
SENATE BILL 5455

State of Washington

67th Legislature

2021 Regular Session

By Senator Gildon

1 AN ACT Relating to retaining body worn and vehicle dashboard
2 camera recordings; amending RCW 10.109.010, 40.14.070, and 42.56.240;
3 adding a new section to chapter 40.14 RCW; creating a new section;
4 and providing an expiration date.

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

6 NEW SECTION. **Sec. 1.** The legislature finds that transparency
7 and accountability are essential to ensure trust between law
8 enforcement and the community. In an effort to increase transparency
9 and best serve justice, the legislature intends to expand the usage
10 of body worn and vehicle dashboard cameras in law enforcement. The
11 legislature recognizes the financial burden that data management and
12 public records requests administrative costs can present for local
13 jurisdictions. The legislature intends to develop and implement a
14 body worn and vehicle dashboard camera data management system pilot
15 grant program to reduce local costs, increase transparency, and
16 advance justice.

17 **Sec. 2.** RCW 10.109.010 and 2018 c 285 s 2 are each amended to
18 read as follows:

19 (1)(a) Subject to the availability of amounts appropriated for
20 this specific purpose, law enforcement agencies participating in the

1 pilot program created in section 4 of this act must deploy body worn
2 cameras. An agency may deploy body worn and vehicle dashboard cameras
3 in phases in order to develop procedures for storing, searching, and
4 retrieving the body worn and vehicle dashboard camera recordings in
5 its custody for the agency's operations, for pending judicial
6 proceedings, or for public disclosure required by law.

7 (b) Law enforcement agencies participating in the pilot grant
8 program must maintain body worn and vehicle dashboard camera
9 recordings for 10 years after the recorded incident occurs. The law
10 enforcement agency may not destroy recordings until 10 years after
11 the recorded incident occurs.

12 (c) A law enforcement agency participating in the pilot grant
13 program must retain access to and custody of its body worn and
14 vehicle dashboard camera recordings as provided in section 4 of this
15 act. The agency is responsible for use of the recordings for the law
16 enforcement agency's operations and during the judicial process.

17 (2) A law enforcement or corrections agency that deploys body
18 worn or vehicle dashboard cameras must establish policies regarding
19 the use of the cameras. The policies must, at a minimum, address:

20 (a) When a body worn or vehicle dashboard camera must be
21 activated and deactivated, and when a law enforcement or corrections
22 officer has the discretion to activate and deactivate the body or
23 vehicle dashboard worn camera;

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

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

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

38 (e) How officers are to be trained on body worn and vehicle
39 dashboard camera usage and how frequently the training is to be
40 reviewed or renewed; and

1 (f) Security rules to protect data collected and stored from body
2 worn or vehicle dashboard cameras.

3 (~~(2)~~) (3) A law enforcement or corrections agency that deploys
4 body worn or vehicle dashboard cameras before June 9, 2016, must
5 establish the policies within one hundred twenty days of June 9,
6 2016. A law enforcement or corrections agency that deploys body worn
7 or vehicle dashboard cameras on or after June 9, 2016, must establish
8 the policies before deploying body worn or vehicle dashboard cameras.

9 **Sec. 3.** RCW 40.14.070 and 2011 c 60 s 18 are each amended to
10 read as follows:

11 (1)(a) County, municipal, and other local government agencies may
12 request authority to destroy noncurrent public records having no
13 further administrative or legal value by submitting to the division
14 of archives and records management lists of such records on forms
15 prepared by the division. The archivist, a representative appointed
16 by the state auditor, and a representative appointed by the attorney
17 general shall constitute a committee, known as the local records
18 committee, which shall review such lists and which may veto the
19 destruction of any or all items contained therein.

20 (b) A local government agency, as an alternative to submitting
21 lists, may elect to establish a records control program based on
22 recurring disposition schedules recommended by the agency to the
23 local records committee. The schedules are to be submitted on forms
24 provided by the division of archives and records management to the
25 local records committee, which may either veto, approve, or amend the
26 schedule. Approval of such schedule or amended schedule shall be by
27 unanimous vote of the local records committee. Upon such approval,
28 the schedule shall constitute authority for the local government
29 agency to destroy the records listed thereon, after the required
30 retention period, on a recurring basis until the schedule is either
31 amended or revised by the committee.

