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**SUBSTITUTE HOUSE BILL 1917**

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**State of Washington 64th Legislature 2015 Regular Session**

**By** House Judiciary (originally sponsored by Representatives Hansen, Pettigrew, Ortiz-Self, and Appleton)

AN ACT Relating to video and/or sound recordings made by law enforcement or corrections officers; amending RCW 9.73.090; reenacting and amending RCW 42.56.240; adding a new chapter to Title 5 RCW; adding a new chapter to Title 10 RCW; creating new sections; and providing an expiration date.

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

NEW SECTION. **Sec.**  The legislature finds that technological developments present opportunities for additional truth-finding, transparency, and accountability in interactions between law enforcement or corrections officers and the public. However, the legislature wants to preserve the public's reasonable expectations of privacy with respect to such interactions; although individuals interacting with law enforcement or corrections officers carrying out their official duties have no expectation that their right to privacy prevents law enforcement or corrections officers from audio and/or video recording their interaction, those individuals do not surrender their right to privacy as it relates to the public records act. The legislature intends to promote transparency and accountability by permitting individuals who interact with law enforcement or corrections officers to access the video and/or sound recordings of these interactions while preserving the public's reasonable expectation that the recordings of these interactions will not be publicly disclosed to enable voyeurism or exploitation.

**Sec.**  RCW 9.73.090 and 2011 c 336 s 325 are each amended to read as follows:

(1) The provisions of RCW 9.73.030 through 9.73.080 shall not apply to police, corrections, fire, emergency medical service, emergency communication center, and poison center personnel in the following instances:

(a) Recording incoming ((~~telephone~~)) calls or messages to police and fire stations, licensed emergency medical service providers, emergency communication centers, and poison centers;

(b) Video and/or sound recordings may be made of arrested persons by police officers responsible for making arrests or holding persons in custody before their first appearance in court. Such video and/or sound recordings shall conform strictly to the following:

(i) The arrested person shall be informed that such recording is being made and the statement so informing him or her shall be included in the recording;

(ii) The recording shall commence with an indication of the time of the beginning thereof and terminate with an indication of the time thereof;

(iii) At the commencement of the recording the arrested person shall be fully informed of his or her constitutional rights, and such statements informing him or her shall be included in the recording;

(iv) The recordings shall only be used for valid police or court activities;

(c) ((~~Sound recordings that correspond to video images recorded by video cameras mounted in law enforcement vehicles. All law enforcement officers wearing a sound recording device that makes recordings corresponding to videos recorded by video cameras mounted in law enforcement vehicles must be in uniform. A sound recording device that makes a recording pursuant to this subsection (1)(c) must be operated simultaneously with the video camera when the operating system has been activated for an event. No sound recording device may be intentionally turned off by the law enforcement officer during the recording of an event. Once the event has been captured, the officer may turn off the audio recording and place the system back into "pre-event" mode~~)) Video and/or sound recordings, of any kind, made by uniformed law enforcement or corrections officers while in the course of their official duties.

(i) No ((~~sound~~)) video and/or ((~~video~~)) sound recording, of any kind, made ((~~under this subsection (1)(c)~~)) by uniformed law enforcement or corrections officers while in the course of their official duties may be ((~~duplicated and~~)) made available to the public ((~~by a law enforcement agency subject to this section until final disposition of any criminal or civil litigation which arises from the event or events which were recorded. Such sound recordings shall not be divulged or used by any law enforcement agency for any commercial purpose.~~

~~A law enforcement officer shall inform any person being recorded by sound under this subsection (1)(c) that a sound recording is being made and the statement so informing the person shall be included in the sound recording, except that the law enforcement officer is not required to inform the person being recorded if the person is being recorded under exigent circumstances. A law enforcement officer is not required to inform a person being recorded by video under this subsection (1)(c) that the person is being recorded by video~~)) pursuant to chapter 42.56 RCW, by any jurisdiction that has deployed body cameras as of the effective date of this act, unless:

(A) The request for the video and/or sound recording:

(I) Specifically identifies the name of the person or persons involved and the incident or case number; or

(II) Provides the specific date, time, and location of the incident; and

(B) The request for the video and/or sound recording is made by:

