

HB 2362 - H AMD 735

By Representative Hansen

ADOPTED 02/22/2016

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

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

14
15 **Sec. 2.** RCW 42.56.240 and 2015 c 224 s 3 and 2015 c 91 s 1 are
16 each reenacted and amended to read as follows:

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

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

26 (2) Information revealing the identity of persons who are
27 witnesses to or victims of crime or who file complaints with

1 investigative, law enforcement, or penology agencies, other than the
2 commission, if disclosure would endanger any person's life, physical
3 safety, or property. If at the time a complaint is filed the
4 complainant, victim, or witness indicates a desire for disclosure or
5 nondisclosure, such desire shall govern. However, all complaints
6 filed with the commission about any elected official or candidate
7 for public office must be made in writing and signed by the
8 complainant under oath;

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

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

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

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

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

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

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

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

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

14 (12) The following security threat group information collected
15 and maintained by the department of corrections pursuant to RCW
16 72.09.745: (a) Information that could lead to the identification of
17 a person's security threat group status, affiliation, or activities;
18 (b) information that reveals specific security threats associated
19 with the operation and activities of security threat groups; and (c)
20 information that identifies the number of security threat group
21 members, affiliates, or associates; (~~and~~)

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

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

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

1 (i) The interior of a place of residence where a person has a
2 reasonable expectation of privacy;
3 (ii) An intimate image as defined in RCW 9A.86.010;
4 (iii) A minor;
5 (iv) The identity of or communications from a victim or witness
6 of an incident involving domestic violence as defined in RCW
7 10.99.020 or sexual assault as defined in RCW 70.125.030, or
8 disclosure of intimate images as defined in RCW 9A.86.010. If at the
9 time of recording the victim or witness indicates a desire for
10 disclosure or nondisclosure of the recorded identity or
11 communications, such desire shall govern;
12 (v) The identifiable location information of a community-based
13 domestic violence program as defined in RCW 70.123.020, or emergency
14 shelter as defined in RCW 70.123.020; or
15 (vi) The waiting or treatment area of a medical facility, or
16 counseling or therapeutic program office.
17 (b) The presumptions set out in (a) of this subsection may be
18 rebutted by specific evidence in individual cases.
19 (c) In a court action seeking the right to inspect or copy a
20 body worn camera recording, a person who prevails against a law
21 enforcement or corrections agency that withholds or discloses all or
22 part of a body worn camera recording pursuant to (a) of this
23 subsection is not entitled to fees, costs, or awards pursuant to RCW
24 42.56.550 unless it is shown that the law enforcement or corrections
25 agency acted in bad faith or with gross negligence.
26 (d) A request for body worn camera recordings must:
27 (i) Specifically identify a name of a person or persons involved
28 in the incident;
29 (ii) Provide the incident or case number;
30 (iii) Provide the date, time, and location of the incident or
31 incidents; or
32 (iv) Identify a law enforcement or corrections officer involved
33 in the incident or incidents.
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1 (e) A person directly involved in an incident recorded by the
2 requested body worn camera recording, an attorney representing a
3 person directly involved in an incident recorded by the requested
4 body worn camera recording, a person or his or her attorney who
5 requests a body worn camera recording relevant to a criminal case
6 involving that person, or the executive director from either the
7 Washington state commission on African-American affairs, Asian
8 Pacific American affairs, or Hispanic affairs, has the right to
9 obtain the body worn camera recording, subject to any exemption
10 under this chapter or any applicable law. A law enforcement or
11 corrections agency responding to requests under this subsection
12 (14)(e) may not require the requesting individual to pay costs of
13 any redacting, altering, distorting, pixelating, suppressing, or
14 otherwise obscuring any portion of a body worn camera recording. A
15 law enforcement or corrections agency may require any person
16 requesting a body worn camera recording pursuant to this subsection
17 (14)(e) to identify himself or herself to ensure he or she is a
18 person entitled to obtain the body worn camera recording under this
19 subsection (14)(e).

