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HOUSE BILL 2362

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State of Washington                      64th Legislature                      2016 Regular Session

By Representatives Hansen, Pettigrew, Nealey, and Kirby

Read first time 01/11/16. Referred to Committee on Judiciary.

1            AN ACT Relating to video and/or sound recordings made by law  
2 enforcement or corrections officers; amending RCW 42.56.120;  
3 reenacting and amending RCW 42.56.240 and 42.56.080; adding a new  
4 chapter to Title 10 RCW; creating new sections; and providing  
5 expiration dates.

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. The legislature  
11 intends to promote transparency and accountability by permitting  
12 individuals who interact with law enforcement or corrections officers  
13 to access video and/or sound recordings of these interactions while  
14 preserving the public's reasonable expectation that the recordings of  
15 these interactions will not be publicly disclosed to enable voyeurism  
16 or exploitation.

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

1 The following investigative, law enforcement, and crime victim  
2 information is exempt from public inspection and copying under this  
3 chapter:

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

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

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

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

29 (5) Information revealing the identity of child victims of sexual  
30 assault who are under age eighteen. Identifying information means the  
31 child victim's name, address, location, photograph, and in cases in  
32 which the child victim is a relative or stepchild of the alleged  
33 perpetrator, identification of the relationship between the child and  
34 the alleged perpetrator;

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

38 (7) Data from the electronic sales tracking system established in  
39 RCW 69.43.165;

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

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

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

14 (11) The identity of a state employee or officer who has in good  
15 faith filed a complaint with an ethics board, as provided in RCW  
16 42.52.410, or who has in good faith reported improper governmental  
17 action, as defined in RCW 42.40.020, to the auditor or other public  
18 official, as defined in RCW 42.40.020;

19 (12) The following security threat group information collected  
20 and maintained by the department of corrections pursuant to RCW  
21 72.09.745: (a) Information that could lead to the identification of a  
22 person's security threat group status, affiliation, or activities;  
23 (b) information that reveals specific security threats associated  
24 with the operation and activities of security threat groups; and (c)  
25 information that identifies the number of security threat group  
26 members, affiliates, or associates; (~~and~~)

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

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

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

39 (i) The interior of a place of residence where a person has a  
40 reasonable expectation of privacy;

1 (ii) Nudity, total or partial, or sexual activity;  
2 (iii) An identifiable or apparent minor; or  
3 (iv) The interior of a medical facility, counseling, or  
4 therapeutic program office.

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

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

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

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

17 (ii) Provide the incident or case number;

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

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

22 (e) A person directly involved in an incident recorded by the  
23 requested body worn camera recording, an attorney representing a  
24 person directly involved in an incident recorded by the requested  
25 body worn camera recording, a person or his or her attorney who  
26 requests a body worn camera recording relevant to a criminal case  
27 involving that person, or the executive director from either the  
28 Washington state commission on African-American affairs, Asian  
29 Pacific American affairs, or Hispanic affairs, has the right to  
30 obtain the body worn camera recording, subject to any exemption under  
31 this chapter or any applicable law. A law enforcement or corrections  
32 agency responding to requests under this subsection (14)(e) may not  
33 require the requesting individual to pay costs of any redacting,  
34 altering, distorting, pixelating, suppressing, or otherwise obscuring  
35 any portion of a body worn camera recording. A law enforcement or  
36 corrections agency may require any person requesting a body worn  
37 camera recording pursuant to this subsection (14)(e) to identify  
38 himself or herself to ensure he or she is a person entitled to obtain  
39 the body worn camera recording under this subsection (14)(e).

1 (f) A law enforcement or corrections agency responding to a  
2 request to disclose body worn camera recordings may require any  
3 requester not listed in (e) of this subsection to pay the reasonable  
4 costs of redacting, altering, distorting, pixelating, suppressing, or  
5 otherwise obscuring any portion of the body worn camera recording  
6 prior to disclosure only to the extent necessary to comply with the  
7 exemptions in this chapter or any applicable law.

8 (g) For purposes of this subsection (14), "body worn camera  
9 recording" means a video and/or sound recording that is made by a  
10 body worn camera attached to the uniform or eyewear of a law  
11 enforcement or corrections officer while in the course of his or her  
12 official duties and that is made on or after the effective date of  
13 this section and prior to July 1, 2018.

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

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

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

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

3       No fee shall be charged for the inspection of public records(~~(-~~  
4 ~~No fee shall be charged for~~) or locating public documents and making  
5 them available for copying, except as provided in RCW 42.56.240(14).

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

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

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

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

38       (c) How a law enforcement or corrections officer will document  
39 when and why a body worn camera was deactivated prior to the

1 conclusion of an interaction with a member of the public while  
2 conducting official law enforcement or corrections business; and

3 (d) How, and under what circumstances, a law enforcement or  
4 corrections officer is to inform a member of the public that he or  
5 she is being recorded.

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

12 (3) This section expires July 1, 2018.

13 NEW SECTION. **Sec. 6.** (1) The legislature shall convene a task  
14 force with the following voting members to examine the use of body  
15 worn cameras by law enforcement and corrections agencies:

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

18 (b) One member from each of the two largest caucuses in the house  
19 of representatives, appointed by the speaker of the house of  
20 representatives;

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

22 (d) Two representatives from the Washington association of  
23 prosecuting attorneys;

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

25 (f) A representative of the Washington association of criminal  
26 defense lawyers;

27 (g) A representative from the American civil liberties union of  
28 Washington;

29 (h) A representative from the Washington association of sheriffs  
30 and police chiefs;

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

35 (j) One law enforcement officer, appointed jointly by the  
36 president of the senate and the speaker of the house of  
37 representatives;

1 (k) One representative of local governments responsible for  
2 oversight of law enforcement, appointed jointly by the president of  
3 the senate and the speaker of the house of representatives;

4 (l) A representative from the Washington coalition for open  
5 government;

6 (m) A representative of the news media, appointed jointly by the  
7 president of the senate and the speaker of the house of  
8 representatives;

9 (n) A representative of victims advocacy groups, appointed  
10 jointly by the president of the senate and the speaker of the house  
11 of representatives;

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

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

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

21 (r) Two representatives of the tribal communities with experience  
22 in interactions between law enforcement and the public, appointed  
23 jointly by the president of the senate and the speaker of the house  
24 of representatives; and

25 (s) A public member, appointed jointly by the president of the  
26 senate and the speaker of the house of representatives.

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

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

34 (4) Staff support for the task force shall be provided by the  
35 office of the chief information officer, with the assistance of the  
36 senate committee services and the house of representatives office of  
37 program research.

38 (5) Legislative members of the task force may be reimbursed for  
39 travel expenses in accordance with RCW 44.04.120. Nonlegislative  
40 members, except those representing an employer or organization, are



1 entitled to be reimbursed for travel expenses as provided in RCW  
2 43.03.050 and 43.03.060.

3 (6) The expenses of the task force shall be paid jointly by the  
4 senate and the house of representatives. Task force expenditures are  
5 subject to approval by the senate facilities and operations committee  
6 and the house executive rules committee, or their successor  
7 committees.

8 (7) The task force shall report its findings and recommendations  
9 to the governor and the appropriate committees of the legislature by  
10 December 1, 2017. The report must include, but is not limited to,  
11 findings and recommendations regarding costs assessed to requesters,  
12 policies adopted by agencies, retention and retrieval of data, and  
13 the use of body worn cameras for gathering evidence, surveillance,  
14 and police accountability.

15 (8) This section expires June 1, 2018.

16 NEW SECTION. **Sec. 7.** Section 5 of this act constitutes a new  
17 chapter in Title 10 RCW.

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