

EHB 2362 - S AMD 698
By Senator Padden

PULLED 03/03/2016

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 access to video and/or sound recordings of interactions with law
9 enforcement or corrections officers, while preserving the public's
10 reasonable expectation that the recordings of these interactions will
11 not be publicly disclosed to enable voyeurism or exploitation.

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

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

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

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

1 public office must be made in writing and signed by the complainant
2 under oath;

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

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

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

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

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

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

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

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

36 (11) The identity of a state employee or officer who has in good
37 faith filed a complaint with an ethics board, as provided in RCW
38 42.52.410, or who has in good faith reported improper governmental
39 action, as defined in RCW 42.40.020, to the auditor or other public
40 official, as defined in RCW 42.40.020;

1 (12) The following security threat group information collected
2 and maintained by the department of corrections pursuant to RCW
3 72.09.745: (a) Information that could lead to the identification of a
4 person's security threat group status, affiliation, or activities;
5 (b) information that reveals specific security threats associated
6 with the operation and activities of security threat groups; and (c)
7 information that identifies the number of security threat group
8 members, affiliates, or associates; (~~and~~)

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

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

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

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

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

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

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

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

34 (iii) An intimate image as defined in RCW 9A.86.010;

35 (iv) A minor;

36 (v) The body of a deceased person;

37 (vi) The identity of or communications from a victim or witness
38 of an incident involving domestic violence as defined in RCW
39 10.99.020 or sexual assault as defined in RCW 70.125.030, or
40 disclosure of intimate images as defined in RCW 9A.86.010. If at the

1 time of recording the victim or witness indicates a desire for
2 disclosure or nondisclosure of the recorded identity or
3 communications, such desire shall govern; or

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

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

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

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

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

19 (ii) Provide the incident or case number;

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

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

24 (e)(i) A person directly involved in an incident recorded by the
25 requested body worn camera recording, an attorney representing a
26 person directly involved in an incident recorded by the requested
27 body worn camera recording, a person or his or her attorney who
28 requests a body worn camera recording relevant to a criminal case
29 involving that person, or the executive director from either the
30 Washington state commission on African-American affairs, Asian
31 Pacific American affairs, or Hispanic affairs, has the right to
32 obtain the body worn camera recording, subject to any exemption under
33 this chapter or any applicable law. In addition, an attorney who
34 represents a person regarding a potential or existing civil cause of
35 action involving the denial of civil rights under the federal or
36 state Constitution, or a violation of a United States department of
37 justice settlement agreement, has the right to obtain the body worn
38 camera recording if relevant to the cause of action, subject to any
39 exemption under this chapter or any applicable law. The attorney must
40 explain the relevancy of the requested body worn camera recording to

1 the cause of action and specify that he or she is seeking relief from
2 redaction costs under this subsection (14)(e).

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

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

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

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

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

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

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

38 (ii) "Covered jurisdiction" means any jurisdiction that has
39 deployed body worn cameras as of the effective date of this section,
40 regardless of whether or not body worn cameras are being deployed in

1 the jurisdiction on the effective date of this section, including,
2 but not limited to, jurisdictions that have deployed body worn
3 cameras on a pilot basis.

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

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

13 (j) A law enforcement or corrections agency must retain body worn
14 camera recordings for at least sixty days and thereafter may destroy
15 the records.

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

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

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

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

25 NEW SECTION. **Sec. 5.** (1) A law enforcement or corrections
26 agency that deploys body worn cameras must establish policies
27 regarding the use of the cameras. The policies must, at a minimum,
28 address:

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

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

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

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

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

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

10 (2) A law enforcement or corrections agency that deploys body
11 worn cameras before the effective date of this section must establish
12 the policies within one hundred twenty days of the effective date of
13 this section. A law enforcement or corrections agency that deploys
14 body worn cameras on or after the effective date of this section must
15 establish the policies before deploying body worn cameras.

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

17 NEW SECTION. **Sec. 6.** For a city or town that is not deploying
18 body worn cameras on the effective date of this section, a
19 legislative authority of a city or town is strongly encouraged to
20 adopt an ordinance or resolution authorizing the use of body worn
21 cameras prior to their use by law enforcement or a corrections
22 agency. Any ordinance or resolution authorizing the use of body worn
23 cameras should identify a community involvement process for providing
24 input into the development of operational policies governing the use
25 of body worn cameras.

