

ESHB 2700 - S COMM AMD

By Committee on Human Services & Corrections

ADOPTED 02/28/2018

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

3 "NEW SECTION. **Sec. 1.** A new section is added to chapter 26.44
4 RCW to read as follows:

5 The legislature recognizes an inherent privacy interest that a
6 child has with respect to the child's recorded voice and image when
7 describing the highly sensitive details of abuse or neglect upon the
8 child as defined in RCW 26.44.020. The legislature further finds that
9 reasonable restrictions on the dissemination of these recordings can
10 accommodate both privacy interests and due process. To that end, the
11 legislature intends to exempt these recordings from dissemination
12 under the public records act and provide additional sanction
13 authority for violations of protective orders that set forth such
14 terms and conditions as are necessary to protect the privacy of the
15 child.

16 **Sec. 2.** RCW 26.44.020 and 2012 c 259 s 1 are each amended to
17 read as follows:

18 The definitions in this section apply throughout this chapter
19 unless the context clearly requires otherwise.

20 (1) "Abuse or neglect" means sexual abuse, sexual exploitation,
21 or injury of a child by any person under circumstances which cause
22 harm to the child's health, welfare, or safety, excluding conduct
23 permitted under RCW 9A.16.100; or the negligent treatment or
24 maltreatment of a child by a person responsible for or providing care
25 to the child. An abused child is a child who has been subjected to
26 child abuse or neglect as defined in this section.

27 (2) "Child" or "children" means any person under the age of
28 eighteen years of age.

29 (3) "Child protective services" means those services provided by
30 the department designed to protect children from child abuse and
31 neglect and safeguard such children from future abuse and neglect,

1 and conduct investigations of child abuse and neglect reports.
2 Investigations may be conducted regardless of the location of the
3 alleged abuse or neglect. Child protective services includes referral
4 to services to ameliorate conditions that endanger the welfare of
5 children, the coordination of necessary programs and services
6 relevant to the prevention, intervention, and treatment of child
7 abuse and neglect, and services to children to ensure that each child
8 has a permanent home. In determining whether protective services
9 should be provided, the department shall not decline to provide such
10 services solely because of the child's unwillingness or developmental
11 inability to describe the nature and severity of the abuse or
12 neglect.

13 (4) "Child protective services section" means the child
14 protective services section of the department.

15 (5) "Children's advocacy center" means a child-focused facility
16 in good standing with the state chapter for children's advocacy
17 centers and that coordinates a multidisciplinary process for the
18 investigation, prosecution, and treatment of sexual and other types
19 of child abuse. Children's advocacy centers provide a location for
20 forensic interviews and coordinate access to services such as, but
21 not limited to, medical evaluations, advocacy, therapy, and case
22 review by multidisciplinary teams within the context of county
23 protocols as defined in RCW 26.44.180 and 26.44.185.

24 (6) "Clergy" means any regularly licensed or ordained minister,
25 priest, or rabbi of any church or religious denomination, whether
26 acting in an individual capacity or as an employee or agent of any
27 public or private organization or institution.

28 (7) "Court" means the superior court of the state of Washington,
29 juvenile department.

30 (8) "Department" means the state department of social and health
31 services.

32 (9) "Family assessment" means a comprehensive assessment of child
33 safety, risk of subsequent child abuse or neglect, and family
34 strengths and needs that is applied to a child abuse or neglect
35 report. Family assessment does not include a determination as to
36 whether child abuse or neglect occurred, but does determine the need
37 for services to address the safety of the child and the risk of
38 subsequent maltreatment.

39 (10) "Family assessment response" means a way of responding to
40 certain reports of child abuse or neglect made under this chapter

1 using a differential response approach to child protective services.
2 The family assessment response shall focus on the safety of the
3 child, the integrity and preservation of the family, and shall assess
4 the status of the child and the family in terms of risk of abuse and
5 neglect including the parent's or guardian's or other caretaker's
6 capacity and willingness to protect the child and, if necessary, plan
7 and arrange the provision of services to reduce the risk and
8 otherwise support the family. No one is named as a perpetrator, and
9 no investigative finding is entered in the record as a result of a
10 family assessment.

11 (11) "Founded" means the determination following an investigation
12 by the department that, based on available information, it is more
13 likely than not that child abuse or neglect did occur.

14 (12) "Inconclusive" means the determination following an
15 investigation by the department, prior to October 1, 2008, that based
16 on available information a decision cannot be made that more likely
17 than not, child abuse or neglect did or did not occur.

18 (13) "Institution" means a private or public hospital or any
19 other facility providing medical diagnosis, treatment, or care.