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

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

28 (i) "Body worn camera recording" means a video and/or sound
29 recording that is made by a body worn camera attached to the uniform
30 or eyewear of a law enforcement or corrections officer from a
31 covered jurisdiction while in the course of his or her official
32 duties and that is made on or after the effective date of this
33 section and prior to July 1, 2019; and

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1 (ii) "Covered jurisdiction" means any jurisdiction that has
2 deployed body worn cameras as of the effective date of this section,
3 regardless of whether or not body worn cameras are being deployed in
4 the jurisdiction on the effective date of this section, including,
5 but not limited to, jurisdictions that have deployed body worn
6 cameras on a pilot basis.

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

11 (i) Nothing in this section is intended to modify the
12 obligations of prosecuting attorneys and law enforcement under *Brady*
13 *v. Maryland*, 373 U.S. 83, 83 S. Ct. 1194, 10 L. Ed. 2d 215 (1963),
14 *Kyles v. Whitley*, 541 U.S. 419, 115 S. Ct. 1555, 131 L. Ed.2d 490
15 (1995), and the relevant Washington court criminal rules and
16 statutes.

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

20 Public records shall be available for inspection and copying,
21 and agencies shall, upon request for identifiable public records,
22 make them promptly available to any person including, if applicable,
23 on a partial or installment basis as records that are part of a
24 larger set of requested records are assembled or made ready for
25 inspection or disclosure. Agencies shall not deny a request for
26 identifiable public records solely on the basis that the request is
27 overbroad. Agencies shall not distinguish among persons requesting
28 records, and such persons shall not be required to provide
29 information as to the purpose for the request except to establish
30 whether inspection and copying would violate RCW 42.56.070(9) or
31 42.56.240(14), or other statute which exempts or prohibits
32 disclosure of specific information or records to certain persons.
33 Agency facilities shall be made available to any person for the
34 copying of public records except when and to the extent that this

1 would unreasonably disrupt the operations of the agency. Agencies
2 shall honor requests received by mail for identifiable public
3 records unless exempted by provisions of this chapter.

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

7 No fee shall be charged for the inspection of public records(~~(-~~
8 ~~No fee shall be charged for~~) or locating public documents and
9 making them available for copying, except as provided in RCW
10 42.56.240(14). A reasonable charge may be imposed for providing
11 copies of public records and for the use by any person of agency
12 equipment or equipment of the office of the secretary of the senate
13 or the office of the chief clerk of the house of representatives to
14 copy public records, which charges shall not exceed the amount
15 necessary to reimburse the agency, the office of the secretary of
16 the senate, or the office of the chief clerk of the house of
17 representatives for its actual costs directly incident to such
18 copying. Agency charges for photocopies shall be imposed in
19 accordance with the actual per page cost or other costs established
20 and published by the agency. In no event may an agency charge a per
21 page cost greater than the actual per page cost as established and
22 published by the agency. To the extent the agency has not determined
23 the actual per page cost for photocopies of public records, the
24 agency may not charge in excess of fifteen cents per page. An agency
25 may require a deposit in an amount not to exceed ten percent of the
26 estimated cost of providing copies for a request. If an agency makes
27 a request available on a partial or installment basis, the agency
28 may charge for each part of the request as it is provided. If an
29 installment of a records request is not claimed or reviewed, the
30 agency is not obligated to fulfill the balance of the request.

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32 NEW SECTION. **Sec. 5.** (1) A law enforcement or corrections
33 agency that deploys body worn cameras must establish policies

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1 regarding the use of the cameras. The policies must, at a minimum,
2 address:

3 (a) When a body worn camera must be activated and deactivated,
4 and when a law enforcement or corrections officer has the discretion
5 to activate and deactivate the body worn camera;

6 (b) How a law enforcement or corrections officer is to respond
7 to circumstances when it would be reasonably anticipated that a
8 person may be unwilling or less willing to communicate with an
9 officer who is recording the communication with a body worn camera;

10 (c) How a law enforcement or corrections officer will document
11 when and why a body worn camera was deactivated prior to the
12 conclusion of an interaction with a member of the public while
13 conducting official law enforcement or corrections business;

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

19 (e) How officers are to be trained on body worn camera usage and
20 how frequently the training is to be reviewed or renewed; and

21 (f) Security rules to protect data collected and stored from
22 body worn cameras.