26 NEW SECTION. **Sec. 7.** (1) The legislature shall convene a task
27 force with the following voting members to examine the use of body
28 worn cameras by law enforcement and corrections agencies:

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

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

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

35 (d) Two representatives from the Washington association of
36 prosecuting attorneys;

37 (e) A representative from the Washington defender association;

- 1 (f) A representative of the Washington association of criminal
2 defense lawyers;
- 3 (g) A representative from the American civil liberties union of
4 Washington;
- 5 (h) A representative from the Washington association of sheriffs
6 and police chiefs;
- 7 (i) Four chief local law enforcement officers, at least two of
8 whom must be from local law enforcement agencies that have deployed
9 body worn cameras, appointed jointly by the president of the senate
10 and the speaker of the house of representatives;
- 11 (j) Three law enforcement officers, one representing the council
12 of metropolitan police and sheriffs and two representing the
13 Washington council of police and sheriffs;
- 14 (k) Two representatives of local governments responsible for
15 oversight of law enforcement, appointed jointly by the president of
16 the senate and the speaker of the house of representatives;
- 17 (l) A representative from the Washington coalition for open
18 government;
- 19 (m) A representative of the news media, appointed jointly by the
20 president of the senate and the speaker of the house of
21 representatives;
- 22 (n) A representative of victims advocacy groups, appointed
23 jointly by the president of the senate and the speaker of the house
24 of representatives;
- 25 (o) Two representatives with experience in interactions between
26 law enforcement and the public, appointed by the Washington state
27 commission on African-American affairs;
- 28 (p) Two representatives with experience in interactions between
29 law enforcement and the public, appointed by the Washington state
30 commission on Asian Pacific American affairs;
- 31 (q) Two representatives with experience in interactions between
32 law enforcement and the public, appointed by the Washington state
33 commission on Hispanic affairs;
- 34 (r) One representative of immigrant or refugee communities,
35 appointed jointly by the president of the senate and the speaker of
36 the house of representatives;
- 37 (s) One person with expertise in the technology of retaining and
38 redacting body worn camera recordings, appointed jointly by the
39 president of the senate and the speaker of the house of
40 representatives;

1 (t) Two representatives of the tribal communities with experience
2 in interactions between law enforcement and the public, appointed
3 jointly by the president of the senate and the speaker of the house
4 of representatives; and

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

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

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

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

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

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

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

30 (8) The task force shall specifically consider and report on the
31 use of body worn cameras in health care facilities subject to the
32 health insurance portability and accountability act of 1996, P.L.
33 104-191, and the uniform health care information act, chapter 70.02
34 RCW. The task force shall consult with subject matter experts,
35 including, but not limited to, the Washington state hospital
36 association and the Washington state medical association, and any
37 findings or recommendations must be consistent with the obligations
38 of health care facilities under both federal and state law.

39 (9) The task force shall report its findings and recommendations
40 to the governor and the appropriate committees of the legislature by

1 December 1, 2017. The report must include, but is not limited to,
2 findings and recommendations regarding costs assessed to requesters,
3 policies adopted by agencies, retention and retrieval of data, model
4 policies regarding body worn cameras that at a minimum address the
5 issues identified in section 5 of this act, and the use of body worn
6 cameras for gathering evidence, surveillance, and police
7 accountability. The task force must allow a minority report to be
8 included with the task force report if requested by a member of the
9 task force.

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

11 NEW SECTION. **Sec. 8.** Sections 5 and 6 of this act constitute a
12 new chapter in Title 10 RCW."

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13 On page 1, line 2 of the title, after "officers;" strike the
14 remainder of the title and insert "amending RCW 42.56.120; reenacting
15 and amending RCW 42.56.240 and 42.56.080; adding a new chapter to
16 Title 10 RCW; creating new sections; and providing expiration dates."

EFFECT: (1) The legislative authority of a city or town is strongly encouraged to adopt an ordinance authorizing the use of body cameras prior to their use.

(2) Requires a process for community input.

(3) Policies are not required to have an officer deactivate a body worn camera when entering a residence.

(4) Disclosure of a body camera recording is presumed to be highly offensive where the recording depicts a patient at a medical center for treatment, or protected health information.

(5) Changes the report date for the task force to 2017.

(6) Establishes a retention period of 60 days for body camera recordings.

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