(I) A person directly involved in the incident recorded by the requested video and/or sound recording, or an attorney representing an individual directly involved in the incident recorded by the requested video and/or sound recording, upon a certification under penalty of perjury, by the person requesting disclosure, that the person requesting disclosure does not intend to use the recording to intimidate, threaten, abuse, or harass any individual on the recording; or

(II) Any other person upon a court order finding, by clear and convincing evidence, that: The public interest in the disclosure of the video and/or sound recording significantly outweighs the privacy interests of the person or persons whose image or sound is contained in the recording; the person requesting the video and/or sound recording gave each nonlaw enforcement or corrections officer whose image or sound is contained in the recording notice of the requested disclosure in the best manner practicable under the circumstances, including individual notice to every person who can be identified through reasonable effort; and each person whose image or sound is contained in the recording had reasonable opportunity to obtain an order from the court to enjoin all or some of the intended disclosure. Law enforcement agencies must provide information sufficient to enable the giving of notice, where available, so long as that would not interfere with ongoing investigations.

(ii) Law enforcement or corrections agencies responding to requests to disclose video and/or sound recordings made under (c)(i) of this subsection may require any person requesting a video and/or sound recording to identify himself or herself to ensure compliance with (c)(i) of this subsection.

(iii) A law enforcement or corrections agency responding to a request for video and/or sound recording under (c)(i) of this subsection may require the requester to pay the costs of redacting any portion of the video and/or sound recording before disclosure.

(iv) Video and/or sound recordings, of any kind, made by uniformed law enforcement or corrections officers while in the course of their official duties may be used by jurisdictions that have deployed body cameras as of the effective date of this act for officer accountability, evidentiary purposes, and any other use not prohibited by law.

(2) It shall not be unlawful for a law enforcement officer acting in the performance of the officer's official duties to intercept, record, or disclose ((~~an~~)) a private oral communication or conversation ((~~where the officer is a party to the communication or conversation or one of the parties to the communication or conversation has given prior consent to the interception, recording, or disclosure~~)) in situations where the law enforcement officer's presence is concealed to one or more parties to the private communication or conversation: PROVIDED, That prior to the interception, transmission, or recording the officer shall obtain written or telephonic authorization from a judge or magistrate, who shall approve the interception, recording, or disclosure of communications or conversations with a nonconsenting party for a reasonable and specified period of time, if there is probable cause to believe that the nonconsenting party has committed, is engaged in, or is about to commit a felony: PROVIDED HOWEVER, That if such authorization is given by telephone the authorization and officer's statement justifying such authorization must be electronically recorded by the judge or magistrate on a recording device in the custody of the judge or magistrate at the time transmitted and the recording shall be retained in the court records and reduced to writing as soon as possible thereafter.

Any recording or interception of a communication or conversation incident to a lawfully recorded or intercepted communication or conversation pursuant to this subsection shall be lawful and may be divulged.

All recordings of communications or conversations made pursuant to this subsection shall be retained for as long as any crime may be charged based on the events or communications or conversations recorded.

(3) Communications or conversations authorized to be intercepted, recorded, or disclosed by this section shall not be inadmissible under RCW 9.73.050.

(4) Authorizations issued under subsection (2) of this section shall be effective for not more than seven days, after which period the issuing authority may renew or continue the authorization for additional periods not to exceed seven days.

(5) If the judge or magistrate determines that there is probable cause to believe that the communication or conversation referenced in subsection (2) of this section concerns the unlawful manufacture, delivery, sale, or possession with intent to manufacture, deliver, or sell, controlled substances as defined in chapter 69.50 RCW, or legend drugs as defined in chapter 69.41 RCW, or imitation controlled substances as defined in chapter 69.52 RCW, the judge or magistrate may authorize the interception, transmission, recording, or disclosure of communications or conversations under subsection (2) of this section even though the true name of the nonconsenting party, or the particular time and place for the interception, transmission, recording, or disclosure, is not known at the time of the request, if the authorization describes the nonconsenting party and subject matter of the communication or conversation with reasonable certainty under the circumstances. Any such communication or conversation may be intercepted, transmitted, recorded, or disclosed as authorized notwithstanding a change in the time or location of the communication or conversation after the authorization has been obtained or the presence of or participation in the communication or conversation by any additional party not named in the authorization.

