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SENATE BILL 6408

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State of Washington

65th Legislature

2018 Regular Session

By Senators Padden and Pedersen

1 AN ACT Relating to body worn cameras, but only with respect to  
2 making existing requirements and public records act provisions  
3 governing body worn cameras permanent and applicable to all law  
4 enforcement and corrections agencies deploying body worn cameras,  
5 strengthening privacy protections for intimate images in body worn  
6 camera recordings, and clarifying records retention requirements for  
7 body worn camera recordings; amending RCW 10.109.010 and 10.109.030;  
8 and reenacting and amending RCW 42.56.240.

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

10 **Sec. 1.** RCW 42.56.240 and 2017 c 261 s 7 and 2017 c 72 s 3 are  
11 each reenacted and amended to read as follows:

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

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

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

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

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

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

26 (6) Information contained in a local or regionally maintained  
27 gang database as well as the statewide gang database referenced in  
28 RCW 43.43.762;

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

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

36 (9) Personally identifying information collected by law  
37 enforcement agencies pursuant to local security alarm system programs  
38 and vacation crime watch programs. Nothing in this subsection shall  
39 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;

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

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;

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;

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

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

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

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

32 (I) A patient is registered to receive treatment, receiving  
33 treatment, waiting for treatment, or being transported in the course  
34 of treatment; or

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

37 (B) Information that meets the definition of protected health  
38 information for purposes of the health insurance portability and  
39 accountability act of 1996 or health care information for purposes of  
40 chapter 70.02 RCW;

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

3 (iii) An intimate image (~~as defined in RCW 9A.86.010~~);

4 (iv) A minor;

5 (v) The body of a deceased person;

6 (vi) The identity of or communications from a victim or witness  
7 of an incident involving domestic violence as defined in RCW  
8 10.99.020 or sexual assault as defined in RCW 70.125.030, or  
9 disclosure of intimate images as defined in RCW 9A.86.010. If at the  
10 time of recording the victim or witness indicates a desire for  
11 disclosure or nondisclosure of the recorded identity or  
12 communications, such desire shall govern; or

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

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

18 (c) In a court action seeking the right to inspect or copy a body  
19 worn camera recording, a person who prevails against a law  
20 enforcement or corrections agency that withholds or discloses all or  
21 part of a body worn camera recording pursuant to (a) of this  
22 subsection is not entitled to fees, costs, or awards pursuant to RCW  
23 42.56.550 unless it is shown that the law enforcement or corrections  
24 agency acted in bad faith or with gross negligence.

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

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

28 (ii) Provide the incident or case number;

29 (iii) Provide the date, time, and location of the incident or  
30 incidents; or

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

33 (e)(i) A person directly involved in an incident recorded by the  
34 requested body worn camera recording, an attorney representing a  
35 person directly involved in an incident recorded by the requested  
36 body worn camera recording, a person or his or her attorney who  
37 requests a body worn camera recording relevant to a criminal case  
38 involving that person, or the executive director from either the  
39 Washington state commission on African-American affairs, Asian  
40 Pacific American affairs, or Hispanic affairs, has the right to

1 obtain the body worn camera recording, subject to any exemption under  
2 this chapter or any applicable law. In addition, an attorney who  
3 represents a person regarding a potential or existing civil cause of  
4 action involving the denial of civil rights under the federal or  
5 state Constitution, or a violation of a United States department of  
6 justice settlement agreement, has the right to obtain the body worn  
7 camera recording if relevant to the cause of action, subject to any  
8 exemption under this chapter or any applicable law. The attorney must  
9 explain the relevancy of the requested body worn camera recording to  
10 the cause of action and specify that he or she is seeking relief from  
11 redaction costs under this subsection (14)(e).

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

17 (iii) A law enforcement or corrections agency may require any  
18 person requesting a body worn camera recording pursuant to this  
19 subsection (14)(e) to identify himself or herself to ensure he or she  
20 is a person entitled to obtain the body worn camera recording under  
21 this subsection (14)(e).