20 (14) "Law enforcement agency" means the police department, the
21 prosecuting attorney, the state patrol, the director of public
22 safety, or the office of the sheriff.

23 (15) "Malice" or "maliciously" means an intent, wish, or design
24 to intimidate, annoy, or injure another person. Such malice may be
25 inferred from an act done in willful disregard of the rights of
26 another, or an act wrongfully done without just cause or excuse, or
27 an act or omission of duty betraying a willful disregard of social
28 duty.

29 (16) "Negligent treatment or maltreatment" means an act or a
30 failure to act, or the cumulative effects of a pattern of conduct,
31 behavior, or inaction, that evidences a serious disregard of
32 consequences of such magnitude as to constitute a clear and present
33 danger to a child's health, welfare, or safety, including but not
34 limited to conduct prohibited under RCW 9A.42.100. When considering
35 whether a clear and present danger exists, evidence of a parent's
36 substance abuse as a contributing factor to negligent treatment or
37 maltreatment shall be given great weight. The fact that siblings
38 share a bedroom is not, in and of itself, negligent treatment or
39 maltreatment. Poverty, homelessness, or exposure to domestic violence
40 as defined in RCW 26.50.010 that is perpetrated against someone other

1 than the child does not constitute negligent treatment or
2 maltreatment in and of itself.

3 (17) "Pharmacist" means any registered pharmacist under chapter
4 18.64 RCW, whether acting in an individual capacity or as an employee
5 or agent of any public or private organization or institution.

6 (18) "Practitioner of the healing arts" or "practitioner" means a
7 person licensed by this state to practice podiatric medicine and
8 surgery, optometry, chiropractic, nursing, dentistry, osteopathic
9 medicine and surgery, or medicine and surgery or to provide other
10 health services. The term "practitioner" includes a duly accredited
11 Christian Science practitioner. A person who is being furnished
12 Christian Science treatment by a duly accredited Christian Science
13 practitioner will not be considered, for that reason alone, a
14 neglected person for the purposes of this chapter.

15 (19) "Professional school personnel" include, but are not limited
16 to, teachers, counselors, administrators, child care facility
17 personnel, and school nurses.

18 (20) "Psychologist" means any person licensed to practice
19 psychology under chapter 18.83 RCW, whether acting in an individual
20 capacity or as an employee or agent of any public or private
21 organization or institution.

22 (21) "Screened-out report" means a report of alleged child abuse
23 or neglect that the department has determined does not rise to the
24 level of a credible report of abuse or neglect and is not referred
25 for investigation.

26 (22) "Sexual exploitation" includes: (a) Allowing, permitting, or
27 encouraging a child to engage in prostitution by any person; or (b)
28 allowing, permitting, encouraging, or engaging in the obscene or
29 pornographic photographing, filming, or depicting of a child by any
30 person.

31 (23) "Sexually aggressive youth" means a child who is defined in
32 RCW 74.13.075(1)(b) as being a sexually aggressive youth.

33 (24) "Social service counselor" means anyone engaged in a
34 professional capacity during the regular course of employment in
35 encouraging or promoting the health, welfare, support, or education
36 of children, or providing social services to adults or families,
37 including mental health, drug and alcohol treatment, and domestic
38 violence programs, whether in an individual capacity, or as an
39 employee or agent of any public or private organization or
40 institution.

1 (25) "Supervising agency" means an agency licensed by the state
2 under RCW 74.15.090 or an Indian tribe under RCW 74.15.190 that has
3 entered into a performance-based contract with the department to
4 provide child welfare services.

5 (26) "Unfounded" means the determination following an
6 investigation by the department that available information indicates
7 that, more likely than not, child abuse or neglect did not occur, or
8 that there is insufficient evidence for the department to determine
9 whether the alleged child abuse did or did not occur.

10 (27) "Child forensic interview" means a developmentally sensitive
11 and legally sound method of gathering factual information regarding
12 allegations of child abuse, child neglect, or exposure to violence.
13 This interview is conducted by a competently trained, neutral
14 professional utilizing techniques informed by research and best
15 practice as part of a larger investigative process.

16 **Sec. 3.** RCW 26.44.020 and 2017 3rd sp.s. c 6 s 321 are each
17 amended to read as follows:

18 The definitions in this section apply throughout this chapter
19 unless the context clearly requires otherwise.

20 (1) "Abuse or neglect" means sexual abuse, sexual exploitation,
21 or injury of a child by any person under circumstances which cause
22 harm to the child's health, welfare, or safety, excluding conduct
23 permitted under RCW 9A.16.100; or the negligent treatment or
24 maltreatment of a child by a person responsible for or providing care
25 to the child. An abused child is a child who has been subjected to
26 child abuse or neglect as defined in this section.

