
SENATE BILL 5732

State of Washington 64th Legislature 2015 Regular Session

By Senators Jayapal, Hasegawa, Kohl-Welles, Chase, and Darneille

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1 AN ACT Relating to law enforcement oversight recorders; amending
2 RCW 9.73.090; reenacting and amending RCW 42.56.240; adding a new
3 chapter to Title 10 RCW; and prescribing penalties.

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

5 NEW SECTION. **Sec. 1.** The legislature finds that accounts of
6 interactions between law enforcement officers and members of the
7 public often have wide variations. Recordings of such interactions
8 could help determine the truth and serve as an effective deterrent to
9 both law enforcement misconduct and false allegations of misconduct.
10 The legislature further finds that recording devices have the
11 potential to serve as a surveillance infrastructure, invade privacy,
12 and subject members of the public to unwarranted public attention.
13 Therefore, the legislature finds that the use of such recording
14 devices should be closely regulated to provide effective oversight of
15 law enforcement conduct without unduly infringing on privacy.

16 NEW SECTION. **Sec. 2.** The definitions in this section apply
17 throughout this chapter unless the context clearly requires
18 otherwise.

19 (1) "Flag" means to identify a recording as potentially
20 containing evidence that is useful for purposes of oversight of law

1 enforcement conduct in a manner consistent with section 4 of this
2 act.

3 (2) "Law enforcement oversight recorder" means a recorder that is
4 mounted in a law enforcement vehicle marked pursuant to RCW 46.08.065
5 or attached to the uniform or otherwise worn by a law enforcement
6 officer.

7 (3) "Recorder" means a device that captures and stores video,
8 audio, or both, in either digital or analog format. It includes, but
9 is not limited to, a video camera, voice recorder, or sound recorder.

10 (4) "Recording" means the audio and/or video of a specific
11 incident captured by a law enforcement oversight recorder.

12 (5) "Redact" means to blur video or distort audio so that the
13 identity of the subject in a recording is obscured sufficiently to
14 render him or her unidentifiable.

15 (6) "Subject" means an individual, other than an on-duty law
16 enforcement officer, whose communications or image is contained
17 within a recording.

18 (7) "Use of force" means any physical coercion by a law
19 enforcement officer including, but not limited to, any physical
20 interaction between an officer and a civilian that causes or should
21 reasonably be expected to cause pain, bodily harm, or physical
22 injury, the complaint of pain or physical injury, disorientation, or
23 intentionally pointing a firearm or beanbag shotgun or otherwise
24 brandishing a weapon at a civilian.

25 NEW SECTION. **Sec. 3.** The use of law enforcement oversight
26 recorders is subject to the following requirements:

27 (1) When a functional law enforcement oversight recorder is
28 mounted in a vehicle or attached to a law enforcement officer or his
29 or her uniform or otherwise provided to a law enforcement officer for
30 use in recording his or her on-duty activities, it must be operated
31 to continuously record while law enforcement officers are on duty;

32 (2) For purposes of this section, a law enforcement officer is
33 not considered on duty in the following circumstances:

34 (a) The law enforcement officer is using a public or private
35 restroom, except when the officer's presence in the restroom is
36 related to law enforcement activity; or

37 (b) The law enforcement officer is on a scheduled or routine
38 break and not engaged in any law enforcement activity;

1 (3) A law enforcement officer communicating with a member of the
2 public shall inform that person when a recording is being made by a
3 law enforcement oversight recorder and the statement so informing the
4 person shall be included in the recording, except that the law
5 enforcement officer is not required to inform the person being
6 recorded if the person is being recorded under exigent circumstances;

7 (4) The storage and retrieval system associated with a law
8 enforcement oversight recorder must be capable of identifying and
9 labeling the data collected by the law enforcement oversight recorder
10 into recordings associated with specific law enforcement officers.
11 The storage and retrieval system must also permit that those
12 recordings may be further searched and segregated into shorter
13 recordings of specific incidents that may be labeled to indicate the
14 officers involved, members of the public, if known, date, time, and
15 location, and allow access of a recording identified by any of those
16 indicators. The system must allow recordings to be flagged pursuant
17 to section 4 of this act, maintain flag status of recordings, and
18 allow retaining and destroying recordings in compliance with section
19 5 of this act. The system must maintain a complete metadata log of
20 the foregoing features and the capture, storage, alteration, and
21 enhancement of every recording;