23 (2) A law enforcement or corrections agency that deploys body
24 worn cameras before the effective date of this section must
25 establish the policies within one hundred twenty days of the
26 effective date of this section. A law enforcement or corrections
27 agency that deploys body worn cameras on or after the effective date
28 of this section must establish the policies before deploying body
29 worn cameras.

30 (3) This section expires July 1, 2019.

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32 NEW SECTION. **Sec. 6.** (1) The legislature shall convene a task
33 force with the following voting members to examine the use of body
34 worn cameras by law enforcement and corrections agencies:

- 1 (a) One member from each of the two largest caucuses of the
2 senate, appointed by the president of the senate;
- 3 (b) One member from each of the two largest caucuses in the
4 house of representatives, appointed by the speaker of the house of
5 representatives;
- 6 (c) A representative from the governor's office;
- 7 (d) Two representatives from the Washington association of
8 prosecuting attorneys;
- 9 (e) A representative from the Washington defender association;
- 10 (f) A representative of the Washington association of criminal
11 defense lawyers;
- 12 (g) A representative from the American civil liberties union of
13 Washington;
- 14 (h) A representative from the Washington association of sheriffs
15 and police chiefs;
- 16 (i) Four chief local law enforcement officers, at least two of
17 whom must be from local law enforcement agencies that have deployed
18 body worn cameras, appointed jointly by the president of the senate
19 and the speaker of the house of representatives;
- 20 (j) Three law enforcement officers, one representing the council
21 of metropolitan police and sheriffs and two representing the
22 Washington council of police and sheriffs;
- 23 (k) Two representatives of local governments responsible for
24 oversight of law enforcement, appointed jointly by the president of
25 the senate and the speaker of the house of representatives;
- 26 (l) A representative from the Washington coalition for open
27 government;
- 28 (m) A representative of the news media, appointed jointly by the
29 president of the senate and the speaker of the house of
30 representatives;
- 31 (n) A representative of victims advocacy groups, appointed
32 jointly by the president of the senate and the speaker of the house
33 of representatives;
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1 (o) Two representatives with experience in interactions between
2 law enforcement and the public, appointed by the Washington state
3 commission on African-American affairs;

4 (p) Two representatives with experience in interactions between
5 law enforcement and the public, appointed by the Washington state
6 commission on Asian Pacific American affairs;

7 (q) Two representatives with experience in interactions between
8 law enforcement and the public, appointed by the Washington state
9 commission on Hispanic affairs;

10 (r) One representative of immigrant or refugee communities,
11 appointed jointly by the president of the senate and the speaker of
12 the house of representatives;

13 (s) One person with expertise in the technology of retaining and
14 redacting body worn camera recordings, appointed jointly by the
15 president of the senate and the speaker of the house of
16 representatives;

17 (t) Two representatives of the tribal communities with
18 experience in interactions between law enforcement and the public,
19 appointed jointly by the president of the senate and the speaker of
20 the house of representatives; and

21 (u) A public member, appointed jointly by the president of the
22 senate and the speaker of the house of representatives.

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

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

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

33 (5) Legislative members of the task force may be reimbursed for
34 travel expenses in accordance with RCW 44.04.120. Nonlegislative

1 members, except those representing an employer, governmental entity,
2 or other organization, are entitled to be reimbursed for travel
3 expenses as provided in RCW 43.03.050 and 43.03.060.

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

9 (7) The task force shall hold public meetings in locations that
10 include rural and urban communities and communities in the eastern
11 and western parts of the state.

12 (8) The task force shall specifically consider and report on the
13 use of body worn cameras in health care facilities subject to the
14 health insurance portability and accountability act of 1996, P.L.
15 104-191, and the uniform health care information act, chapter 70.02
16 RCW. The task force shall consult with subject matter experts,
17 including, but not limited to, the Washington state hospital
18 association and the Washington state medical association, and any
19 findings or recommendations must be consistent with the obligations
20 of health care facilities under both federal and state law.