32 (2)(a) Except as otherwise provided by law, no public records
33 shall be destroyed until approved for destruction by the local
34 records committee. Official public records shall not be destroyed
35 unless:

36 (i) The records are six or more years old;

37 (ii) The department of origin of the records has made a
38 satisfactory showing to the state records committee that the
39 retention of the records for a minimum of six years is both

1 unnecessary and uneconomical, particularly where lesser federal
2 retention periods for records generated by the state under federal
3 programs have been established; or

4 (iii) The originals of official public records less than six
5 years old have been copied or reproduced by any photographic,
6 photostatic, microfilm, miniature photographic, or other process
7 approved by the state archivist which accurately reproduces or forms
8 a durable medium for so reproducing the original.

9 An automatic reduction of retention periods from seven to six
10 years for official public records on record retention schedules
11 existing on June 10, 1982, shall not be made, but the same shall be
12 reviewed individually by the local records committee for approval or
13 disapproval of the change to a retention period of six years.

14 The state archivist may furnish appropriate information,
15 suggestions, and guidelines to local government agencies for their
16 assistance in the preparation of lists and schedules or any other
17 matter relating to the retention, preservation, or destruction of
18 records under this chapter. The local records committee may adopt
19 appropriate regulations establishing procedures to be followed in
20 such matters.

21 Records of county, municipal, or other local government agencies,
22 designated by the archivist as of primarily historical interest, may
23 be transferred to a recognized depository agency.

24 (b) (i) Records of investigative reports prepared by any state,
25 county, municipal, or other law enforcement agency pertaining to sex
26 offenders contained in chapter 9A.44 RCW or sexually violent offenses
27 as defined in RCW 71.09.020 that are not required in the current
28 operation of the law enforcement agency or for pending judicial
29 proceedings shall, following the expiration of the applicable
30 schedule of the law enforcement agency's retention of the records, be
31 transferred to the Washington association of sheriffs and police
32 chiefs for permanent electronic retention and retrieval. Upon
33 electronic retention of any document, the association shall be
34 permitted to destroy the paper copy of the document.

35 (ii) Any sealed record transferred to the Washington association
36 of sheriffs and police chiefs for permanent electronic retention and
37 retrieval, including records sealed after transfer, shall be
38 electronically retained in such a way that the record is clearly
39 marked as sealed.

1 (iii) The Washington association of sheriffs and police chiefs
2 shall be permitted to destroy both the paper copy and electronic
3 record of any offender verified as deceased.

4 (c) Any record transferred to the Washington association of
5 sheriffs and police chiefs pursuant to (b) of this subsection shall
6 be deemed to no longer constitute a public record pursuant to RCW
7 42.56.010 and shall be exempt from public disclosure. Such records
8 shall be disseminated only to criminal justice agencies as defined in
9 RCW 10.97.030 for the purpose of determining if a sex offender met
10 the criteria of a sexually violent predator as defined in chapter
11 71.09 RCW and the end-of-sentence review committee as defined by RCW
12 72.09.345 for the purpose of fulfilling its duties under RCW
13 71.09.025 and 9.95.420.

14 Electronic records marked as sealed shall only be accessible by
15 criminal justice agencies as defined in RCW 10.97.030 who would
16 otherwise have access to a sealed paper copy of the document, the
17 end-of-sentence review committee as defined by RCW 72.09.345 for the
18 purpose of fulfilling its duties under RCW 71.09.025 and 9.95.420,
19 and the system administrator for the purposes of system
20 administration and maintenance.

21 (d) A local law enforcement agency participating in the pilot
22 grant program created in section 4 of this act, that retains body
23 worn or vehicle dashboard camera recordings may destroy the recording
24 as authorized in RCW 10.109.010. After consulting with the system
25 administrator and attorney general, the police chief or sheriff of
26 the agency shall determine whether a recording in the system is no
27 longer legally required to be maintained in the data management
28 system and whether it should be destroyed or have a different
29 appropriate disposition.

30 (3) Except as otherwise provided by law, county, municipal, and
31 other local government agencies may, as an alternative to destroying
32 noncurrent public records having no further administrative or legal
33 value, donate the public records to the state library, local library,
34 historical society, genealogical society, or similar society or
35 organization.

36 Public records may not be donated under this subsection unless:

37 (a) The records are seventy years old or more;

38 (b) The local records committee has approved the destruction of
39 the public records; and

1 (c) The state archivist has determined that the public records
2 have no historic interest.

3 NEW SECTION. **Sec. 4.** A new section is added to chapter 40.14
4 RCW to read as follows:

5 (1)(a) Subject to the availability of amounts appropriated for
6 this specific purpose, the body worn and vehicle dashboard camera
7 data management system pilot grant program is established. The
8 Washington association of sheriffs and police chiefs is the pilot
9 grant program's administrator. The association shall designate the
10 police chief or sheriff of any participating jurisdiction as a local
11 administrator.