22 (5) Notwithstanding any other provision of law, all audio and
23 video captured and stored by a law enforcement oversight recorder is
24 for the exclusive use of investigations of potential law enforcement
25 misconduct and may not be disclosed to any person or entity except as
26 specified in section 6 of this act. Audio and video may be used only
27 by law enforcement supervisors, internal investigation officers, and
28 external investigators and prosecutors and only during investigations
29 of potential law enforcement misconduct. Audio and video may not be
30 used in a court in a pending action or proceeding unless the action
31 or proceeding relates to or arises as a result of law enforcement
32 misconduct.

33 NEW SECTION. **Sec. 4.** A recording may be flagged at any time it
34 is maintained pursuant to section 5 of this act, but exclusively
35 under the following circumstances:

36 (1) All recordings shall be flagged when related to an incident
37 involving the use of force, or for which a complaint, formal or
38 informal, is registered;

1 (2) A recording shall be flagged when requested by a subject of
2 the recording;

3 (3) A recording shall be flagged when requested by any other
4 person only if:

5 (a) The recording was not made inside a private residence; and

6 (b) The requester presents specific, articulable facts to support
7 a reasonable belief that law enforcement misconduct occurred during
8 the incident related to the recording;

9 (4) Once flagged, a recording shall not be unflagged.

10 NEW SECTION. **Sec. 5.** (1) All recordings shall be retained in a
11 secure system that limits any individual or entity, except as
12 necessary to comply with section 6 of this act or to effectuate
13 oversight and accountability of police misconduct related to flagged
14 recordings, from accessing, viewing, deleting, or distributing any
15 recordings.

16 (2) Unflagged recordings shall be retained for not less than
17 sixty days and not more than seventy-five days.

18 (3) Flagged recordings shall be retained for three years, or
19 during the pendency of any investigation of potential law enforcement
20 misconduct during the incident related to the recording, whichever
21 time period is longer.

22 NEW SECTION. **Sec. 6.** (1) Disclosure of recordings shall be
23 governed by the following:

24 (a) Flagged recordings shall be subject to public disclosure
25 pursuant to chapter 42.56 RCW;

26 (b) A recording shall be disclosed to a subject of the recording,
27 or to a third party with the written consent of the subject of the
28 recording. If the recording has multiple subjects, the recording
29 shall be redacted prior to disclosure, if feasible, to obscure the
30 identity of all subjects who have not consented to disclosure;

31 (c) Unflagged recordings are confidential and shall not be
32 disclosed or distributed to any person or entity without the consent
33 of all subjects of the recording except as provided in (b) of this
34 subsection.

35 (2) Any person who knowingly violates this section is guilty of a
36 gross misdemeanor.

1 NEW SECTION. **Sec. 7.** Any person who violates the provisions of
2 this chapter is subject to legal action for damages or equitable
3 relief, to be brought by any other person claiming that a violation
4 of this chapter has injured his or her business, his or her person,
5 or his or her reputation. A person so injured is entitled to actual
6 damages, including mental pain and suffering endured by him or her on
7 account of violation of the provisions of this chapter, and
8 reasonable attorneys' fees and other costs of litigation.

9 NEW SECTION. **Sec. 8.** (1) Any jurisdiction that uses law
10 enforcement oversight recorders shall provide for an audit and
11 evaluation of the law enforcement oversight recorder program, to be
12 conducted by an independent entity outside the law enforcement
13 agency. The audit and evaluation must be conducted at least
14 biennially. The auditor shall examine actual use of law enforcement
15 oversight recorders, the storage and retrieval system, use of force
16 reports, incident complaints, requests for flagging, requests for
17 public disclosure of recordings, and any other materials the auditor
18 finds relevant to aid in program evaluation and assessment of
19 compliance with this chapter. The auditor shall provide a report of
20 the audit and evaluation to the governing body of the jurisdiction
21 and make it available to the public.

