

---

HOUSE BILL 2700

---

State of Washington

65th Legislature

2018 Regular Session

By Representatives Valdez, Smith, Stonier, Sawyer, Jinkins, Ortiz-Self, and Kagi

Read first time 01/12/18. Referred to Committee on Early Learning & Human Services.

1 AN ACT Relating to the handling of child forensic interview and  
2 child interview digital recordings; amending RCW 26.44.020,  
3 26.44.020, and 26.44.185; reenacting and amending RCW 42.56.240;  
4 adding new sections to chapter 26.44 RCW; prescribing penalties;  
5 providing an effective date; and providing an expiration date.

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

7 NEW SECTION. **Sec. 1.** A new section is added to chapter 26.44  
8 RCW to read as follows:

9 The legislature recognizes an inherent privacy interest that a  
10 child has with respect to the child's recorded voice and image when  
11 describing the highly sensitive details of abuse or neglect upon the  
12 child as defined in RCW 26.44.020. The legislature further finds that  
13 reasonable restrictions on the dissemination of these recordings can  
14 accommodate both privacy interests and due process. To that end, the  
15 legislature intends to exempt these recordings from dissemination  
16 under the public records act and provide additional sanction  
17 authority for violations of protective orders that set forth such  
18 terms and conditions as are necessary to protect the privacy of the  
19 child.

1       **Sec. 2.** RCW 26.44.020 and 2012 c 259 s 1 are each amended to  
2 read as follows:

3       The definitions in this section apply throughout this chapter  
4 unless the context clearly requires otherwise.

5       (1) "Abuse or neglect" means sexual abuse, sexual exploitation,  
6 or injury of a child by any person under circumstances which cause  
7 harm to the child's health, welfare, or safety, excluding conduct  
8 permitted under RCW 9A.16.100; or the negligent treatment or  
9 maltreatment of a child by a person responsible for or providing care  
10 to the child. An abused child is a child who has been subjected to  
11 child abuse or neglect as defined in this section.

12       (2) "Child" or "children" means any person under the age of  
13 eighteen years of age.

14       (3) "Child protective services" means those services provided by  
15 the department designed to protect children from child abuse and  
16 neglect and safeguard such children from future abuse and neglect,  
17 and conduct investigations of child abuse and neglect reports.  
18 Investigations may be conducted regardless of the location of the  
19 alleged abuse or neglect. Child protective services includes referral  
20 to services to ameliorate conditions that endanger the welfare of  
21 children, the coordination of necessary programs and services  
22 relevant to the prevention, intervention, and treatment of child  
23 abuse and neglect, and services to children to ensure that each child  
24 has a permanent home. In determining whether protective services  
25 should be provided, the department shall not decline to provide such  
26 services solely because of the child's unwillingness or developmental  
27 inability to describe the nature and severity of the abuse or  
28 neglect.

29       (4) "Child protective services section" means the child  
30 protective services section of the department.

31       (5) "Children's advocacy center" means a child-focused facility  
32 in good standing with the state chapter for children's advocacy  
33 centers and that coordinates a multidisciplinary process for the  
34 investigation, prosecution, and treatment of sexual and other types  
35 of child abuse. Children's advocacy centers provide a location for  
36 forensic interviews and coordinate access to services such as, but  
37 not limited to, medical evaluations, advocacy, therapy, and case  
38 review by multidisciplinary teams within the context of county  
39 protocols as defined in RCW 26.44.180 and 26.44.185.

1 (6) "Clergy" means any regularly licensed or ordained minister,  
2 priest, or rabbi of any church or religious denomination, whether  
3 acting in an individual capacity or as an employee or agent of any  
4 public or private organization or institution.

5 (7) "Court" means the superior court of the state of Washington,  
6 juvenile department.

7 (8) "Department" means the state department of social and health  
8 services.

9 (9) "Family assessment" means a comprehensive assessment of child  
10 safety, risk of subsequent child abuse or neglect, and family  
11 strengths and needs that is applied to a child abuse or neglect  
12 report. Family assessment does not include a determination as to  
13 whether child abuse or neglect occurred, but does determine the need  
14 for services to address the safety of the child and the risk of  
15 subsequent maltreatment.