21 (9) The task force shall report its findings and recommendations
22 to the governor and the appropriate committees of the legislature by
23 December 1, 2018. The report must include, but is not limited to,
24 findings and recommendations regarding costs assessed to requesters,
25 policies adopted by agencies, retention and retrieval of data, model
26 policies regarding body worn cameras that at a minimum address the
27 issues identified in section 5 of this act, and the use of body worn
28 cameras for gathering evidence, surveillance, and police
29 accountability. The task force must allow a minority report to be
30 included with the task force report if requested by a member of the
31 task force.

32 (10) This section expires June 1, 2019.

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1 NEW SECTION. **Sec. 7.** Section 5 of this act constitutes a new
2 chapter in Title 10 RCW."

EFFECT: The striking amendment makes the following changes:

Rewords a portion of the intent statement to indicate the intent is to permit access to recordings of interactions with officers, rather to permit individuals who interact with officers to have access to recordings.

Provides that the Public Records Act (PRA) provisions of the bill apply only to body worn camera recordings made by officers from law enforcement or corrections agencies that have deployed body worn cameras as of the effective date of the act, regardless of whether the cameras are being deployed on the effective date of the act, and including jurisdictions that have deployed the cameras on a pilot basis.

Extends the termination of the act by one year, so that the PRA provisions apply to body worn camera recordings made between the effective date of the act and July 1, 2019, the task force report is due by December 1, 2018, and the task force and body worn camera policies sections terminate in 2019 rather than 2018.

Revises the material that is presumed highly offensive to a reasonable person as follows:

- Replaces "nudity or sexual activity" with "intimate image" as defined in RCW 9A.86.010;
- Replaces "an identifiable or apparent minor" with "a minor;"
- Adds the identity of or communications from a victim or witness of an incident involving domestic violence or sexual assault. Provides that a victim's wishes regarding disclosure or nondisclosure govern if expressed at the time of recording;
- Adds the identifiable location information of a community-based domestic violence program or emergency shelter; and
- Limits the medical facility and counseling/therapeutic program presumption to the waiting or treatment areas, rather than the interior, of those facilities.

Provides that in an action where a person prevails against an agency that withholds or discloses recordings, the person is not entitled to fees, costs, and awards unless the agency acted with bad faith or gross negligence (instead of negligence).

Provides that nothing in the act is intended to modify law enforcement or prosecutor obligations under *Brady v. Maryland*, *Kyles v. Whitley*, or relevant statutes or court rules.

Provides that law enforcement agency policies on body worn cameras

must include: (1) how officers are to communicate the fact of recording with persons who are non-English speakers, deaf, or hard of hearing; (2) how officers are to be trained on body worn camera usage and how frequently the training must be renewed; and (3) security rules to protect data collected and stored from body worn cameras.

Adds the following additional members to the task force: (1) three law enforcement officers (instead of one), one representing the Council of Metropolitan Police and Sheriffs and two representing the Washington Council of Police and Sheriffs; (2) one representative of immigrant or refugee communities; (3) one additional representative of local governments; and (4) one person with expertise in the technology of retaining and redacting body camera recordings.

Requires the task force to hold public meetings in locations that include rural and urban communities and communities in the eastern and western part of the state.

Requires the task force to report recommendations on model policies regarding body worn cameras that at a minimum address the issues that are required by the bill to be addressed in body worn camera policies adopted by law enforcement or corrections agencies.

Requires the task force to consider and report on the use of body worn cameras in health care facilities subject to federal and state health care privacy laws, in consultation with subject matter experts, including the Washington State Hospital Association and the Washington State Medical Association.

Requires the task force to allow a minority report to be included with the task force report if requested by a member of the task force.

Removes the Office of the Chief Information Officer as the entity providing the main staff support for the task force, and provides that Senate Committee Services and Office of Program Research will staff the task force.

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