22 (2) The report shall include:

23 (a) The number of law enforcement oversight recorders used,
24 subdivided by the number mounted in vehicles and the number attached
25 to uniforms;

26 (b) The hours of recordings made by law enforcement oversight
27 recorders;

28 (c) The number and percentage of recordings flagged, subdivided
29 by the justification for flagging;

30 (d) The number of complaints of police misconduct, and the
31 percentage of those complaints in which a law enforcement oversight
32 recording provided useful information to the investigation of the
33 complaint;

34 (e) The number of requests for public disclosure of recordings,
35 and the percentage of requests that were filled or denied, along with
36 the reasons for denial; and

37 (f) Additional information and analysis that the auditor deems
38 useful.

1 **Sec. 9.** RCW 9.73.090 and 2011 c 336 s 325 are each amended to
2 read as follows:

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

7 (a) Recording incoming telephone calls to police and fire
8 stations, licensed emergency medical service providers, emergency
9 communication centers, and poison centers;

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

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

17 (ii) The recording shall commence with an indication of the time
18 of the beginning thereof and terminate with an indication of the time
19 thereof;

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

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

25 (c) ~~((Sound recordings that correspond to video images recorded
26 by video cameras mounted in law enforcement vehicles. All law
27 enforcement officers wearing a sound recording device that makes
28 recordings corresponding to videos recorded by video cameras mounted
29 in law enforcement vehicles must be in uniform. A sound recording
30 device that makes a recording pursuant to this subsection (1)(c) must
31 be operated simultaneously with the video camera when the operating
32 system has been activated for an event. No sound recording device may
33 be intentionally turned off by the law enforcement officer during the
34 recording of an event. Once the event has been captured, the officer
35 may turn off the audio recording and place the system back into "pre-
36 event" mode.~~

37 ~~No sound or video recording made under this subsection (1)(c) may
38 be duplicated and made available to the public by a law enforcement
39 agency subject to this section until final disposition of any
40 criminal or civil litigation which arises from the event or events~~

1 ~~which were recorded. Such sound recordings shall not be divulged or~~
2 ~~used by any law enforcement agency for any commercial purpose.~~

3 ~~A law enforcement officer shall inform any person being recorded~~
4 ~~by sound under this subsection (1)(c) that a sound recording is being~~
5 ~~made and the statement so informing the person shall be included in~~
6 ~~the sound recording, except that the law enforcement officer is not~~
7 ~~required to inform the person being recorded if the person is being~~
8 ~~recorded under exigent circumstances. A law enforcement officer is~~
9 ~~not required to inform a person being recorded by video under this~~
10 ~~subsection (1)(c) that the person is being recorded by video))~~
11 Recordings made by law enforcement officers pursuant to sections 2
12 through 8 of this act.

13 (2) It shall not be unlawful for a law enforcement officer acting
14 in the performance of the officer's official duties to intercept,
15 record, or disclose an oral communication or conversation where the
16 officer is a party to the communication or conversation or one of the
17 parties to the communication or conversation has given prior consent
18 to the interception, recording, or disclosure: PROVIDED, That prior
19 to the interception, transmission, or recording the officer shall
20 obtain written or telephonic authorization from a judge or
21 magistrate, who shall approve the interception, recording, or
22 disclosure of communications or conversations with a nonconsenting
23 party for a reasonable and specified period of time, if there is
24 probable cause to believe that the nonconsenting party has committed,
25 is engaged in, or is about to commit a felony: PROVIDED HOWEVER, That
26 if such authorization is given by telephone the authorization and
27 officer's statement justifying such authorization must be
28 electronically recorded by the judge or magistrate on a recording
29 device in the custody of the judge or magistrate at the time
30 transmitted and the recording shall be retained in the court records
31 and reduced to writing as soon as possible thereafter.

