

EHB 2362 - S COMM AMD

By Committee on Law & Justice

NOT ADOPTED 03/04/2016

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

3 "NEW SECTION. **Sec. 1.** The legislature finds that technological
4 developments present opportunities for additional truth-finding,
5 transparency, and accountability in interactions between law
6 enforcement or corrections officers and the public. The legislature
7 intends to promote transparency and accountability by permitting
8 access to video and/or sound recordings of interactions with law
9 enforcement or corrections officers, while preserving the public's
10 reasonable expectation that the recordings of these interactions will
11 not be publicly disclosed to enable voyeurism or exploitation.

12 **Sec. 2.** RCW 42.56.240 and 2015 c 224 s 3 and 2015 c 91 s 1 are
13 each reenacted and amended to read as follows:

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

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

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

1 public office must be made in writing and signed by the complainant
2 under oath;

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

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

12 (5) Information revealing the identity of child victims of sexual
13 assault who are under age eighteen. Identifying information means the
14 child victim's name, address, location, photograph, and in cases in
15 which the child victim is a relative or stepchild of the alleged
16 perpetrator, identification of the relationship between the child and
17 the alleged perpetrator;

18 (6) Information contained in a local or regionally maintained
19 gang database as well as the statewide gang database referenced in
20 RCW 43.43.762;

21 (7) Data from the electronic sales tracking system established in
22 RCW 69.43.165;

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

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

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

36 (11) The identity of a state employee or officer who has in good
37 faith filed a complaint with an ethics board, as provided in RCW
38 42.52.410, or who has in good faith reported improper governmental
39 action, as defined in RCW 42.40.020, to the auditor or other public
40 official, as defined in RCW 42.40.020;

1 (12) The following security threat group information collected
2 and maintained by the department of corrections pursuant to RCW
3 72.09.745: (a) Information that could lead to the identification of a
4 person's security threat group status, affiliation, or activities;
5 (b) information that reveals specific security threats associated
6 with the operation and activities of security threat groups; and (c)
7 information that identifies the number of security threat group
8 members, affiliates, or associates; (~~and~~)

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

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

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

21 (i)(A) Any areas of medical facility, counseling, or therapeutic
22 program office where: (I) A patient is registered to receive
23 treatment, receiving treatment, waiting for treatment, or being
24 transported in the course of treatment; or (II) health care
25 information is shared with patients, their families, or among the
26 care team; or (B) information that meets the definition of protected
27 health information for purposes of the health insurance portability
28 and accountability act of 1996 or health care information for
29 purposes of 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 as defined in RCW 9A.86.010;

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

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

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

18 (ii) Provide the incident or case number;

19 (iii) Provide the date, time, and location of the incident or
20 incidents; or

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

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

1 the cause of action and specify that he or she is seeking relief from
2 redaction costs under this subsection (14)(e).

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

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

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

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

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

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

32 (i) "Body worn camera recording" means a video and/or sound
33 recording that is made by a body worn camera attached to the uniform
34 or eyewear of a law enforcement or corrections officer from a covered
35 jurisdiction while in the course of his or her official duties and
36 that is made on or after the effective date of this section and prior
37 to July 1, 2019; and

38 (ii) "Covered jurisdiction" means any jurisdiction that has
39 deployed body worn cameras as of the effective date of this section,
40 regardless of whether or not body worn cameras are being deployed in

1 the jurisdiction on the effective date of this section, including,
2 but not limited to, jurisdictions that have deployed body worn
3 cameras on a pilot basis.

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

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

13 **Sec. 3.** RCW 42.56.080 and 2005 c 483 s 1 and 2005 c 274 s 285
14 are each reenacted and amended to read as follows:

15 Public records shall be available for inspection and copying, and
16 agencies shall, upon request for identifiable public records, make
17 them promptly available to any person including, if applicable, on a
18 partial or installment basis as records that are part of a larger set
19 of requested records are assembled or made ready for inspection or
20 disclosure. Agencies shall not deny a request for identifiable public
21 records solely on the basis that the request is overbroad. Agencies
22 shall not distinguish among persons requesting records, and such
23 persons shall not be required to provide information as to the
24 purpose for the request except to establish whether inspection and
25 copying would violate RCW 42.56.070(9) or 42.56.240(14), or other
26 statute which exempts or prohibits disclosure of specific information
27 or records to certain persons. Agency facilities shall be made
28 available to any person for the copying of public records except when
29 and to the extent that this would unreasonably disrupt the operations
30 of the agency. Agencies shall honor requests received by mail for
31 identifiable public records unless exempted by provisions of this
32 chapter.