Authorizations issued under this subsection shall be effective for not more than fourteen days, after which period the issuing authority may renew or continue the authorization for an additional period not to exceed fourteen days.

**Sec.**  RCW 42.56.240 and 2013 c 315 s 2, 2013 c 190 s 7, and 2013 c 183 s 1 are each reenacted and 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; copies of license applications or information on the applications may be released to law enforcement or corrections agencies;

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

(6) 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; ((~~and~~))

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

(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; ((~~and~~))

(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; and

(13) Video and/or sound recordings made by law enforcement or corrections officers of jurisdictions that have deployed body cameras as of the effective date of this act while in the course of their official duties pursuant to RCW 9.73.090.

NEW SECTION. **Sec.**  A failure to record, maintain, or provide video and/or sound recordings made by jurisdictions that have deployed body cameras as of the effective date of this act and pursuant to RCW 9.73.090 may not be used to argue for derivative suppression of any witness testimony as to the unrecorded event, or any other evidence lawfully obtained.

NEW SECTION. **Sec.**  A law enforcement agency that equips its officers with body worn cameras by the effective date of this act must establish policies regarding the use of the cameras. The policies must, at a minimum, address:

(1) When a body worn camera must be activated and deactivated, and when an officer has the discretion to activate and deactivate the body worn camera;

(2) Circumstances when a person may be unwilling to communicate with an officer who is recording the communication with a body worn camera; and

(3) How the officer will document when and why a body worn camera was deactivated prior to the conclusion of an interaction with a member of the public while conducting official law enforcement business.

NEW SECTION. **Sec.**  (1) The legislature shall convene a task force with the following voting members to examine law enforcement agencies' use of vehicle-mounted and body worn cameras:

(a) One member from each of the two largest caucuses of the senate, appointed by the president of the senate;

(b) One member from each of the two largest caucuses in the house of representatives, appointed by the speaker of the house of representatives;

(c) A representative from the governor's office;

(d) A representative from the Washington association of prosecuting attorneys;

(e) A representative of the Washington association of criminal defense lawyers;

(f) A representative from the American civil liberties union of Washington;

(g) A representative from the Washington association of sheriffs and police chiefs;

(h) A representative from the Washington coalition for open government;

(i) A representative from the Washington state commission on African American affairs;

(j) A representative from the Washington state commission on Asian Pacific American affairs;

(k) A representative from the Washington state commission on Hispanic affairs; and

(l) A citizen member.

(2) The task force shall choose two cochairs from among its legislative members.

(3) The task force shall undertake a thorough review of law enforcement agencies' use of vehicle-mounted and body worn cameras, including implications for police accountability, privacy, surveillance, and disproportionate impact, and make recommendations for a legislative framework that promotes police oversight while protecting privacy and limiting surveillance. The review shall include, but is not limited to:

(a) Appropriate requirements for law enforcement agencies' operation of vehicle-mounted and body worn cameras including, but not limited to, regulations for when recording devices may be turned on and turned off and notice and consent requirements for use of the cameras;

(b) Appropriate restrictions on the use of information collected from vehicle-mounted and body worn cameras; and

(c) Appropriate limitations on disclosure of information collected from vehicle-mounted and body worn cameras to the public.

(4) Staff support for the task force shall be provided by senate committee services and the house of representatives office of program research.

(5) Legislative members of the task force may be reimbursed for travel expenses in accordance with RCW 44.04.120. Nonlegislative members, except those representing an employer or organization, are entitled to be reimbursed for travel expenses as provided in RCW 43.03.050 and 43.03.060.

(6) The expenses of the task force shall be paid jointly by the senate and the house of representatives. Task force expenditures are subject to approval by the senate facilities and operations committee and the house executive rules committee, or their successor committees.

(7) The task force shall report its findings and recommendations to the governor and the appropriate committees of the legislature by December 1, 2015.

(8) This section expires June 1, 2016.

NEW SECTION. **Sec.**  Section 4 of this act constitutes a new chapter in Title 5 RCW.

NEW SECTION. **Sec.**  Section 5 of this act constitutes a new chapter in Title 10 RCW.

**--- END ---**