
HOUSE BILL 2438

State of Washington

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By Representatives Dent and Chapman

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1 AN ACT Relating to dashboard camera recordings; and amending RCW
2 9.73.090 and 42.56.240.

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

4 **Sec. 1.** RCW 9.73.090 and 2011 c 336 s 325 are each amended to
5 read as follows:

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

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

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

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

1 (ii) The recording shall commence with an indication of the time
2 of the beginning thereof and terminate with an indication of the time
3 thereof;

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

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

9 (c) Sound recordings that correspond to video images recorded by
10 video cameras mounted in law enforcement vehicles. All law
11 enforcement officers wearing a sound recording device that makes
12 recordings corresponding to videos recorded by video cameras mounted
13 in law enforcement vehicles must be in uniform. A sound recording
14 device that makes a recording pursuant to this subsection (1)(c) must
15 be operated simultaneously with the video camera when the operating
16 system has been activated for an event. No sound recording device may
17 be intentionally turned off by the law enforcement officer during the
18 recording of an event. Once the event has been captured, the officer
19 may turn off the audio recording and place the system back into "pre-
20 event" mode.

21 No sound or video recording made under this subsection (1)(c) may
22 be (~~duplicate and made available to the public by a law enforcement~~
23 ~~agency subject to this section until final disposition of any~~
24 ~~criminal or civil litigation which arises from the event or events~~
25 ~~which were recorded. Such sound recordings shall not be~~) divulged or
26 used by any law enforcement agency for any commercial purpose.

27 A law enforcement officer shall inform any person being recorded
28 by sound under this subsection (1)(c) that a sound recording is being
29 made and the statement so informing the person shall be included in
30 the sound recording, except that the law enforcement officer is not
31 required to inform the person being recorded if the person is being
32 recorded under exigent circumstances. A law enforcement officer is
33 not required to inform a person being recorded by video under this
34 subsection (1)(c) that the person is being recorded by video.

35 (2) It shall not be unlawful for a law enforcement officer acting
36 in the performance of the officer's official duties to intercept,
37 record, or disclose an oral communication or conversation where the
38 officer is a party to the communication or conversation or one of the
39 parties to the communication or conversation has given prior consent
40 to the interception, recording, or disclosure: PROVIDED, That prior

1 to the interception, transmission, or recording the officer shall
2 obtain written or telephonic authorization from a judge or
3 magistrate, who shall approve the interception, recording, or
4 disclosure of communications or conversations with a nonconsenting
5 party for a reasonable and specified period of time, if there is
6 probable cause to believe that the nonconsenting party has committed,
7 is engaged in, or is about to commit a felony: PROVIDED HOWEVER, That
8 if such authorization is given by telephone the authorization and
9 officer's statement justifying such authorization must be
10 electronically recorded by the judge or magistrate on a recording
11 device in the custody of the judge or magistrate at the time
12 transmitted and the recording shall be retained in the court records
13 and reduced to writing as soon as possible thereafter.

14 Any recording or interception of a communication or conversation
15 incident to a lawfully recorded or intercepted communication or
16 conversation pursuant to this subsection shall be lawful and may be
17 divulged.

18 All recordings of communications or conversations made pursuant
19 to this subsection shall be retained for as long as any crime may be
20 charged based on the events or communications or conversations
21 recorded.

22 (3) Communications or conversations authorized to be intercepted,
23 recorded, or disclosed by this section shall not be inadmissible
24 under RCW 9.73.050.

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

29 (5) If the judge or magistrate determines that there is probable
30 cause to believe that the communication or conversation concerns the
31 unlawful manufacture, delivery, sale, or possession with intent to
32 manufacture, deliver, or sell, controlled substances as defined in
33 chapter 69.50 RCW, or legend drugs as defined in chapter 69.41 RCW,
34 or imitation controlled substances as defined in chapter 69.52 RCW,
35 the judge or magistrate may authorize the interception, transmission,
36 recording, or disclosure of communications or conversations under
37 subsection (2) of this section even though the true name of the
38 nonconsenting party, or the particular time and place for the
39 interception, transmission, recording, or disclosure, is not known at
40 the time of the request, if the authorization describes the

1 nonconsenting party and subject matter of the communication or
2 conversation with reasonable certainty under the circumstances. Any
3 such communication or conversation may be intercepted, transmitted,
4 recorded, or disclosed as authorized notwithstanding a change in the
5 time or location of the communication or conversation after the
6 authorization has been obtained or the presence of or participation
7 in the communication or conversation by any additional party not
8 named in the authorization.

9 Authorizations issued under this subsection shall be effective
10 for not more than fourteen days, after which period the issuing
11 authority may renew or continue the authorization for an additional
12 period not to exceed fourteen days.

