

SHB 1917 - H AMD 221

By Representative Hansen

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

3 "NEW SECTION. **Sec. 1.** The legislature finds that technological
4 developments present opportunities for additional truth-finding,
5 transparency, and accountability in interactions between law
6 enforcement or corrections officers and the public. The legislature
7 intends to promote transparency and accountability by permitting
8 individuals who interact with law enforcement or corrections officers
9 to access video and/or sound recordings of these interactions while
10 preserving the public's reasonable expectation that the recordings of
11 these interactions will not be publicly disclosed to enable voyeurism
12 or exploitation.

13 **Sec. 2.** RCW 42.56.240 and 2013 c 315 s 2, 2013 c 190 s 7, and
14 2013 c 183 s 1 are each reenacted and amended to read as follows:

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

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

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

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

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

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

16 (6) The statewide gang database referenced in RCW 43.43.762;

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

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

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

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

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

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

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

5 (13) Video and/or sound recordings made by body worn cameras
6 attached to the uniform of law enforcement or corrections officers
7 from covered jurisdictions while in the course of their official
8 duties, to the extent nondisclosure is essential for the protection
9 of any person's right to privacy, as described in RCW 42.56.050
10 including, but not limited to, the circumstances enumerated in (a) of
11 this subsection.

12 (a) Disclosure of a recording made by body worn cameras attached
13 to the uniform of law enforcement or corrections officers from
14 covered jurisdictions while in the course of their official duties is
15 presumed to be highly offensive to a reasonable person, under RCW
16 42.56.050, to the extent it depicts:

17 (i) The interior of a private residence;

18 (ii) Nudity or sexual activity; or

19 (iii) An identifiable minor.

20 (b) A person who prevails against a law enforcement or
21 corrections agency that withholds all or part of a video and/or sound
22 recording pursuant to (a) of this subsection shall not, in an action
23 in the court seeking the right to inspect or copy a video and/or
24 sound recording made pursuant to this subsection, be entitled to
25 fees, costs, or awards pursuant to RCW 42.56.550 unless it is shown
26 that the law enforcement or corrections agency acted in bad faith or
27 with negligence.

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

30 (d) A request for video and/or sound recordings made by body worn
31 cameras attached to the uniform of law enforcement or corrections
32 officers from covered jurisdictions while in the course of their
33 official duties must:

34 (i) Specifically identify a name of a person or persons involved;

35 (ii) Provide the incident or case number;

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

38 (iv) Identify a law enforcement or corrections officer involved
39 in an incident or incidents.

1 (e) A person directly involved in an incident recorded by the
2 requested video and/or sound recording, or an attorney representing a
3 person directly involved in an incident, has the right to obtain the
4 video and/or sound recording of an incident, subject to any exemption
5 under this chapter or any applicable law. Agencies responding to
6 requests under this subsection (13)(e) may not require the requesting
7 individual to pay costs of any redacting, altering, distorting,
8 pixelating, suppressing, or otherwise obscuring any portion of a
9 video and/or sound recording as allowed by (f) of this subsection. A
10 law enforcement or corrections agency may require any person
11 requesting a video and/or sound recording pursuant to this subsection
12 (13)(e) to identify himself or herself to ensure he or she is a
13 person directly involved in the incident recorded by the requested
14 video and/or sound recording or an attorney representing a person
15 directly involved in the incident.

16 (f) A law enforcement or corrections agency responding to a
17 request to disclose video and/or sound recordings made by body worn
18 cameras attached to the uniform of law enforcement or corrections
19 officers from covered jurisdictions while in the course of their
20 official duties may require any requester not directly involved in
21 the incident recorded by the requested video and/or sound recording,
22 or his or her lawyer, to pay the reasonable costs of redacting,
23 altering, distorting, pixelating, suppressing, or otherwise obscuring
24 any portion of the video and/or sound recording prior to disclosure
25 only to the extent necessary to comply with the exemptions in this
26 chapter or any applicable law.

27 (g) For purposes of this subsection, "covered jurisdiction" means
28 any jurisdiction that has deployed body worn cameras by the effective
29 date of this section.

30 (h) Nothing in this subsection shall be construed to restrict
31 access to video and/or sound recordings made by body worn cameras
32 from jurisdictions that have deployed body worn cameras as of the
33 effective date of this section as necessary for review by official
34 civilian and accountability bodies.