27 (2) "Child" or "children" means any person under the age of
28 eighteen years of age.

29 (3) "Child protective services" means those services provided by
30 the department designed to protect children from child abuse and
31 neglect and safeguard such children from future abuse and neglect,
32 and conduct investigations of child abuse and neglect reports.
33 Investigations may be conducted regardless of the location of the
34 alleged abuse or neglect. Child protective services includes referral
35 to services to ameliorate conditions that endanger the welfare of
36 children, the coordination of necessary programs and services
37 relevant to the prevention, intervention, and treatment of child
38 abuse and neglect, and services to children to ensure that each child
39 has a permanent home. In determining whether protective services

1 should be provided, the department shall not decline to provide such
2 services solely because of the child's unwillingness or developmental
3 inability to describe the nature and severity of the abuse or
4 neglect.

5 (4) "Child protective services section" means the child
6 protective services section of the department.

7 (5) "Children's advocacy center" means a child-focused facility
8 in good standing with the state chapter for children's advocacy
9 centers and that coordinates a multidisciplinary process for the
10 investigation, prosecution, and treatment of sexual and other types
11 of child abuse. Children's advocacy centers provide a location for
12 forensic interviews and coordinate access to services such as, but
13 not limited to, medical evaluations, advocacy, therapy, and case
14 review by multidisciplinary teams within the context of county
15 protocols as defined in RCW 26.44.180 and 26.44.185.

16 (6) "Clergy" means any regularly licensed or ordained minister,
17 priest, or rabbi of any church or religious denomination, whether
18 acting in an individual capacity or as an employee or agent of any
19 public or private organization or institution.

20 (7) "Court" means the superior court of the state of Washington,
21 juvenile department.

22 (8) "Department" means the department of children, youth, and
23 families.

24 (9) "Family assessment" means a comprehensive assessment of child
25 safety, risk of subsequent child abuse or neglect, and family
26 strengths and needs that is applied to a child abuse or neglect
27 report. Family assessment does not include a determination as to
28 whether child abuse or neglect occurred, but does determine the need
29 for services to address the safety of the child and the risk of
30 subsequent maltreatment.

31 (10) "Family assessment response" means a way of responding to
32 certain reports of child abuse or neglect made under this chapter
33 using a differential response approach to child protective services.
34 The family assessment response shall focus on the safety of the
35 child, the integrity and preservation of the family, and shall assess
36 the status of the child and the family in terms of risk of abuse and
37 neglect including the parent's or guardian's or other caretaker's
38 capacity and willingness to protect the child and, if necessary, plan
39 and arrange the provision of services to reduce the risk and
40 otherwise support the family. No one is named as a perpetrator, and

1 no investigative finding is entered in the record as a result of a
2 family assessment.

3 (11) "Founded" means the determination following an investigation
4 by the department that, based on available information, it is more
5 likely than not that child abuse or neglect did occur.

6 (12) "Inconclusive" means the determination following an
7 investigation by the department of social and health services, prior
8 to October 1, 2008, that based on available information a decision
9 cannot be made that more likely than not, child abuse or neglect did
10 or did not occur.

11 (13) "Institution" means a private or public hospital or any
12 other facility providing medical diagnosis, treatment, or care.

13 (14) "Law enforcement agency" means the police department, the
14 prosecuting attorney, the state patrol, the director of public
15 safety, or the office of the sheriff.

16 (15) "Malice" or "maliciously" means an intent, wish, or design
17 to intimidate, annoy, or injure another person. Such malice may be
18 inferred from an act done in willful disregard of the rights of
19 another, or an act wrongfully done without just cause or excuse, or
20 an act or omission of duty betraying a willful disregard of social
21 duty.

22 (16) "Negligent treatment or maltreatment" means an act or a
23 failure to act, or the cumulative effects of a pattern of conduct,
24 behavior, or inaction, that evidences a serious disregard of
25 consequences of such magnitude as to constitute a clear and present
26 danger to a child's health, welfare, or safety, including but not
27 limited to conduct prohibited under RCW 9A.42.100. When considering
28 whether a clear and present danger exists, evidence of a parent's
29 substance abuse as a contributing factor to negligent treatment or
30 maltreatment shall be given great weight. The fact that siblings
31 share a bedroom is not, in and of itself, negligent treatment or
32 maltreatment. Poverty, homelessness, or exposure to domestic violence
33 as defined in RCW 26.50.010 that is perpetrated against someone other
34 than the child does not constitute negligent treatment or
35 maltreatment in and of itself.