32 Any recording or interception of a communication or conversation
33 incident to a lawfully recorded or intercepted communication or
34 conversation pursuant to this subsection shall be lawful and may be
35 divulged.

36 All recordings of communications or conversations made pursuant
37 to this subsection shall be retained for as long as any crime may be
38 charged based on the events or communications or conversations
39 recorded.

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

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

8 (5) If the judge or magistrate determines that there is probable
9 cause to believe that the communication or conversation concerns the
10 unlawful manufacture, delivery, sale, or possession with intent to
11 manufacture, deliver, or sell, controlled substances as defined in
12 chapter 69.50 RCW, or legend drugs as defined in chapter 69.41 RCW,
13 or imitation controlled substances as defined in chapter 69.52 RCW,
14 the judge or magistrate may authorize the interception, transmission,
15 recording, or disclosure of communications or conversations under
16 subsection (2) of this section even though the true name of the
17 nonconsenting party, or the particular time and place for the
18 interception, transmission, recording, or disclosure, is not known at
19 the time of the request, if the authorization describes the
20 nonconsenting party and subject matter of the communication or
21 conversation with reasonable certainty under the circumstances. Any
22 such communication or conversation may be intercepted, transmitted,
23 recorded, or disclosed as authorized notwithstanding a change in the
24 time or location of the communication or conversation after the
25 authorization has been obtained or the presence of or participation
26 in the communication or conversation by any additional party not
27 named in the authorization.

28 Authorizations issued under this subsection shall be effective
29 for not more than fourteen days, after which period the issuing
30 authority may renew or continue the authorization for an additional
31 period not to exceed fourteen days.

32 **Sec. 10.** RCW 42.56.240 and 2013 c 315 s 2, 2013 c 190 s 7, and
33 2013 c 183 s 1 are each reenacted and amended to read as follows:

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

37 (1) Specific intelligence information and specific investigative
38 records compiled by investigative, law enforcement, and penology
39 agencies, and state agencies vested with the responsibility to

1 discipline members of any profession, the nondisclosure of which is
2 essential to effective law enforcement or for the protection of any
3 person's right to privacy;

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

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

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

23 (5) Information revealing the identity of child victims of sexual
24 assault who are under age eighteen. Identifying information means the
25 child victim's name, address, location, photograph, and in cases in
26 which the child victim is a relative or stepchild of the alleged
27 perpetrator, identification of the relationship between the child and
28 the alleged perpetrator;

29 (6) The statewide gang database referenced in RCW 43.43.762;

30 (7) Data from the electronic sales tracking system established in
31 RCW 69.43.165;

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

37 (9) Personally identifying information collected by law
38 enforcement agencies pursuant to local security alarm system programs
39 and vacation crime watch programs. Nothing in this subsection shall
40 be interpreted so as to prohibit the legal owner of a residence or

1 business from accessing information regarding his or her residence or
2 business; ((and))

3 (10) The felony firearm offense conviction database of felony
4 firearm offenders established in RCW 43.43.822; ((and))

5 (11) The identity of a state employee or officer who has in good
6 faith filed a complaint with an ethics board, as provided in RCW
7 42.52.410, or who has in good faith reported improper governmental
8 action, as defined in RCW 42.40.020, to the auditor or other public
9 official, as defined in RCW 42.40.020; ((and))

10 (12) The following security threat group information collected
11 and maintained by the department of corrections pursuant to RCW
12 72.09.745: (a) Information that could lead to the identification of a
13 person's security threat group status, affiliation, or activities;
14 (b) information that reveals specific security threats associated
15 with the operation and activities of security threat groups; and (c)
16 information that identifies the number of security threat group
17 members, affiliates, or associates; and

18 (13) Recordings made by law enforcement officers pursuant to
19 sections 2 through 8 of this act, except as specified in section 6 of
20 this act.

21 NEW SECTION. **Sec. 11.** Sections 1 through 8 of this act
22 constitute a new chapter in Title 10 RCW.

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