35 **Sec. 3.** RCW 42.56.080 and 2005 c 483 s 1 and 2005 c 274 s 285
36 are each reenacted and amended to read as follows:

37 Public records shall be available for inspection and copying, and
38 agencies shall, upon request for identifiable public records, make
39 them promptly available to any person including, if applicable, on a

1 partial or installment basis as records that are part of a larger set
2 of requested records are assembled or made ready for inspection or
3 disclosure. Agencies shall not deny a request for identifiable public
4 records solely on the basis that the request is overbroad. Agencies
5 shall not distinguish among persons requesting records, and such
6 persons shall not be required to provide information as to the
7 purpose for the request except to establish whether inspection and
8 copying would violate RCW 42.56.070(9) or 42.56.240(13), or other
9 statute which exempts or prohibits disclosure of specific information
10 or records to certain persons. Agency facilities shall be made
11 available to any person for the copying of public records except when
12 and to the extent that this would unreasonably disrupt the operations
13 of the agency. Agencies shall honor requests received by mail for
14 identifiable public records unless exempted by provisions of this
15 chapter.

16 **Sec. 4.** RCW 42.56.120 and 2005 c 483 s 2 are each amended to
17 read as follows:

18 No fee shall be charged for the inspection of public records(~~(-~~
19 ~~No fee shall be charged for~~) or locating public documents and making
20 them available for copying, except as provided in RCW 42.56.240(13).
21 A reasonable charge may be imposed for providing copies of public
22 records and for the use by any person of agency equipment or
23 equipment of the office of the secretary of the senate or the office
24 of the chief clerk of the house of representatives to copy public
25 records, which charges shall not exceed the amount necessary to
26 reimburse the agency, the office of the secretary of the senate, or
27 the office of the chief clerk of the house of representatives for its
28 actual costs directly incident to such copying. Agency charges for
29 photocopies shall be imposed in accordance with the actual per page
30 cost or other costs established and published by the agency. In no
31 event may an agency charge a per page cost greater than the actual
32 per page cost as established and published by the agency. To the
33 extent the agency has not determined the actual per page cost for
34 photocopies of public records, the agency may not charge in excess of
35 fifteen cents per page. An agency may require a deposit in an amount
36 not to exceed ten percent of the estimated cost of providing copies
37 for a request. If an agency makes a request available on a partial or
38 installment basis, the agency may charge for each part of the request
39 as it is provided. If an installment of a records request is not

1 claimed or reviewed, the agency is not obligated to fulfill the
2 balance of the request.

3 NEW SECTION. **Sec. 5.** A failure to record, maintain, or provide
4 video and/or sound recordings made by body worn cameras from
5 jurisdictions that have deployed body worn cameras as of the
6 effective date of this section may not be used to argue for
7 derivative suppression of any witness testimony as to the unrecorded
8 event, or any other evidence lawfully obtained.

9 NEW SECTION. **Sec. 6.** A law enforcement agency that deploys body
10 worn cameras by the effective date of this section must establish
11 policies regarding the use of the cameras. The policies must, at a
12 minimum, address:

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

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

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

23 NEW SECTION. **Sec. 7.** (1) The legislature shall convene a task
24 force with the following voting members to examine law enforcement
25 agencies' use of body worn cameras:

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

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

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

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

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

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

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

3 (h) Two chief local law enforcement officers representing local
4 law enforcement agencies that qualify as covered jurisdictions as
5 defined in RCW 42.56.240;

6 (i) Two chief local law enforcement officers representing local
7 law enforcement agencies that do not qualify as covered jurisdictions
8 as defined in RCW 42.56.240;

9 (j) A representative from the Washington coalition for open
10 government;

11 (k) A representative of the news media;

12 (l) A representative of victims advocacy groups;

13 (m) A representative from the Washington state commission on
14 African-American affairs;

15 (n) A representative from the Washington state commission on
16 Asian Pacific American affairs;

17 (o) A representative from the Washington state commission on
18 Hispanic affairs;

19 (p) A representative of the tribal communities; and

20 (q) A citizen member.

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

23 (3) The task force may request such information, recordings, and
24 other records from agencies as the task force deems appropriate for
25 it to effectuate this section. A participating agency must provide
26 such information, recordings, or records upon request subject to
27 exemptions under chapter 42.56 RCW or any applicable law.