33 **Sec. 4.** RCW 42.56.120 and 2005 c 483 s 2 are each amended to
34 read as follows:

35 No fee shall be charged for the inspection of public records(~~(-~~
36 ~~No fee shall be charged for~~) or locating public documents and making
37 them available for copying, except as provided in RCW 42.56.240(14).
38 A reasonable charge may be imposed for providing copies of public

1 records and for the use by any person of agency equipment or
2 equipment of the office of the secretary of the senate or the office
3 of the chief clerk of the house of representatives to copy public
4 records, which charges shall not exceed the amount necessary to
5 reimburse the agency, the office of the secretary of the senate, or
6 the office of the chief clerk of the house of representatives for its
7 actual costs directly incident to such copying. Agency charges for
8 photocopies shall be imposed in accordance with the actual per page
9 cost or other costs established and published by the agency. In no
10 event may an agency charge a per page cost greater than the actual
11 per page cost as established and published by the agency. To the
12 extent the agency has not determined the actual per page cost for
13 photocopies of public records, the agency may not charge in excess of
14 fifteen cents per page. An agency may require a deposit in an amount
15 not to exceed ten percent of the estimated cost of providing copies
16 for a request. If an agency makes a request available on a partial or
17 installment basis, the agency may charge for each part of the request
18 as it is provided. If an installment of a records request is not
19 claimed or reviewed, the agency is not obligated to fulfill the
20 balance of the request.

21 NEW SECTION. **Sec. 5.** (1) A law enforcement or corrections
22 agency that deploys body worn cameras must establish policies
23 regarding the use of the cameras. The policies must, at a minimum,
24 address:

25 (a) When a body worn camera must be activated and deactivated,
26 and when a law enforcement or corrections officer has the discretion
27 to activate and deactivate the body worn camera;

28 (b) How a law enforcement or corrections officer is to respond to
29 circumstances when it would be reasonably anticipated that a person
30 may be unwilling or less willing to communicate with an officer who
31 is recording the communication with a body worn camera;

32 (c) How a law enforcement or corrections officer will document
33 when and why a body worn camera was deactivated prior to the
34 conclusion of an interaction with a member of the public while
35 conducting official law enforcement or corrections business;

36 (d) How, and under what circumstances, a law enforcement or
37 corrections officer is to inform a member of the public that he or
38 she is being recorded, including in situations where the person is a

1 non-English speaker or has limited English proficiency, or where the
2 person is deaf or hard of hearing;

3 (e) How officers are to be trained on body worn camera usage and
4 how frequently the training is to be reviewed or renewed; and

5 (f) Security rules to protect data collected and stored from body
6 worn cameras.

7 (2) A law enforcement or corrections agency that deploys body
8 worn cameras before the effective date of this section must establish
9 the policies within one hundred twenty days of the effective date of
10 this section. A law enforcement or corrections agency that deploys
11 body worn cameras on or after the effective date of this section must
12 establish the policies before deploying body worn cameras.

13 (3) This section expires July 1, 2019.

14 NEW SECTION. **Sec. 6.** Footage from a body worn camera recording
15 may not be introduced as evidence in a criminal proceeding unless
16 there is probable cause to believe that the footage is evidence of
17 criminal activity constituting a felony offense or a violation of RCW
18 46.61.502 or 46.61.504, or where the footage is obtained in the
19 course of executing a valid warrant or obtained under exigent
20 circumstances. For the purposes of this section, "body worn camera
21 recording" means a video and/or sound recording that is made by a
22 body worn camera attached to the uniform or eyewear of a law
23 enforcement or corrections officer while in the course of his or her
24 official duties.

25 NEW SECTION. **Sec. 7.** (1) The legislature shall convene a task
26 force with the following voting members to examine the use of body
27 worn cameras by law enforcement and corrections agencies:

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

30 (b) One member from each of the two largest caucuses in the house
31 of representatives, appointed by the speaker of the house of
32 representatives;

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

34 (d) Two representatives from the Washington association of
35 prosecuting attorneys;

36 (e) A representative from the Washington defender association;

37 (f) A representative of the Washington association of criminal
38 defense lawyers;

1 (g) A representative from the American civil liberties union of
2 Washington;

3 (h) A representative from the Washington association of sheriffs
4 and police chiefs;

5 (i) Four chief local law enforcement officers, at least two of
6 whom must be from local law enforcement agencies that have deployed
7 body worn cameras, appointed jointly by the president of the senate
8 and the speaker of the house of representatives;