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

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

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

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

1 (i) "Body worn camera recording" means a video and/or sound  
2 recording that is made by a body worn camera attached to the uniform  
3 or eyewear of a law enforcement or corrections officer (~~from a~~  
4 ~~covered jurisdiction~~) while in the course of his or her official  
5 duties (~~and that is made on or after June 9, 2016, and prior to July~~  
6 ~~1, 2019~~); and

7 (ii) (~~"Covered jurisdiction" means any jurisdiction that has~~  
8 ~~deployed body worn cameras as of June 9, 2016, regardless of whether~~  
9 ~~or not body worn cameras are being deployed in the jurisdiction on~~  
10 ~~June 9, 2016, including, but not limited to, jurisdictions that have~~  
11 ~~deployed body worn cameras on a pilot basis~~) "Intimate image" means  
12 an individual or individuals engaged in sexual activity, including  
13 sexual intercourse as defined in RCW 9A.44.010 and masturbation, or  
14 an individual's intimate body parts, whether nude or visible through  
15 less than opaque clothing, including the genitals, pubic area, anus,  
16 or postpubescent female nipple.

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

21 (i) Nothing in this section is intended to modify the obligations  
22 of prosecuting attorneys and law enforcement under *Brady v. Maryland*,  
23 373 U.S. 83, 83 S. Ct. 1194, 10 L. Ed. 2d 215 (1963), *Kyles v.*  
24 *Whitley*, 541 U.S. 419, 115 S. Ct. 1555, 131 L. Ed.2d 490 (1995), and  
25 the relevant Washington court criminal rules and statutes.

26 (j) A law enforcement or corrections agency must retain body worn  
27 camera recordings for at least sixty days and thereafter may destroy  
28 the records in accordance with the applicable records retention  
29 schedule;

30 (15) Any records and information contained within the statewide  
31 sexual assault kit tracking system established in RCW 43.43.545;  
32 (~~and~~)

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

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

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

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

1 (iii) Inspection or copying is required by federal law; or  
2 (iv) A court of competent jurisdiction mandates that the record  
3 be available for inspection or copying.

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

6 (17) Information and records prepared, owned, used, or retained  
7 by the Washington association of sheriffs and police chiefs and  
8 information and records prepared, owned, used, or retained by the  
9 Washington state patrol pursuant to chapter 261, Laws of 2017.

10 **Sec. 2.** RCW 10.109.010 and 2016 c 163 s 5 are each amended to  
11 read as follows:

12 (1) A law enforcement or corrections agency that deploys body  
13 worn cameras must establish policies regarding the use of the  
14 cameras. The policies must, at a minimum, address:

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

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

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

26 (d) How, and under what circumstances, a law enforcement or  
27 corrections officer is to inform a member of the public that he or  
28 she is being recorded, including in situations where the person is a  
29 non-English speaker or has limited English proficiency, or where the  
30 person is deaf or hard of hearing;

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

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

35 (2) A law enforcement or corrections agency that deploys body  
36 worn cameras before June 9, 2016, must establish the policies within  
37 one hundred twenty days of June 9, 2016. A law enforcement or  
38 corrections agency that deploys body worn cameras on or after June 9,  
39 2016, must establish the policies before deploying body worn cameras.

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

2       **Sec. 3.** RCW 10.109.030 and 2016 c 163 s 8 are each amended to  
3 read as follows:

4       (~~(1)~~) For state and local agencies, a body worn camera may only  
5 be used by officers employed by a general authority Washington law  
6 enforcement agency as defined in RCW 10.93.020, any officer employed  
7 by the department of corrections, and personnel for jails as defined  
8 in RCW 70.48.020 and detention facilities as defined in RCW  
9 13.40.020.

10       (~~(2) This section expires July 1, 2019.~~)

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