S-0673.1

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**SENATE BILL 5427**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**State of Washington 68th Legislature 2023 Regular Session**

**By** Senators Valdez, Billig, Cleveland, Dhingra, Frame, Hasegawa, Hunt, Keiser, Kuderer, Liias, Lovelett, Lovick, Saldaña, Salomon, Stanford, and C. Wilson

AN ACT Relating to supporting people who have been targeted or affected by hate crimes and bias incidents by establishing a reporting hotline, tracking hate crimes and bias incidents, and creating a compensation program and assistance fund; amending RCW 42.56.240; adding new sections to chapter 43.10 RCW; creating new sections; and providing an effective date.

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

NEW SECTION. **Sec.**  A new section is added to chapter 43.10 RCW to read as follows:

(1) The attorney general's office shall oversee a hate crimes and bias incidents hotline staffed during business hours and dedicated to assisting people who have been targeted or affected by hate crimes and bias incidents. The hate crimes and bias incidents hotline shall:

(a) Accept reports of hate crimes and bias incidents made to the hate crimes and bias incidents hotline;

(b) Provide appropriate crisis intervention, information, and referral to people who have been targeted or affected by hate crimes and bias incidents that is victim-centered, culturally competent, and trauma-informed;

(c) Be as accessible to as many residents of Washington as possible, regardless of language proficiency, as much as is practically possible within the limits of the resources appropriated to operate the hotline.

(2)(a) The attorney general's office shall:

(i) Develop a standardized intake process for all reports of hate crimes and bias incidents made to the hate crimes and bias incidents hotline;

(ii) Identify local service providers to refer people who have been targeted or affected by hate crimes and bias incidents;

(iii) Collect data describing the incident, location, date, and real or perceived affected protected class, of each hate crime or bias incident reported to the hate crimes and bias incidents hotline;

(iv) Review and analyze, at least annually, data pertaining to hate crimes and bias incidents that has been submitted to the hate crimes and bias incidents hotline; and

(v) No later than July 1, 2026, and at least annually thereafter, provide information regarding hate crimes and bias incidents occurring in Washington during the prior calendar year to the governor, senate, and house of representatives, and make the information publicly available on its website, excluding the personal identifying information of any individual.

(b) Any information regarding hate crimes or bias incidents that reveals the personal identifying information of any individual: (i) Must not be included in any public report prepared in accordance with this section; and (ii) is confidential and exempt from public inspection, copying, or disclosure under chapter 42.56 RCW.

(3) Any law enforcement agency in this state that receives a report of a hate crime or bias incident shall refer the targeted or affected person to the hate crimes and bias incidents hotline.

(4)(a) No later than July 1, 2024, the attorney general's office shall prepare a standard quarterly report form for use by law enforcement agencies to report hate crimes and bias incidents, and make the standard form available on its website. The standard form should facilitate the collection and aggregation of information concerning the incident, location, date, and real or perceived affected protected class, of each hate crime or bias incident reported to the hate crimes and bias incidents hotline.

(b) No later than January 30, 2025, and at least quarterly thereafter, all law enforcement agencies in this state shall prepare and send a report to the attorney general's office each quarter of all reported hate crimes and bias incidents that occurred within the reporting agency's jurisdiction in the prior quarter. The report must describe the incident, location, date, and real or perceived affected protected class of each reported hate crime and bias incident.

(5)(a) Whenever a hate crime or bias incident is reported to the hate crimes and bias incidents hotline by a member of the public, the hotline shall promptly share information concerning the incident, location, date, and real or perceived affected protected class, of the hate crime or bias incident with the primary local law enforcement agency of the jurisdiction in which the hate crime or bias incident occurred. The hotline shall anonymize the information it shares such that the person targeted or affected by the hate crime or bias incident cannot be identified unless the targeted or affected person consents to being identified.

(b) If the person targeted or affected by the hate crime or bias incident consents to sharing personal identifying information with the primary local law enforcement agency of the jurisdiction in which the hate crime or bias incident occurred, the hate crimes and bias incidents hotline shall promptly share the targeted or affected person's name, address, and contact information with the primary local law enforcement agency. If the targeted or affected person consents to share some but not all personal identifying information, the hotline must share only the information the targeted or affected person has consented to share.

(6) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Bias incident" means a person's hostile expression of animus toward another person, relating to the other person's actual or perceived race, color, religion, ancestry, national origin, gender, sexual orientation, gender expression or identity, or mental, physical, or sensory disability, of which criminal investigation or prosecution is impossible or inappropriate. "Bias incident" does not include any incident in which probable cause of the commission of a crime is established by the investigating law enforcement officer.

