

SHB 1080 - S COMM AMD

By Committee on Law & Justice

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

3 "Sec. 1. RCW 42.56.240 and 2022 c 268 s 31 are each amended to
4 read as follows:

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

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

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

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

30 (4) License applications under RCW 9.41.070, except that copies
31 of license applications or information on the applications may be

1 released to law enforcement or corrections agencies or to persons and
2 entities as authorized under RCW 9.41.815;

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

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

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

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

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

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

31 (11) The identity of a state employee or officer who has in good
32 faith filed a complaint with an ethics board, as provided in RCW
33 42.52.410, or who has in good faith reported improper governmental
34 action, as defined in RCW 42.40.020, to the auditor or other public
35 official, as defined in RCW 42.40.020;

36 (12) The following security threat group information collected
37 and maintained by the department of corrections pursuant to RCW
38 72.09.745: (a) Information that could lead to the identification of a
39 person's security threat group status, affiliation, or activities;
40 (b) information that reveals specific security threats associated

1 with the operation and activities of security threat groups; and (c)
2 information that identifies the number of security threat group
3 members, affiliates, or associates;

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

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

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

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

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

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

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

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

31 (iii) An intimate image;

32 (iv) A minor;

33 (v) The body of a deceased person;

34 (vi) The identity of or communications from a victim or witness
35 of an incident involving domestic violence as defined in RCW
36 10.99.020 or sexual assault as defined in RCW 70.125.030, or
37 disclosure of intimate images as defined in RCW 9A.86.010. If at the
38 time of recording the victim or witness indicates a desire for
39 disclosure or nondisclosure of the recorded identity or
40 communications, such desire shall govern; or

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

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

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

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

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

18 (ii) Provide the incident or case number;

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

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

23 (e) (i) (A) A person directly involved in an incident recorded by
24 the requested body worn camera recording, (~~an attorney representing~~
25 ~~a person directly involved in an incident recorded by the requested~~
26 ~~body worn camera recording,~~) a person (~~or his or her attorney~~) who
27 requests a body worn camera recording relevant to a criminal case
28 involving that person, or the executive director from either the
29 Washington state commission on African American affairs, Asian
30 Pacific American affairs, or Hispanic affairs, has the right to
31 obtain the body worn camera recording, subject to any exemption under
32 this chapter or any applicable law. (~~In addition, an~~)

33 (B) An attorney who represents a person regarding a potential or
34 existing civil cause of action involving the denial of civil rights
35 under the federal or state Constitution, or a violation of a United
36 States department of justice settlement agreement, has the right to
37 obtain the body worn camera recording if relevant to the cause of
38 action, subject to any exemption under this chapter or any applicable
39 law. The attorney must explain the relevancy of the requested body
40 worn camera recording to the cause of action and specify that he or

1 she is seeking relief from redaction costs under this subsection
2 (14) (e). When making a request, the attorney shall identify and
3 include the date, time, and location of the incident or incidents of
4 any body worn camera recording that is relevant to the cause of
5 action that the attorney has received through the discovery process.
6 Recordings responsive to the request and identified by the attorney
7 as not received through the discovery process shall be provided to
8 the attorney free of cost. Recordings responsive to the request and
9 identified by the attorney as having been received through the
10 discovery process may be excluded from the request, unless the
11 attorney requests such recordings. If the attorney requests
12 recordings identified by the attorney as having been received through
13 the discovery process, the attorney shall pay the costs of any
14 redacting, altering, distorting, pixelating, suppressing, or
15 otherwise obscuring any portion of a body worn camera recording.

16 (C) An attorney representing a person directly involved in an
17 incident recorded by the requested body worn camera recording has the
18 right to obtain the body worn camera recording, subject to any
19 exemption under this chapter or any applicable law. When making a
20 request, the attorney shall identify and include the date, time, and
21 location of the incident or incidents of any body worn camera
22 recording of the person directly involved in an incident or incidents
23 that the attorney has received through the discovery process.
24 Recordings responsive to the request and identified by the attorney
25 as not received through the discovery process shall be provided to
26 the attorney free of cost. Recordings responsive to the request and
27 identified by the attorney as having been received through the
28 discovery process may be excluded from the request, unless the
29 attorney requests such recordings. If the attorney requests
30 recordings identified by the attorney as having been received through
31 the discovery process, the attorney shall pay the costs of any
32 redacting, altering, distorting, pixelating, suppressing, or
33 otherwise obscuring any portion of a body worn camera recording.

34 (D) An attorney who requests a body worn camera recording
35 relevant to a criminal case involving the attorney's client has the
36 right to obtain the body worn camera recording, subject to any
37 exemption under this chapter or any applicable law. When making a
38 request, the attorney shall identify and include the date, time, and
39 location of the incident or incidents of any body worn camera
40 recording that is relevant to the criminal case involving the

1 attorney's client that the attorney has received through the
2 discovery process. Recordings responsive to the request and
3 identified by the attorney as not received through the discovery
4 process shall be provided to the attorney free of cost. Recordings
5 responsive to the request and identified by the attorney as having
6 been received through the discovery process may be excluded from the
7 request, unless the attorney requests such recordings. If the
8 attorney requests recordings identified by the attorney as having
9 been received through the discovery process, the attorney shall pay
10 the costs of any redacting, altering, distorting, pixelating,
11 suppressing, or otherwise obscuring any portion of a body worn camera
12 recording.

13 (ii) (~~(A law enforcement or corrections)~~) An agency that
14 possesses law enforcement or corrections agency body worn camera
15 recordings responding to requests under this subsection (14)(e) may
16 not require the requesting individual to pay costs of any redacting,
17 altering, distorting, pixelating, suppressing, or otherwise obscuring
18 any portion of a body worn camera recording, unless the requestor has
19 indicated in (e)(i)(B), (C), or (D) of this subsection that the
20 recording has been provided through the discovery process.

21 (iii) (~~(A law enforcement or corrections)~~) An agency that
22 possesses law enforcement or corrections agency body worn camera
23 recordings may require any person requesting a body worn camera
24 recording pursuant to this subsection (14)(e) to identify himself or
25 herself to ensure he or she is a person entitled to obtain the body
26 worn camera recording under this subsection (14)(e).

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

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

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

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

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

13 (ii) "Intimate image" means an individual or individuals engaged
14 in sexual activity, including sexual intercourse as defined in RCW
15 9A.44.010 and masturbation, or an individual's intimate body parts,
16 whether nude or visible through less than opaque clothing, including
17 the genitals, pubic area, anus, or postpubescent female nipple.

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

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

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

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

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

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

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

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

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

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

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

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

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

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22 On page 1, line 1 of the title, after "cameras;" strike the
23 remainder of the title and insert "and amending RCW 42.56.240."

EFFECT: Restores current statutory language allowing a right to access body worn camera recordings for an attorney representing a person directly involved in an incident, a person or the person's attorney in a criminal case involving that person, or 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.

Establishes procedures for an attorney to identify any body worn camera recordings that the attorney has received through the discovery process.

Provides that any body worn camera recording responsive to a Public Records Act request that was not received by an attorney through the discovery process shall be provided to the attorney free of cost.

Requires an attorney to pay for redacting, altering, distorting, pixelating, suppressing, or otherwise obscuring any portion of a body worn camera recording that was identified by the attorney as having been received through the discovery process.

Requires any agency that possesses law enforcement or corrections agency body worn camera recordings to follow the public disclosure procedures and exemptions from disclosure for such recordings.

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