28 (4) Staff support for the task force shall be provided by the
29 office of the chief information officer, with the assistance of the
30 senate committee services and the house of representatives office of
31 program research.

32 (5) Legislative members of the task force may be reimbursed for
33 travel expenses in accordance with RCW 44.04.120. Nonlegislative
34 members, except those representing an employer or organization, are
35 entitled to be reimbursed for travel expenses as provided in RCW
36 43.03.050 and 43.03.060.

37 (6) The expenses of the task force shall be paid jointly by the
38 senate and the house of representatives. Task force expenditures are
39 subject to approval by the senate facilities and operations committee

1 and the house executive rules committee, or their successor
2 committees.

3 (7) The task force shall report its findings and recommendations
4 to the governor and the appropriate committees of the legislature by
5 December 1, 2016. This report shall include, but is not limited to,
6 findings and recommendations regarding costs assessed to requesters,
7 policies adopted by agencies, retention and retrieval of data, and
8 the use of body worn cameras for gathering evidence and police
9 accountability.

10 (8) This section expires June 1, 2017.

11 NEW SECTION. **Sec. 8.** Section 2 of this act expires July 1,
12 2017.

13 NEW SECTION. **Sec. 9.** Section 5 of this act constitutes a new
14 chapter in Title 5 RCW.

15 NEW SECTION. **Sec. 10.** Section 6 of this act constitutes a new
16 chapter in Title 10 RCW."

17 Correct the title.

EFFECT: (1) This amendment reverts the privacy act to current law
by:

(a) Removing changes to the privacy act regarding procedures
related to vehicle-mounted cameras;

(b) Removing changes to the privacy act's wiretap provisions; and

(c) Moving the public records act (PRA) exemption for video
and/or sound recordings to the PRA.

(2) This amendment modifies the PRA exemptions created in the
original bill by:

(a) Applying the PRA exemption only to recordings made by body
worn cameras attached to the uniform of law enforcement or
corrections officers from jurisdictions that have deployed body
cameras as of the effective date of the section;

(b) Limiting the PRA exemption only to recordings that are (i)
highly offensive to a reasonable person and (ii) not of legitimate
concern to the public;

(c) Creating a presumption that recordings are highly offensive
to a reasonable person to the extent it depicts (i) the interior of a
private residence, (ii) nudity or sexual activity, or (iii) an
identifiable minor;

(d) Providing that a person who prevails against a law
enforcement or corrections agency in an action seeking the right to
inspect or copy a recording shall not be entitled to fees, costs, or
awards unless the law enforcement or corrections agency acted in bad
faith or with negligence;

(e) Requiring that requests for body worn cameras either (i)
identify the name of a person involved, (ii) provide an incident or

case number, (iii) provide the date, time, and location of an incident, or (iv) identify a law enforcement or corrections officer involved;

(f) Removing a requirement that a person directly involved with the incident who seeks disclosure of a recording certify under penalty of perjury that he or she does not intend to use the recording to harass, abuse, or threaten any other person on the recording;

(g) Removing a requirement that a person not involved with the incident who seeks disclosure of a recording obtain a court order showing that the privacy interests involved in the recording are substantially outweighed by the public interest;

(h) Allowing law enforcement or corrections agencies to require a person requesting a recording who is not directly involved in the incident to pay reasonable costs of redacting exempt information;

(i) Prohibiting law enforcement or corrections agencies from requiring a person directly involved in a recorded incident to pay the costs of redaction for that recording; and

(j) Expiring the PRA exemption for body worn cameras on July 1, 2017.

(3) This amendment modifies the task force created by this act by:

(a) Removing vehicle-mounted cameras from consideration of the task force;

(b) Adding members to the task force representing local law enforcement agencies, the news media, victim advocacy groups, and tribal communities;

(c) Requiring agencies to provide records to the task force as required to effectuate its purpose;

(d) Changing the date by which the task force must make its report from December 1, 2015, to December 1, 2016; and

(e) Modifying the requirements for the task force's report so that it must include, but not be limited to, findings and recommendations regarding costs assessed to requesters, policies adopted by agencies, retention and retrieval of data, and the use of body worn cameras for gathering evidence and police accountability.

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