

SHB 1394 - H AMD 90

By Representative Dent

NOT ADOPTED 03/03/2023

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

3 **"Sec. 1.** RCW 4.24.550 and 2015 c 261 s 1 are each amended to
4 read as follows:

5 (1) In addition to the disclosure under subsection (5) of this
6 section, public agencies are authorized to release information to the
7 public regarding sex offenders and kidnapping offenders when the
8 agency determines that disclosure of the information is relevant and
9 necessary to protect the public and counteract the danger created by
10 the particular offender. This authorization applies to information
11 regarding: (a) Any person adjudicated or convicted of a sex offense
12 as defined in RCW 9A.44.128 or a kidnapping offense as defined by RCW
13 9A.44.128; (b) any person under the jurisdiction of the indeterminate
14 sentence review board as the result of a sex offense or kidnapping
15 offense; (c) any person committed as a sexually violent predator
16 under chapter 71.09 RCW or as a sexual psychopath under chapter 71.06
17 RCW; (d) any person found not guilty of a sex offense or kidnapping
18 offense by reason of insanity under chapter 10.77 RCW; and (e) any
19 person found incompetent to stand trial for a sex offense or
20 kidnapping offense and subsequently committed under chapter 71.05 or
21 71.34 RCW.

22 (2) Except for the information specifically required under
23 subsection (5) of this section, the extent of the (~~public~~
24 ~~disclosure~~) community notification of relevant and necessary
25 information shall be rationally related to: (a) The level of risk
26 posed by the offender to the community; (b) the locations where the
27 offender resides, expects to reside, or is regularly found; and (c)
28 the needs of the affected community members for information to
29 enhance their individual and collective safety.

30 (3) Except for the information specifically required under
31 subsection (5) of this section, local law enforcement agencies shall
32 consider the following guidelines in determining the extent of ((a

1 ~~public disclosure~~) community notification made under this section:
2 (a) For offenders classified as risk level I, the agency shall share
3 information with other appropriate law enforcement agencies and, if
4 the offender is a student, the public or private school regulated
5 under Title 28A RCW or chapter 72.40 RCW which the offender is
6 attending, or planning to attend. The agency may disclose, upon
7 request, relevant, necessary, and accurate information to any victim
8 or witness to the offense, any individual community member who lives
9 near the residence where the offender resides, expects to reside, or
10 is regularly found, and any individual who requests information
11 regarding a specific offender; (b) for offenders classified as risk
12 level II, the agency may also disclose relevant, necessary, and
13 accurate information to public and private schools, child day care
14 centers, family day care providers, public libraries, businesses and
15 organizations that serve primarily children, women, or vulnerable
16 adults, and neighbors and community groups near the residence where
17 the offender resides, expects to reside, or is regularly found; (c)
18 for offenders classified as risk level III, the agency may also
19 disclose relevant, necessary, and accurate information to the public
20 at large; and (d) because more localized notification is not feasible
21 and homeless and transient offenders may present unique risks to the
22 community, the agency may also disclose relevant, necessary, and
23 accurate information to the public at large for offenders registered
24 as homeless or transient.

25 (4) The county sheriff with whom an offender classified as risk
26 level III is registered shall release a sex offender community
27 notification that conforms to the guidelines established under RCW
28 4.24.5501.

29 (5) (a) When funded by federal grants or other sources, the
30 Washington association of sheriffs and police chiefs shall create and
31 maintain a statewide registered kidnapping and sex offender website,
32 which shall be available to the public. The website shall post all
33 level III and level II registered sex offenders, level I registered
34 sex offenders only during the time they are out of compliance with
35 registration requirements under RCW 9A.44.130 or if lacking a fixed
36 residence as provided in RCW 9A.44.130, and all registered kidnapping
37 offenders in the state of Washington.

38 (i) For level III offenders, the website shall contain, but is
39 not limited to, the registered sex offender's name, relevant criminal
40 convictions, address by hundred block, physical description, and

1 photograph. The website shall provide mapping capabilities that
2 display the sex offender's address by hundred block on a map. The
3 website shall allow citizens to search for registered sex offenders
4 within the state of Washington by county, city, zip code, last name,
5 and address by hundred block.