16 (10) "Family assessment response" means a way of responding to  
17 certain reports of child abuse or neglect made under this chapter  
18 using a differential response approach to child protective services.  
19 The family assessment response shall focus on the safety of the  
20 child, the integrity and preservation of the family, and shall assess  
21 the status of the child and the family in terms of risk of abuse and  
22 neglect including the parent's or guardian's or other caretaker's  
23 capacity and willingness to protect the child and, if necessary, plan  
24 and arrange the provision of services to reduce the risk and  
25 otherwise support the family. No one is named as a perpetrator, and  
26 no investigative finding is entered in the record as a result of a  
27 family assessment.

28 (11) "Founded" means the determination following an investigation  
29 by the department that, based on available information, it is more  
30 likely than not that child abuse or neglect did occur.

31 (12) "Inconclusive" means the determination following an  
32 investigation by the department, prior to October 1, 2008, that based  
33 on available information a decision cannot be made that more likely  
34 than not, child abuse or neglect did or did not occur.

35 (13) "Institution" means a private or public hospital or any  
36 other facility providing medical diagnosis, treatment, or care.

37 (14) "Law enforcement agency" means the police department, the  
38 prosecuting attorney, the state patrol, the director of public  
39 safety, or the office of the sheriff.

1 (15) "Malice" or "maliciously" means an intent, wish, or design  
2 to intimidate, annoy, or injure another person. Such malice may be  
3 inferred from an act done in willful disregard of the rights of  
4 another, or an act wrongfully done without just cause or excuse, or  
5 an act or omission of duty betraying a willful disregard of social  
6 duty.

7 (16) "Negligent treatment or maltreatment" means an act or a  
8 failure to act, or the cumulative effects of a pattern of conduct,  
9 behavior, or inaction, that evidences a serious disregard of  
10 consequences of such magnitude as to constitute a clear and present  
11 danger to a child's health, welfare, or safety, including but not  
12 limited to conduct prohibited under RCW 9A.42.100. When considering  
13 whether a clear and present danger exists, evidence of a parent's  
14 substance abuse as a contributing factor to negligent treatment or  
15 maltreatment shall be given great weight. The fact that siblings  
16 share a bedroom is not, in and of itself, negligent treatment or  
17 maltreatment. Poverty, homelessness, or exposure to domestic violence  
18 as defined in RCW 26.50.010 that is perpetrated against someone other  
19 than the child does not constitute negligent treatment or  
20 maltreatment in and of itself.

21 (17) "Pharmacist" means any registered pharmacist under chapter  
22 18.64 RCW, whether acting in an individual capacity or as an employee  
23 or agent of any public or private organization or institution.

24 (18) "Practitioner of the healing arts" or "practitioner" means a  
25 person licensed by this state to practice podiatric medicine and  
26 surgery, optometry, chiropractic, nursing, dentistry, osteopathic  
27 medicine and surgery, or medicine and surgery or to provide other  
28 health services. The term "practitioner" includes a duly accredited  
29 Christian Science practitioner. A person who is being furnished  
30 Christian Science treatment by a duly accredited Christian Science  
31 practitioner will not be considered, for that reason alone, a  
32 neglected person for the purposes of this chapter.

33 (19) "Professional school personnel" include, but are not limited  
34 to, teachers, counselors, administrators, child care facility  
35 personnel, and school nurses.

36 (20) "Psychologist" means any person licensed to practice  
37 psychology under chapter 18.83 RCW, whether acting in an individual  
38 capacity or as an employee or agent of any public or private  
39 organization or institution.

1 (21) "Screened-out report" means a report of alleged child abuse  
2 or neglect that the department has determined does not rise to the  
3 level of a credible report of abuse or neglect and is not referred  
4 for investigation.

5 (22) "Sexual exploitation" includes: (a) Allowing, permitting, or  
6 encouraging a child to engage in prostitution by any person; or (b)  
7 allowing, permitting, encouraging, or engaging in the obscene or  
8 pornographic photographing, filming, or depicting of a child by any  
9 person.

10 (23) "Sexually aggressive youth" means a child who is defined in  
11 RCW 74.13.075(1)(b) as being a sexually aggressive youth.

12 (24) "Social service counselor" means anyone engaged in a  
13 professional capacity during the regular course of employment in  
14 encouraging or promoting the health, welfare, support, or education  
15 of children, or providing social services to adults or families,  
16 including mental health, drug and alcohol treatment, and domestic  
17 violence programs, whether in an individual capacity, or as an  
18 employee or agent of any public or private organization or  
19 institution.