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

15 The following investigative, law enforcement, and crime victim
16 information is exempt from public inspection and copying under this
17 chapter:

18 (1) Specific intelligence information and specific investigative
19 records compiled by investigative, law enforcement, and penology
20 agencies, and state agencies vested with the responsibility to
21 discipline members of any profession, the nondisclosure of which is
22 essential to effective law enforcement or for the protection of any
23 person's right to privacy;

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

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

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

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

15 (6) Information contained in a local or regionally maintained
16 gang database as well as the statewide gang database referenced in
17 RCW 43.43.762;

18 (7) Data from the electronic sales tracking system established in
19 RCW 69.43.165;

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

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

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

33 (11) The identity of a state employee or officer who has in good
34 faith filed a complaint with an ethics board, as provided in RCW
35 42.52.410, or who has in good faith reported improper governmental
36 action, as defined in RCW 42.40.020, to the auditor or other public
37 official, as defined in RCW 42.40.020;

38 (12) The following security threat group information collected
39 and maintained by the department of corrections pursuant to RCW
40 72.09.745: (a) Information that could lead to the identification of a

1 person's security threat group status, affiliation, or activities;
2 (b) information that reveals specific security threats associated
3 with the operation and activities of security threat groups; and (c)
4 information that identifies the number of security threat group
5 members, affiliates, or associates;

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

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

16 (a) Disclosure of a body worn camera or dashboard camera
17 recording is presumed to be highly offensive to a reasonable person
18 under RCW 42.56.050 to the extent it depicts:

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

21 (I) A patient is registered to receive treatment, receiving
22 treatment, waiting for treatment, or being transported in the course
23 of treatment; or

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

26 (B) Information that meets the definition of protected health
27 information for purposes of the health insurance portability and
28 accountability act of 1996 or health care information for purposes of
29 chapter 70.02 RCW;

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

32 (iii) An intimate image;

33 (iv) A minor;

34 (v) The body of a deceased person;

35 (vi) The identity of or communications from a victim or witness
36 of an incident involving domestic violence as defined in RCW
37 10.99.020 or sexual assault as defined in RCW 70.125.030, or
38 disclosure of intimate images as defined in RCW 9A.86.010. If at the
39 time of recording the victim or witness indicates a desire for

1 disclosure or nondisclosure of the recorded identity or
2 communications, such desire shall govern; or

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

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

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

16 (d) A request for body worn camera or dashboard camera recordings
17 must:

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

20 (ii) Provide the incident or case number;

21 (iii) Provide the date, time, and location of the incident or
22 incidents; or

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

25 (e) (i) A person directly involved in an incident recorded by the
26 requested body worn camera or dashboard camera recording, an attorney
27 representing a person directly involved in an incident recorded by
28 the requested body worn camera or dashboard camera recording, a
29 person or his or her attorney who requests a body worn camera or
30 dashboard camera recording relevant to a criminal case involving that
31 person, or the executive director from either the Washington state
32 commission on African American affairs, Asian Pacific American
33 affairs, or Hispanic affairs, has the right to obtain the body worn
34 camera or dashboard camera recording, subject to any exemption under
35 this chapter or any applicable law. In addition, an attorney who
36 represents a person regarding a potential or existing civil cause of
37 action involving the denial of civil rights under the federal or
38 state Constitution, or a violation of a United States department of
39 justice settlement agreement, has the right to obtain the body worn
40 camera or dashboard camera recording if relevant to the cause of

1 action, subject to any exemption under this chapter or any applicable
2 law. The attorney must explain the relevancy of the requested body
3 worn camera or dashboard camera recording to the cause of action and
4 specify that he or she is seeking relief from redaction costs under
5 this subsection (14) (e).

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

11 (iii) A law enforcement or corrections agency may require any
12 person requesting a body worn camera or dashboard camera recording
13 pursuant to this subsection (14) (e) to identify himself or herself to
14 ensure he or she is a person entitled to obtain the body worn camera
15 or dashboard camera recording under this subsection (14) (e).

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

24 (ii) An agency that charges redaction costs under this subsection
25 (14) (f) must use redaction technology that provides the least costly
26 commercially available method of redacting body worn camera or
27 dashboard camera recordings, to the extent possible and reasonable.

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

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

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

1 (ii) "Dashboard camera recording" means a video and/or sound
2 recording that is made by a camera mounted in a law enforcement
3 vehicle and/or a sound recording device worn by a law enforcement
4 officer to make sound recordings corresponding to the mounted camera
5 video recordings; and

6 (iii) "Intimate image" means an individual or individuals engaged
7 in sexual activity, including sexual intercourse as defined in RCW
8 9A.44.010 and masturbation, or an individual's intimate body parts,
9 whether nude or visible through less than opaque clothing, including
10 the genitals, pubic area, anus, or postpubescent female nipple.

11 (h) Nothing in this subsection shall be construed to restrict
12 access to body worn camera or dashboard camera recordings as
13 otherwise permitted by law for official or recognized civilian and
14 accountability bodies or 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 or dashboard camera recordings for at least sixty days and
22 thereafter may destroy the records in accordance with the applicable
23 records retention schedule;

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

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

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

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

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

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

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

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

39 (17) Information and records prepared, owned, used, or retained
40 by the Washington association of sheriffs and police chiefs and

1 information and records prepared, owned, used, or retained by the
2 Washington state patrol pursuant to chapter 261, Laws of 2017; and
3 (18) Any and all audio or video recordings of child forensic
4 interviews as defined in chapter 26.44 RCW. Such recordings are
5 confidential and may only be disclosed pursuant to a court order
6 entered upon a showing of good cause and with advance notice to the
7 child's parent, guardian, or legal custodian. However, if the child
8 is an emancipated minor or has attained the age of majority as
9 defined in RCW 26.28.010, advance notice must be to the child.
10 Failure to disclose an audio or video recording of a child forensic
11 interview as defined in chapter 26.44 RCW is not grounds for
12 penalties or other sanctions available under this chapter.

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