6 (ii) For level II offenders, and level I sex offenders during the
7 time they are out of compliance with registration requirements under
8 RCW 9A.44.130, the website shall contain, but is not limited to, the
9 same information and functionality as described in (a)(i) of this
10 subsection, provided that it is permissible under state and federal
11 law. If it is not permissible, the website shall be limited to the
12 information and functionality that is permissible under state and
13 federal law.

14 (iii) For kidnapping offenders, the website shall contain, but is
15 not limited to, the same information and functionality as described
16 in (a)(i) of this subsection, provided that it is permissible under
17 state and federal law. If it is not permissible, the website shall be
18 limited to the information and functionality that is permissible
19 under state and federal law.

20 (b) Law enforcement agencies must provide information requested
21 by the Washington association of sheriffs and police chiefs to
22 administer the statewide registered kidnapping and sex offender
23 website.

24 (c) (i) ~~((Within))~~ Except as provided in (c)(iii) of this
25 subsection, within five business days of the Washington association
26 of sheriffs and police chiefs receiving any public record request
27 under chapter 42.56 RCW for sex offender and kidnapping offender
28 information, records or website data it holds or maintains pursuant
29 to this section or a unified sex offender registry, the Washington
30 association of sheriffs and police chiefs shall refer the requester
31 in writing to the appropriate law enforcement agency or agencies for
32 submission of such a request. The Washington association of sheriffs
33 and police chiefs shall have no further obligation under chapter
34 42.56 RCW for responding to such a request.

35 (ii) This ~~((subparagraph))~~ subsection (5)(c) of this section is
36 remedial and applies retroactively.

37 (iii) Information held by or accessible to the Washington
38 association of sheriffs and police chiefs for a person who is
39 required to register under RCW 9A.44.130 for an offense committed

1 when under age 18 is exempt from public disclosure under chapter
2 42.56 RCW.

3 (6) (a) Law enforcement agencies responsible for the registration
4 and dissemination of information regarding offenders required to
5 register under RCW 9A.44.130 shall assign a risk level classification
6 to all offenders after consideration of: (i) Any available risk level
7 classifications provided by the department of corrections, the
8 department of social and health services, and the indeterminate
9 sentence review board; (ii) the agency's own application of a sex
10 offender risk assessment tool; and (iii) other information and
11 aggravating or mitigating factors known to the agency and deemed
12 rationally related to the risk posed by the offender to the community
13 at large.

14 (b) A sex offender shall be classified as a risk level I if his
15 or her risk assessment and other information or factors deemed
16 relevant by the law enforcement agency indicate he or she is at a low
17 risk to sexually reoffend within the community at large. A sex
18 offender shall be classified as a risk level II if his or her risk
19 assessment and other information or factors deemed relevant by the
20 law enforcement agency indicate he or she is at a moderate risk to
21 sexually reoffend within the community at large. A sex offender shall
22 be classified as a risk level III if his or her risk assessment and
23 other information or factors deemed relevant by the law enforcement
24 agency indicate he or she is at a high risk to sexually reoffend
25 within the community at large.

26 (c) The agency shall make a good faith effort to notify the
27 public and residents within a reasonable period of time after the
28 offender registers with the agency.

29 (d) Agencies may develop a process to allow an offender to
30 petition for review of the offender's assigned risk level
31 classification. The timing, frequency, and process for review are at
32 the sole discretion of the agency.

33 (7) An appointed or elected public official, public employee, or
34 public agency as defined in RCW 4.24.470, or units of local
35 government and its employees, as provided in RCW 36.28A.010, are
36 immune from civil liability for damages for any discretionary risk
37 level classification decisions or release of relevant and necessary
38 information, unless it is shown that the official, employee, or
39 agency acted with gross negligence or in bad faith. The immunity in
40 this section applies to risk level classification decisions and the

1 release of relevant and necessary information regarding any
2 individual for whom disclosure is authorized. The decision of a law
3 enforcement agency or official to classify an offender to a risk
4 level other than the one assigned by the department of corrections,
5 the department of social and health services, or the indeterminate
6 sentence review board, or the release of any relevant and necessary
7 information based on that different classification shall not, by
8 itself, be considered gross negligence or bad faith. The immunity
9 provided under this section applies to the release of relevant and
10 necessary information to other public officials, public employees, or
11 public agencies, and to the general public.