20 (25) "Supervising agency" means an agency licensed by the state  
21 under RCW 74.15.090 or an Indian tribe under RCW 74.15.190 that has  
22 entered into a performance-based contract with the department to  
23 provide child welfare services.

24 (26) "Unfounded" means the determination following an  
25 investigation by the department that available information indicates  
26 that, more likely than not, child abuse or neglect did not occur, or  
27 that there is insufficient evidence for the department to determine  
28 whether the alleged child abuse did or did not occur.

29 (27) "Child forensic interview" means a developmentally sensitive  
30 and legally sound method of gathering factual information regarding  
31 allegations of abuse or exposure to violence. This interview is  
32 conducted by a competently trained, neutral professional utilizing  
33 techniques informed by research and best practice as part of a larger  
34 investigative process. A child forensic interview digital recording  
35 and recordings of other child interviews that depict or describe  
36 allegations of abuse or exposure to violence are exempt from  
37 disclosure under the public records act, chapter 42.56 RCW, except by  
38 court order upon a showing of good cause and only with advance notice  
39 to the child's guardian.

1       **Sec. 3.** RCW 26.44.020 and 2017 3rd sp.s. c 6 s 321 are each  
2 amended to read as follows:

3       The definitions in this section apply throughout this chapter  
4 unless the context clearly requires otherwise.

5       (1) "Abuse or neglect" means sexual abuse, sexual exploitation,  
6 or injury of a child by any person under circumstances which cause  
7 harm to the child's health, welfare, or safety, excluding conduct  
8 permitted under RCW 9A.16.100; or the negligent treatment or  
9 maltreatment of a child by a person responsible for or providing care  
10 to the child. An abused child is a child who has been subjected to  
11 child abuse or neglect as defined in this section.

12       (2) "Child" or "children" means any person under the age of  
13 eighteen years of age.

14       (3) "Child protective services" means those services provided by  
15 the department designed to protect children from child abuse and  
16 neglect and safeguard such children from future abuse and neglect,  
17 and conduct investigations of child abuse and neglect reports.  
18 Investigations may be conducted regardless of the location of the  
19 alleged abuse or neglect. Child protective services includes referral  
20 to services to ameliorate conditions that endanger the welfare of  
21 children, the coordination of necessary programs and services  
22 relevant to the prevention, intervention, and treatment of child  
23 abuse and neglect, and services to children to ensure that each child  
24 has a permanent home. In determining whether protective services  
25 should be provided, the department shall not decline to provide such  
26 services solely because of the child's unwillingness or developmental  
27 inability to describe the nature and severity of the abuse or  
28 neglect.

29       (4) "Child protective services section" means the child  
30 protective services section of the department.

31       (5) "Children's advocacy center" means a child-focused facility  
32 in good standing with the state chapter for children's advocacy  
33 centers and that coordinates a multidisciplinary process for the  
34 investigation, prosecution, and treatment of sexual and other types  
35 of child abuse. Children's advocacy centers provide a location for  
36 forensic interviews and coordinate access to services such as, but  
37 not limited to, medical evaluations, advocacy, therapy, and case  
38 review by multidisciplinary teams within the context of county  
39 protocols as defined in RCW 26.44.180 and 26.44.185.

1 (6) "Clergy" means any regularly licensed or ordained minister,  
2 priest, or rabbi of any church or religious denomination, whether  
3 acting in an individual capacity or as an employee or agent of any  
4 public or private organization or institution.

5 (7) "Court" means the superior court of the state of Washington,  
6 juvenile department.

7 (8) "Department" means the department of children, youth, and  
8 families.

9 (9) "Family assessment" means a comprehensive assessment of child  
10 safety, risk of subsequent child abuse or neglect, and family  
11 strengths and needs that is applied to a child abuse or neglect  
12 report. Family assessment does not include a determination as to  
13 whether child abuse or neglect occurred, but does determine the need  
14 for services to address the safety of the child and the risk of  
15 subsequent maltreatment.

