
HOUSE BILL 1917

State of Washington 64th Legislature 2015 Regular Session

By Representatives Hansen, Pettigrew, Ortiz-Self, and Appleton

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1 AN ACT Relating to video and/or sound recordings made by law
2 enforcement or corrections officers; amending RCW 9.73.090;
3 reenacting and amending RCW 42.56.240; adding a new chapter to Title
4 5 RCW; and creating a new section.

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

6 NEW SECTION. **Sec. 1.** The legislature finds that technological
7 developments present opportunities for additional truth-finding,
8 transparency, and accountability in interactions between law
9 enforcement or corrections officer and the public. However, the
10 legislature wants to preserve the public's reasonable expectations of
11 privacy with respect to such interactions; although individuals
12 interacting with law enforcement or corrections officers carrying out
13 their official duties have no expectation that their right to privacy
14 prevents law enforcement or corrections officers from audio and/or
15 video recording their interaction, those individuals do not surrender
16 their right to privacy as it relates to the public records act. The
17 legislature intends to promote transparency and accountability by
18 permitting individuals who interact with law enforcement or
19 corrections officers to access the video and/or sound recordings of
20 these interactions while preserving the public's reasonable

1 expectation that the recordings of these interactions will not be
2 publicly disclosed to enable voyeurism or exploitation.

3 **Sec. 2.** RCW 9.73.090 and 2011 c 336 s 325 are each amended to
4 read as follows:

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

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

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

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

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

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

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

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

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

10 ~~A law enforcement officer shall inform any person being recorded~~
11 ~~by sound under this subsection (1)(c) that a sound recording is being~~
12 ~~made and the statement so informing the person shall be included in~~
13 ~~the sound recording, except that the law enforcement officer is not~~
14 ~~required to inform the person being recorded if the person is being~~
15 ~~recorded under exigent circumstances. A law enforcement officer is~~
16 ~~not required to inform a person being recorded by video under this~~
17 ~~subsection (1)(c) that the person is being recorded by video))~~
18 pursuant to chapter 42.56 RCW unless:

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

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

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

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

25 (I) A person directly involved in the incident recorded by the
26 requested video and/or sound recording or is an attorney representing
27 an individual directly involved in the incident recorded by the
28 requested video and/or sound; or

29 (II) Any other person upon a court order finding, by clear and
30 convincing evidence, that the public interest in the disclosure of
31 the video and/or sound recording significantly outweighs the privacy
32 interests of the person or persons whose image or sound is contained
33 in the recording.

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

39 (iii) Any person who requests and receives video and/or sound
40 recordings made under (b)(i) of this subsection is prohibited from

1 displaying or disclosing the video and/or sound recording to any
2 other person, including any description or account of any or all of
3 the recording, without first providing direct third-party notice to
4 each nonlaw enforcement or corrections officer whose image or sound
5 is contained in the recording and affording each person whose image
6 or sound is contained in the recording reasonable opportunity to
7 obtain an order from a court of competent jurisdiction to enjoin all
8 or some of the intended display, disclosure, description, or account
9 of the recording.

10 (iv) Any person who receives video and/or sound recordings under
11 this section who displays or discloses the recording to any other
12 person, including any description or account of any or all of the
13 recording, without first providing direct third-party notice to each
14 nonlaw enforcement or corrections officer whose image or sound is
15 contained in the recording and affording each person whose image or
16 sound is contained in the recording reasonable opportunity to obtain
17 an order from a court of competent jurisdiction to enjoin all or some
18 of the intended display, disclosure, description, or account of the
19 recording is subject to damages in a civil action pursuant to RCW
20 9.73.060.

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

25 (2) It shall not be unlawful for a law enforcement officer acting
26 in the performance of the officer's official duties to intercept,
27 record, or disclose ~~((an))~~ a private oral communication or
28 conversation ~~((where the officer is a party to the communication or~~
29 ~~conversation or one of the parties to the communication or~~
30 ~~conversation has given prior consent to the interception, recording,~~
31 ~~or disclosure))~~ in situations where the law enforcement officer's
32 presence is concealed to one or more parties to the private
33 communication or conversation: PROVIDED, That prior to the
34 interception, transmission, or recording the officer shall obtain
35 written or telephonic authorization from a judge or magistrate, who
36 shall approve the interception, recording, or disclosure of
37 communications or conversations with a nonconsenting party for a
38 reasonable and specified period of time, if there is probable cause
39 to believe that the nonconsenting party has committed, is engaged in,
40 or is about to commit a felony: PROVIDED HOWEVER, That if such

1 authorization is given by telephone the authorization and officer's
2 statement justifying such authorization must be electronically
3 recorded by the judge or magistrate on a recording device in the
4 custody of the judge or magistrate at the time transmitted and the
5 recording shall be retained in the court records and reduced to
6 writing as soon as possible thereafter.

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

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

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

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

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

1 presence of or participation in the communication or conversation by
2 any additional party not named in the authorization.

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

7 **Sec. 3.** RCW 42.56.240 and 2013 c 315 s 2, 2013 c 190 s 7, and
8 2013 c 183 s 1 are each reenacted and amended to read as follows:

9 The following investigative, law enforcement, and crime victim
10 information is exempt from public inspection and copying under this
11 chapter:

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

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

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

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

37 (5) Information revealing the identity of child victims of sexual
38 assault who are under age eighteen. Identifying information means the
39 child victim's name, address, location, photograph, and in cases in

1 which the child victim is a relative or stepchild of the alleged
2 perpetrator, identification of the relationship between the child and
3 the alleged perpetrator;

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

5 (7) Data from the electronic sales tracking system established in
6 RCW 69.43.165;

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

12 (9) Personally identifying information collected by law
13 enforcement agencies pursuant to local security alarm system programs
14 and vacation crime watch programs. Nothing in this subsection shall
15 be interpreted so as to prohibit the legal owner of a residence or
16 business from accessing information regarding his or her residence or
17 business; ~~((and))~~

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

20 (11) The identity of a state employee or officer who has in good
21 faith filed a complaint with an ethics board, as provided in RCW
22 42.52.410, or who has in good faith reported improper governmental
23 action, as defined in RCW 42.40.020, to the auditor or other public
24 official, as defined in RCW 42.40.020; ~~((and))~~

25 (12) The following security threat group information collected
26 and maintained by the department of corrections pursuant to RCW
27 72.09.745: (a) Information that could lead to the identification of a
28 person's security threat group status, affiliation, or activities;
29 (b) information that reveals specific security threats associated
30 with the operation and activities of security threat groups; and (c)
31 information that identifies the number of security threat group
32 members, affiliates, or associates; and

33 (13) Video and/or sound recordings made by law enforcement or
34 corrections officers while in the course of their official duties
35 pursuant to RCW 9.73.090.

36 NEW SECTION. **Sec. 4.** A failure to record, maintain, or provide
37 video and/or sound recordings made pursuant to RCW 9.73.090 may not
38 be used to argue for derivative suppression of any witness testimony
39 as to the unrecorded event, or any other evidence lawfully obtained.

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

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