9 (j) Three law enforcement officers, one representing the council
10 of metropolitan police and sheriffs and two representing the
11 Washington council of police and sheriffs;

12 (k) Two representatives of local governments responsible for
13 oversight of law enforcement, appointed jointly by the president of
14 the senate and the speaker of the house of representatives;

15 (l) A representative from the Washington coalition for open
16 government;

17 (m) A representative of the news media, appointed jointly by the
18 president of the senate and the speaker of the house of
19 representatives;

20 (n) A representative of victims advocacy groups, appointed
21 jointly by the president of the senate and the speaker of the house
22 of representatives;

23 (o) Two representatives with experience in interactions between
24 law enforcement and the public, appointed by the Washington state
25 commission on African-American affairs;

26 (p) Two representatives with experience in interactions between
27 law enforcement and the public, appointed by the Washington state
28 commission on Asian Pacific American affairs;

29 (q) Two representatives with experience in interactions between
30 law enforcement and the public, appointed by the Washington state
31 commission on Hispanic affairs;

32 (r) One representative of immigrant or refugee communities,
33 appointed jointly by the president of the senate and the speaker of
34 the house of representatives;

35 (s) One person with expertise in the technology of retaining and
36 redacting body worn camera recordings, appointed jointly by the
37 president of the senate and the speaker of the house of
38 representatives;

39 (t) Two representatives of the tribal communities with experience
40 in interactions between law enforcement and the public, appointed

1 jointly by the president of the senate and the speaker of the house
2 of representatives; and

3 (u) A public member, appointed jointly by the president of the
4 senate and the speaker of the house of representatives.

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

7 (3) The task force may request such information, recordings, and
8 other records from agencies as the task force deems appropriate for
9 it to effectuate this section. A participating agency must provide
10 such information, recordings, or records upon request subject to
11 exemptions under chapter 42.56 RCW or any applicable law.

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

15 (5) Legislative members of the task force may be reimbursed for
16 travel expenses in accordance with RCW 44.04.120. Nonlegislative
17 members, except those representing an employer, governmental entity,
18 or other organization, are entitled to be reimbursed for travel
19 expenses as provided in RCW 43.03.050 and 43.03.060.

20 (6) The expenses of the task force shall be paid jointly by the
21 senate and the house of representatives. Task force expenditures are
22 subject to approval by the senate facilities and operations committee
23 and the house executive rules committee, or their successor
24 committees.

25 (7) The task force shall hold public meetings in locations that
26 include rural and urban communities and communities in the eastern
27 and western parts of the state.

28 (8) The task force shall specifically consider and report on the
29 use of body worn cameras in health care facilities subject to the
30 health insurance portability and accountability act of 1996, P.L.
31 104-191, and the uniform health care information act, chapter 70.02
32 RCW. The task force shall consult with subject matter experts,
33 including, but not limited to, the Washington state hospital
34 association and the Washington state medical association, and any
35 findings or recommendations must be consistent with the obligations
36 of health care facilities under both federal and state law.

37 (9) The task force shall report its findings and recommendations
38 to the governor and the appropriate committees of the legislature by
39 December 1, 2018. The report must include, but is not limited to,
40 findings and recommendations regarding costs assessed to requesters,

1 policies adopted by agencies, retention and retrieval of data, model
2 policies regarding body worn cameras that at a minimum address the
3 issues identified in section 5 of this act, and the use of body worn
4 cameras for gathering evidence, surveillance, and police
5 accountability. The task force must allow a minority report to be
6 included with the task force report if requested by a member of the
7 task force.

8 (10) This section expires June 1, 2019.

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

11 NEW SECTION. **Sec. 9.** Section 6 of this act constitutes a new
12 chapter in Title 5 RCW."

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13 On page 1, line 2 of the title, after "officers;" strike the
14 remainder of the title and insert "amending RCW 42.56.120; reenacting
15 and amending RCW 42.56.240 and 42.56.080; adding a new chapter to
16 Title 10 RCW; adding a new chapter to Title 5 RCW; creating new
17 sections; and providing expiration dates."

EFFECT: Prohibits introduction of body camera footage as evidence
in a criminal proceeding unless there is probable cause to believe
that the footage is evidence of criminal activity constituting a
felony offense or driving while impaired, or where the footage is
obtained in the course of executing a valid warrant or obtained under
exigent circumstances. Disclosure of a body worn camera recording is
presumed to be highly offensive where the recording depicts a patient
at a medical center for treatment, or protected health information.

Policies are not required to have an officer deactivate a body
worn camera when entering a residence.

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