12 (b) The pilot grant program is limited to four participating law
13 enforcement agencies from two cities and two counties. Participating
14 agencies must be from one city and one county east of the crest of
15 the Cascade mountain range and one city and one county west of the
16 crest of the Cascade mountain range. County participating agencies
17 are limited to counties with a population under 2,000,000 and city
18 participating agencies are limited to cities with a population under
19 500,000.

20 (c) The pilot grant program ends three years after the effective
21 date of this section. The Washington association of sheriffs and
22 police chiefs must report on preliminary findings and final results
23 of the pilot grant program to the governor and legislature. The
24 initial report is due July 1, 2022, and the final report is due
25 December 1, 2024.

26 (d)(i) The local agency may contract for storage of the
27 recordings or create its own server network and data management
28 software. The local police chief or sheriff, or his or her designee,
29 is authorized to contract with state or nonstate entities including,
30 but not limited to, cloud-based web services and private software and
31 technology providers for the creation, operation, and maintenance of
32 the body worn and dashboard camera data management system.

33 (ii) The contract must ensure the chain of custody is not
34 disrupted or compromised. All data must be maintained in a manner
35 that allows for custody of the data to be traced from creation to
36 upload into the system.

37 (2) Local body worn and vehicle dashboard camera data management
38 systems must be fully integrated and serve as a local repository for
39 all recordings produced from the body worn and vehicle dashboard

1 cameras used by law enforcement agencies participating in the pilot
2 grant program. The local police chief or sheriff is responsible for
3 maintaining the system's security and data integrity. Upon successful
4 upload of a body worn or vehicle dashboard camera recording from a
5 local law enforcement agency to its data management system, the local
6 system administrator or their designee manages, tracks, and responds
7 to all legal public disclosure requests for recordings in the system
8 including, but not limited to, making legally required redactions and
9 releasing the recordings to the requester as required by law.

10 (3) The body worn and vehicle dashboard camera data management
11 system must incorporate minimum functionality that enables:

12 (a) Secure long-term storage and preservation of body worn and
13 vehicle dashboard camera recordings transferred from all
14 participating law enforcement agencies;

15 (b) The local administrator to manage, track, and respond to
16 lawful public disclosure requests regarding recordings in the data
17 management system including making the legally required redactions
18 prior to disclosure;

19 (c) Each law enforcement agency continued custody and access to
20 view and use the data it uploads to the system;

21 (d) Each law enforcement agency to locate, retrieve, copy, or
22 share the recordings in the system for agency operations, training,
23 administrative functions, and related judicial actions using a
24 uniform data format that protects the recordings from destruction,
25 alteration, or further redaction, maintains chain of custody
26 requirements, and generates audit tracking;

27 (e) Each participating law enforcement agency to track and update
28 the status of recordings stored in its system with status changes in
29 related cases or availability for public records release using a
30 uniform labeling and tracking method;

31 (f) The system administrator and participating local law
32 enforcement agencies to utilize electronic technology or technologies
33 allowing continuous access; and

34 (g) The system administrator to compile data, report outcomes,
35 and issue recommendations for increasing transparency and ensuring
36 accuracy and fidelity of the data and information collected and
37 reported under the pilot grant program.

38 (4) The pilot grant program shall be funded from the state
39 general fund for the 2021-2023 and 2023-2025 fiscal biennia.

40 (5) This section expires July 1, 2025.

1 **Sec. 5.** RCW 42.56.240 and 2019 c 300 s 1 are each amended to
2 read as follows:

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

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

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

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

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

31 (5) Information revealing the specific details that describe an
32 alleged or proven child victim of sexual assault under age eighteen,
33 or the identity or contact information of an alleged or proven child
34 victim of sexual assault who is under age eighteen. Identifying
35 information includes the child victim's name, addresses, location,
36 photograph, and in cases in which the child victim is a relative,
37 stepchild, or stepsibling of the alleged perpetrator, identification
38 of the relationship between the child and the alleged perpetrator.
39 Contact information includes phone numbers, email addresses, social
40 media profiles, and user names and passwords;

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 or a local administrator of the body worn and
40 vehicle dashboard camera data management system created in section 4

1 of this act shall not disclose a body worn camera recording to the
2 extent the recording is exempt under this subsection.