36 (17) "Pharmacist" means any registered pharmacist under chapter
37 18.64 RCW, whether acting in an individual capacity or as an employee
38 or agent of any public or private organization or institution.

39 (18) "Practitioner of the healing arts" or "practitioner" means a
40 person licensed by this state to practice podiatric medicine and

1 surgery, optometry, chiropractic, nursing, dentistry, osteopathic
2 medicine and surgery, or medicine and surgery or to provide other
3 health services. The term "practitioner" includes a duly accredited
4 Christian Science practitioner. A person who is being furnished
5 Christian Science treatment by a duly accredited Christian Science
6 practitioner will not be considered, for that reason alone, a
7 neglected person for the purposes of this chapter.

8 (19) "Professional school personnel" include, but are not limited
9 to, teachers, counselors, administrators, child care facility
10 personnel, and school nurses.

11 (20) "Psychologist" means any person licensed to practice
12 psychology under chapter 18.83 RCW, whether acting in an individual
13 capacity or as an employee or agent of any public or private
14 organization or institution.

15 (21) "Screened-out report" means a report of alleged child abuse
16 or neglect that the department has determined does not rise to the
17 level of a credible report of abuse or neglect and is not referred
18 for investigation.

19 (22) "Sexual exploitation" includes: (a) Allowing, permitting, or
20 encouraging a child to engage in prostitution by any person; or (b)
21 allowing, permitting, encouraging, or engaging in the obscene or
22 pornographic photographing, filming, or depicting of a child by any
23 person.

24 (23) "Sexually aggressive youth" means a child who is defined in
25 RCW 74.13.075(1)(b) as being a sexually aggressive youth.

26 (24) "Social service counselor" means anyone engaged in a
27 professional capacity during the regular course of employment in
28 encouraging or promoting the health, welfare, support, or education
29 of children, or providing social services to adults or families,
30 including mental health, drug and alcohol treatment, and domestic
31 violence programs, whether in an individual capacity, or as an
32 employee or agent of any public or private organization or
33 institution.

34 (25) "Supervising agency" means an agency licensed by the state
35 under RCW 74.15.090 or an Indian tribe under RCW 74.15.190 that has
36 entered into a performance-based contract with the department to
37 provide child welfare services.

38 (26) "Unfounded" means the determination following an
39 investigation by the department that available information indicates
40 that, more likely than not, child abuse or neglect did not occur, or

1 that there is insufficient evidence for the department to determine
2 whether the alleged child abuse did or did not occur.

3 (27) "Child forensic interview" means a developmentally sensitive
4 and legally sound method of gathering factual information regarding
5 allegations of child abuse, child neglect, or exposure to violence.
6 This interview is conducted by a competently trained, neutral
7 professional utilizing techniques informed by research and best
8 practice as part of a larger investigative process.

9 NEW SECTION. Sec. 4. A new section is added to chapter 26.44
10 RCW to read as follows:

11 Any and all audio and video recordings of child forensic
12 interviews as defined in this chapter are exempt from disclosure
13 under the public records act, chapter 42.56 RCW. Such recordings are
14 confidential under chapter 13.50 RCW and federal law and may only be
15 disclosed pursuant to a court order entered upon a showing of good
16 cause and with advance notice to the child's parent, guardian, or
17 legal custodian. However, if the child is an emancipated minor or has
18 attained the age of majority as defined in RCW 26.28.010, advance
19 notice must be to the child. Failure to disclose an audio or video
20 recording of a child forensic interview as defined in this chapter is
21 not grounds for penalties or other sanctions available under chapter
22 42.56 RCW or RCW 13.50.100(10). Nothing in this section is intended
23 to restrict the ability of the department or law enforcement to share
24 child welfare information as authorized or required by state or
25 federal law.

26 **Sec. 5.** RCW 26.44.185 and 2010 c 176 s 3 are each amended to
27 read as follows:

28 (1) Each county shall revise and expand its existing child sexual
29 abuse investigation protocol to address investigations of child
30 fatality, child physical abuse, and criminal child neglect cases and
31 to incorporate the statewide guidelines for first responders to child
32 fatalities developed by the criminal justice training commission. The
33 protocols shall address the coordination of child fatality, child
34 physical abuse, and criminal child neglect investigations between the
35 county and city prosecutor's offices, law enforcement, children's
36 protective services, children's advocacy centers, where available,
37 local advocacy groups, emergency medical services, and any other
38 local agency involved in the investigation of such cases. The

1 protocol shall include the handling of child forensic interview audio
2 and video recordings in accordance with section 6 of this act. The
3 protocol revision and expansion shall be developed by the prosecuting
4 attorney in collaboration with the agencies referenced in this
5 section.