(b) "Hate crime" means the commission, attempted commission, or alleged commission of an offense described in RCW 9A.36.080.

(c) "Hate crimes and bias incidents hotline" means the communications channel or channels overseen by the attorney general's office pursuant to this section.

(d) "Law enforcement agency" means any general or limited authority Washington law enforcement agency as those terms are defined in RCW 10.93.020.

(e) "Law enforcement officer" means any general authority, limited authority, or specially commissioned Washington peace officer as those terms are defined in RCW 10.93.020.

(f) "Local service providers" means providers of services to people who have been targeted or affected by hate crimes and bias incidents, including without limitation crisis intervention, advocacy, information and referral, and outreach and awareness, that are located in the same geographic area that the hate crime or bias incident occurred or where the targeted or affected person resides.

(g) "Personal identifying information" means any information that can be used to distinguish or trace an individual's identity, such as name, prior legal name, alias, mother's maiden name, date or place of birth, residence, mailing address, telephone number, email address, social security number, driver's license number, bank account number, or other similar information.

(h) "Protected class" means a class of individuals who are members of, or perceived as being members of, a group based on one or more of the following shared characteristics: Race, color, religion, ancestry, national origin, gender, sexual orientation, gender expression or identity, or mental, physical, or sensory disability.

NEW SECTION. **Sec.**  A new section is added to chapter 43.10 RCW to read as follows:

(1) The hate crime and bias incident compensation program is created within the attorney general's office for the purpose of providing compensation to persons targeted or affected by hate crimes and bias incidents for damages or losses caused by such crimes and incidents.

(2) The attorney general's office shall develop a standardized claim form, and intake and evaluation process, for all claims made to the hate crime and bias incident compensation program.

(3) The attorney general's office shall establish procedures and rules for: (a) Approving and denying claims made to the hate crime and bias incident compensation program; (b) tracking and evaluating repeat claims; (c) requesting, processing, and reviewing documentation and other evidence submitted in support of claims; (d) paying approved claims; and (e) prioritizing or otherwise resolving claims when the amount of funds remaining in the Washington hate crime and bias incident account is inadequate to meet all current claims, or is anticipated to be inadequate to meet future claims.

(4) The attorney general's office may provide compensation to persons targeted or affected by hate crimes and bias incidents by authorizing expenditures from the Washington hate crime and bias incident account, established in section 3 of this act, up to a maximum of $2,000 per person targeted or affected by a specific hate crime or bias incident, subject to the availability of funds in the account and the requirements of this act.

(5) As used in this section, "bias incident" and "hate crime" have the meanings defined in section 1 of this act.

NEW SECTION. **Sec.**  A new section is added to chapter 43.10 RCW to read as follows:

(1) The Washington hate crime and bias incident account is created in the custody of the state treasurer. The account shall consist of funds appropriated by the legislature for the purpose of the hate crimes and bias incident compensation program, and all receipts from gifts, grants, bequests, devises, or other funds from public and private sources provided for the purpose of compensating persons targeted or affected by hate crimes or bias incidents for damages or losses caused by such crimes and incidents. Only the attorney general, or the attorney general's designee, may authorize expenditures from the account to compensate persons targeted or affected by hate crimes and bias incidents for damages or losses caused by such crimes and incidents, consistent with section 2 of this act.

(2) The Washington hate crime and bias incident account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures.

**Sec.**  RCW 42.56.240 and 2022 c 268 s 31 are each amended to read as follows:

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

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

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

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

(4) License applications under RCW 9.41.070, except that copies of license applications or information on the applications may be released to law enforcement or corrections agencies or to persons and entities as authorized under RCW 9.41.815;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(iii) An intimate image;

(iv) A minor;

(v) The body of a deceased person;

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

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

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

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

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

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

(ii) Provide the incident or case number;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) The survivor consents to inspection or copying;

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

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

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

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

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

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

(19) Information exempt from public disclosure and copying under section 1(2)(b) of this act.

NEW SECTION. **Sec.**  This act does not create or limit any private right of action.

NEW SECTION. **Sec.**  If specific funding for the purposes of this act, referencing this act by bill or chapter number, is not provided by June 30, 2023, in the omnibus appropriations act, this act is null and void.

NEW SECTION. **Sec.**  This act takes effect January 1, 2024.

**--- END ---**