12 (8) Except as may otherwise be provided by law, nothing in this
13 section shall impose any liability upon a public official, public
14 employee, or public agency for failing to release information
15 authorized under this section.

16 (9) (~~Nothing in this section implies that information regarding~~
17 ~~persons designated in subsection (1) of this section is confidential~~
18 ~~except as may otherwise be provided by law~~) Sex offender and
19 kidnapping offender information for a person who is required to
20 register under RCW 9A.44.130 for an offense committed when under age
21 18 is exempt from public disclosure under chapter 42.56 RCW.

22 (10) When a law enforcement agency or official classifies an
23 offender differently than the offender is classified by the end of
24 sentence review committee at the time of the offender's release from
25 confinement, the law enforcement agency or official shall notify the
26 end of sentence review committee and the Washington state patrol and
27 submit its reasons supporting the change in classification.

28 (11) As used in this section, "law enforcement agency" means a
29 general authority Washington law enforcement agency as defined in RCW
30 10.93.020.

31 **Sec. 2.** RCW 42.56.240 and 2022 c 268 s 31 are each amended to
32 read as follows:

33 The following investigative, law enforcement, and crime victim
34 information is exempt from public inspection and copying under this
35 chapter:

36 (1) Specific intelligence information and specific investigative
37 records compiled by investigative, law enforcement, and penology
38 agencies, and state agencies vested with the responsibility to
39 discipline members of any profession, the nondisclosure of which is

1 essential to effective law enforcement or for the protection of any
2 person's right to privacy;

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

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

19 (4) License applications under RCW 9.41.070, except that copies
20 of license applications or information on the applications may be
21 released to law enforcement or corrections agencies or to persons and
22 entities as authorized under RCW 9.41.815;

23 (5) Information revealing the specific details that describe an
24 alleged or proven child victim of sexual assault under age eighteen,
25 or the identity or contact information of an alleged or proven child
26 victim of sexual assault who is under age eighteen. Identifying
27 information includes the child victim's name, addresses, location,
28 photograph, and in cases in which the child victim is a relative,
29 stepchild, or stepsibling of the alleged perpetrator, identification
30 of the relationship between the child and the alleged perpetrator.
31 Contact information includes phone numbers, email addresses, social
32 media profiles, and user names and passwords;

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

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

38 (8) Information submitted to the statewide unified sex offender
39 notification and registration program under RCW 36.28A.040(6) by a
40 person for the purpose of receiving notification regarding a

1 registered sex offender, including the person's name, residential
2 address, and email address;

3 (9) Information compiled and submitted for the purpose of sex
4 offender and kidnapping offender registration for a person who is
5 required to register under RCW 9A.44.130 for an offense committed
6 when under age 18, regardless of whether the information is held by a
7 law enforcement agency, the statewide unified sex offender
8 notification and registration program under RCW 36.28A.040, the
9 central registry of sex offenders and kidnapping offenders under RCW
10 43.43.540, or another public agency;

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

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

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

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

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

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

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

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

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

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

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

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

17 (iii) An intimate image;

18 (iv) A minor;

19 (v) The body of a deceased person;

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

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

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

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

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

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

3 (ii) Provide the incident or case number;

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

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

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

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

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

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

1 otherwise obscuring any portion of the body worn camera recording
2 prior to disclosure only to the extent necessary to comply with the
3 exemptions in this chapter or any applicable law.

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

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

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

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

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

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

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

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

38 (15) Any records and information contained within the statewide
39 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."

28 Correct the title.

EFFECT: Replaces the content of the bill with an exemption from public disclosure for sex offender and kidnapping offender registration information for a person who is required to register for a sex or kidnapping offense committed when under age 18.

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