6 (2) Revised and expanded protocols under this section shall be
7 adopted and in place by July 1, 2008. Thereafter, the protocols shall
8 be reviewed every two years to determine whether modifications are
9 needed.

10 NEW SECTION. Sec. 6. A new section is added to chapter 26.44
11 RCW to read as follows:

12 (1) Any and all audio and video recordings of child forensic
13 interviews disclosed in a criminal or civil proceeding must be
14 subject to a protective order, or other such order, unless the court
15 finds good cause that the interview should not be subject to such an
16 order. The protective order shall include the following: (a) That the
17 recording be used only for the purposes of conducting the party's
18 side of the case, unless otherwise agreed by the parties or ordered
19 by the court; (b) that the recording not be copied, photographed,
20 duplicated, or otherwise reproduced except as a written transcript
21 that does not reveal the identity of the child; (c) that the
22 recording not be given, displayed, or in any way provided to a third
23 party, except as permitted in (d) or (e) of this subsection or as
24 necessary at trial; (d) that the recording remain in the exclusive
25 custody of the attorneys, their employees, or agents, including
26 expert witnesses retained by either party, who shall be provided a
27 copy of the protective order; (e) that, if the party is not
28 represented by an attorney, the party, their employees, and agents,
29 including expert witnesses, shall not be given a copy of the
30 recording but shall be given reasonable access to view the recording
31 by the custodian of the recording; and (f) that upon termination of
32 representation or upon disposition of the matter at the trial court
33 level, attorneys and other custodians of recordings promptly return
34 all copies of the recording.

35 (2) A violation of a court order pursuant to this section is
36 subject to a civil penalty of up to ten thousand dollars, in addition
37 to any other appropriate sanction by the court.

1 (3) Nothing in this section is intended to restrict the ability
2 of the department or law enforcement to share child welfare
3 information as authorized or required by state or federal law.

4 **Sec. 7.** RCW 42.56.240 and 2017 c 261 s 7 and 2017 c 72 s 3 are
5 each reenacted and amended to read as follows:

6 The following investigative, law enforcement, and crime victim
7 information is exempt from public inspection and copying under this
8 chapter:

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

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

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

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

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

1 (6) Information contained in a local or regionally maintained
2 gang database as well as the statewide gang database referenced in
3 RCW 43.43.762;

4 (7) Data from the electronic sales tracking system established in
5 RCW 69.43.165;

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

11 (9) Personally identifying information collected by law
12 enforcement agencies pursuant to local security alarm system programs
13 and vacation crime watch programs. Nothing in this subsection shall
14 be 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 as defined in RCW 9A.86.010;

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 from a covered
19 jurisdiction while in the course of his or her official duties and
20 that is made on or after June 9, 2016, and prior to July 1, 2019; and

21 (ii) "Covered jurisdiction" means any jurisdiction that has
22 deployed body worn cameras as of June 9, 2016, regardless of whether
23 or not body worn cameras are being deployed in the jurisdiction on
24 June 9, 2016, including, but not limited to, jurisdictions that have
25 deployed body worn cameras on a pilot basis.

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

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

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

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

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; (~~and~~)

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 NEW SECTION. Sec. 8. Section 7 of this act applies
29 retroactively to all outstanding public records requests submitted
30 prior to the effective date of this section.

31 NEW SECTION. Sec. 9. Section 2 of this act expires July 1,
32 2018.

33 NEW SECTION. Sec. 10. Section 3 of this act takes effect July
34 1, 2018.

35 NEW SECTION. Sec. 11. Except for section 3 of this act, this
36 act is necessary for the immediate preservation of the public peace,

1 health, or safety, or support of the state government and its
2 existing public institutions, and takes effect immediately."

ESHB 2700 - S COMM AMD

By Committee on Human Services & Corrections

ADOPTED 02/28/2018

3 On page 1, line 2 of the title, after "recordings;" strike the
4 remainder of the title and insert "amending RCW 26.44.020, 26.44.020,
5 and 26.44.185; reenacting and amending RCW 42.56.240; adding new
6 sections to chapter 26.44 RCW; creating a new section; prescribing
7 penalties; providing an effective date; providing an expiration date;
8 and declaring an emergency."

EFFECT: Requires advance notice to a child who is an emancipated minor or has attained the age of majority before the court ordered disclosure of any audio or video recording of a child forensic interview involving the child.

--- END ---