 (ii) A law enforcement or corrections agency responding to
38 requests under this subsection (14)(e) may not require the requesting
39 individual to pay costs of any redacting, altering, distorting,

1 pixelating, suppressing, or otherwise obscuring any portion of a body
2 worn camera recording.

3 (iii) A law enforcement or corrections agency may require any
4 person requesting a body worn camera recording pursuant to this
5 subsection (14)(e) to identify himself or herself to ensure he or she
6 is a person entitled to obtain the body worn camera recording under
7 this subsection (14)(e).

8 (f)(i) A law enforcement or corrections agency responding to a
9 request to disclose body worn camera recordings may require any
10 requester not listed in (e) of this subsection to pay the reasonable
11 costs of redacting, altering, distorting, pixelating, suppressing, or
12 otherwise obscuring any portion of the body worn camera recording
13 prior to disclosure only to the extent necessary to comply with the
14 exemptions in this chapter or any applicable law.

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

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

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

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

31 (ii) "Intimate image" means an individual or individuals engaged
32 in sexual activity, including sexual intercourse as defined in RCW
33 9A.44.010 and masturbation, or an individual's intimate body parts,
34 whether nude or visible through less than opaque clothing, including
35 the genitals, pubic area, anus, or postpubescent female nipple.

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

1 (i) Nothing in this section is intended to modify the obligations
2 of prosecuting attorneys and law enforcement under *Brady v. Maryland*,
3 373 U.S. 83, 83 S. Ct. 1194, 10 L. Ed. 2d 215 (1963), *Kyles v.*
4 *Whitley*, 541 U.S. 419, 115 S. Ct. 1555, 131 L. Ed.2d 490 (1995), and
5 the relevant Washington court criminal rules and statutes.

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

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

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

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

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

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

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

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

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

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

29 (18) Any and all audio or video recordings of child forensic
30 interviews as defined in chapter 26.44 RCW. Such recordings are
31 confidential and may only be disclosed pursuant to a court order
32 entered upon a showing of good cause and with advance notice to the
33 child's parent, guardian, or legal custodian. However, if the child
34 is an emancipated minor or has attained the age of majority as
35 defined in RCW 26.28.010, advance notice must be to the child.
36 Failure to disclose an audio or video recording of a child forensic
37 interview as defined in chapter 26.44 RCW is not grounds for
38 penalties or other sanctions available under this chapter.

1 **Sec. 2.** RCW 10.97.130 and 1992 c 188 s 8 are each amended to
2 read as follows:

3 (1) Information ((identifying)) revealing the specific details
4 that describe the alleged or proven child victim of sexual assault
5 under age eighteen, or the identity or contact information of an
6 alleged or proven child victim((s)) under age eighteen ((who are
7 victims of sexual assaults)) is confidential and not subject to
8 release to the press or public without the permission of the child
9 victim ((~~or~~)) and the child's legal guardian. Identifying information
10 includes the child victim's name, addresses, location, photographs,
11 and in cases in which the child victim is a relative ((~~or~~)),
12 stepchild, or stepsibling of the alleged perpetrator, identification
13 of the relationship between the child and the alleged perpetrator.
14 Contact information includes phone numbers, email addresses, social
15 media profiles, and usernames and passwords. Contact information or
16 information identifying the child victim of sexual assault may be
17 released to law enforcement, prosecutors, judges, defense attorneys,
18 or private or governmental agencies that provide services to the
19 child victim of sexual assault. Prior to release of any criminal
20 history record information, the releasing agency shall delete any
21 contact information or information identifying a child victim of
22 sexual assault from the information except as provided in this
23 section.

24 (2) This section does not apply to court documents or other
25 materials admitted in open judicial proceedings."

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26 On page 1, line 2 of the title, after "assault;" strike the
27 remainder of the title and insert "amending RCW 10.97.130; and
28 reenacting and amending RCW 42.56.240."

EFFECT: Clarifies that RCW 10.97.130 does not apply to court documents or other materials admitted in open judicial proceedings.

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