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

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

8 (I) A patient is registered to receive treatment, receiving
9 treatment, waiting for treatment, or being transported in the course
10 of treatment; or

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

13 (B) Information that meets the definition of protected health
14 information for purposes of the health insurance portability and
15 accountability act of 1996 or health care information for purposes of
16 chapter 70.02 RCW;

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

19 (iii) An intimate image;

20 (iv) A minor;

21 (v) The body of a deceased person;

22 (vi) The identity of or communications from a victim or witness
23 of an incident involving domestic violence as defined in RCW
24 10.99.020 or sexual assault as defined in RCW 70.125.030, or
25 disclosure of intimate images as defined in RCW 9A.86.010. If at the
26 time of recording the victim or witness indicates a desire for
27 disclosure or nondisclosure of the recorded identity or
28 communications, such desire shall govern; or

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

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

34 (c) In a court action seeking the right to inspect or copy a body
35 worn camera recording, a person who prevails against a law
36 enforcement or corrections agency that withholds or discloses all or
37 part of a body worn camera recording pursuant to (a) of this
38 subsection is not entitled to fees, costs, or awards pursuant to RCW
39 42.56.550 unless it is shown that the law enforcement or corrections
40 agency acted in bad faith or with gross negligence.

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

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

4 (ii) Provide the incident or case number;

5 (iii) Provide the date, time, and location of the incident or
6 incidents; or

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

9 (e) (i) A person directly involved in an incident recorded by the
10 requested body worn camera recording, an attorney representing a
11 person directly involved in an incident recorded by the requested
12 body worn camera recording, a person or his or her attorney who
13 requests a body worn camera recording relevant to a criminal case
14 involving that person, or the executive director from either the
15 Washington state commission on African American affairs, Asian
16 Pacific American affairs, or Hispanic affairs, has the right to
17 obtain the body worn camera recording, subject to any exemption under
18 this chapter or any applicable law. In addition, an attorney who
19 represents a person regarding a potential or existing civil cause of
20 action involving the denial of civil rights under the federal or
21 state Constitution, or a violation of a United States department of
22 justice settlement agreement, has the right to obtain the body worn
23 camera recording if relevant to the cause of action, subject to any
24 exemption under this chapter or any applicable law. The attorney must
25 explain the relevancy of the requested body worn camera recording to
26 the cause of action and specify that he or she is seeking relief from
27 redaction costs under this subsection (14) (e).

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

33 (iii) A law enforcement or corrections agency may require any
34 person requesting a body worn camera recording pursuant to this
35 subsection (14) (e) to identify himself or herself to ensure he or she
36 is a person entitled to obtain the body worn camera recording under
37 this subsection (14) (e).

38 (f) (i) A law enforcement or corrections agency responding to a
39 request to disclose body worn camera recordings may require any
40 requester not listed in (e) of this subsection to pay the reasonable

1 costs of redacting, altering, distorting, pixelating, suppressing, or
2 otherwise obscuring any portion of the body worn camera recording
3 prior to disclosure only to the extent necessary to comply with the
4 exemptions in this chapter or any applicable law.

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

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

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

17 (i) "Body worn camera recording" means a video and/or sound
18 recording that is made by a body worn camera attached to the uniform
19 or eyewear of a law enforcement or corrections officer while in the
20 course of his or her official duties; and

21 (ii) "Intimate image" means an individual or individuals engaged
22 in sexual activity, including sexual intercourse as defined in RCW
23 9A.44.010 and masturbation, or an individual's intimate body parts,
24 whether nude or visible through less than opaque clothing, including
25 the genitals, pubic area, anus, or postpubescent female nipple.

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 in accordance with the applicable records retention~~
38 ~~schedule~~) recordings:

39 (i) For agencies participating in the pilot grant program created
40 in section 4 of this act, after successful upload to its body worn

1 and vehicle dashboard camera data management system created pursuant
2 to section 4 of this act; and

3 (ii) For agencies not participating in the pilot grant program,
4 in accordance with the applicable records retention schedule;

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

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

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

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

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

15 (iii) Inspection or copying is required by federal law; or

16 (iv) A court of competent jurisdiction mandates that the record
17 be available for inspection or copying.

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

20 (17) Information and records prepared, owned, used, or retained
21 by the Washington association of sheriffs and police chiefs and
22 information and records prepared, owned, used, or retained by the
23 Washington state patrol pursuant to chapter 261, Laws of 2017; and

24 (18) Any and all audio or video recordings of child forensic
25 interviews as defined in chapter 26.44 RCW. Such recordings are
26 confidential and may only be disclosed pursuant to a court order
27 entered upon a showing of good cause and with advance notice to the
28 child's parent, guardian, or legal custodian. However, if the child
29 is an emancipated minor or has attained the age of majority as
30 defined in RCW 26.28.010, advance notice must be to the child.
31 Failure to disclose an audio or video recording of a child forensic
32 interview as defined in chapter 26.44 RCW is not grounds for
33 penalties or other sanctions available under this chapter.

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