16 (10) "Family assessment response" means a way of responding to  
17 certain reports of child abuse or neglect made under this chapter  
18 using a differential response approach to child protective services.  
19 The family assessment response shall focus on the safety of the  
20 child, the integrity and preservation of the family, and shall assess  
21 the status of the child and the family in terms of risk of abuse and  
22 neglect including the parent's or guardian's or other caretaker's  
23 capacity and willingness to protect the child and, if necessary, plan  
24 and arrange the provision of services to reduce the risk and  
25 otherwise support the family. No one is named as a perpetrator, and  
26 no investigative finding is entered in the record as a result of a  
27 family assessment.

28 (11) "Founded" means the determination following an investigation  
29 by the department that, based on available information, it is more  
30 likely than not that child abuse or neglect did occur.

31 (12) "Inconclusive" means the determination following an  
32 investigation by the department of social and health services, prior  
33 to October 1, 2008, that based on available information a decision  
34 cannot be made that more likely than not, child abuse or neglect did  
35 or did not occur.

36 (13) "Institution" means a private or public hospital or any  
37 other facility providing medical diagnosis, treatment, or care.

38 (14) "Law enforcement agency" means the police department, the  
39 prosecuting attorney, the state patrol, the director of public  
40 safety, or the office of the sheriff.

1 (15) "Malice" or "maliciously" means an intent, wish, or design  
2 to intimidate, annoy, or injure another person. Such malice may be  
3 inferred from an act done in willful disregard of the rights of  
4 another, or an act wrongfully done without just cause or excuse, or  
5 an act or omission of duty betraying a willful disregard of social  
6 duty.

7 (16) "Negligent treatment or maltreatment" means an act or a  
8 failure to act, or the cumulative effects of a pattern of conduct,  
9 behavior, or inaction, that evidences a serious disregard of  
10 consequences of such magnitude as to constitute a clear and present  
11 danger to a child's health, welfare, or safety, including but not  
12 limited to conduct prohibited under RCW 9A.42.100. When considering  
13 whether a clear and present danger exists, evidence of a parent's  
14 substance abuse as a contributing factor to negligent treatment or  
15 maltreatment shall be given great weight. The fact that siblings  
16 share a bedroom is not, in and of itself, negligent treatment or  
17 maltreatment. Poverty, homelessness, or exposure to domestic violence  
18 as defined in RCW 26.50.010 that is perpetrated against someone other  
19 than the child does not constitute negligent treatment or  
20 maltreatment in and of itself.

21 (17) "Pharmacist" means any registered pharmacist under chapter  
22 18.64 RCW, whether acting in an individual capacity or as an employee  
23 or agent of any public or private organization or institution.

24 (18) "Practitioner of the healing arts" or "practitioner" means a  
25 person licensed by this state to practice podiatric medicine and  
26 surgery, optometry, chiropractic, nursing, dentistry, osteopathic  
27 medicine and surgery, or medicine and surgery or to provide other  
28 health services. The term "practitioner" includes a duly accredited  
29 Christian Science practitioner. A person who is being furnished  
30 Christian Science treatment by a duly accredited Christian Science  
31 practitioner will not be considered, for that reason alone, a  
32 neglected person for the purposes of this chapter.

33 (19) "Professional school personnel" include, but are not limited  
34 to, teachers, counselors, administrators, child care facility  
35 personnel, and school nurses.

36 (20) "Psychologist" means any person licensed to practice  
37 psychology under chapter 18.83 RCW, whether acting in an individual  
38 capacity or as an employee or agent of any public or private  
39 organization or institution.



1 (21) "Screened-out report" means a report of alleged child abuse  
2 or neglect that the department has determined does not rise to the  
3 level of a credible report of abuse or neglect and is not referred  
4 for investigation.

5 (22) "Sexual exploitation" includes: (a) Allowing, permitting, or  
6 encouraging a child to engage in prostitution by any person; or (b)  
7 allowing, permitting, encouraging, or engaging in the obscene or  
8 pornographic photographing, filming, or depicting of a child by any  
9 person.

10 (23) "Sexually aggressive youth" means a child who is defined in  
11 RCW 74.13.075(1)(b) as being a sexually aggressive youth.

12 (24) "Social service counselor" means anyone engaged in a  
13 professional capacity during the regular course of employment in  
14 encouraging or promoting the health, welfare, support, or education  
15 of children, or providing social services to adults or families,  
16 including mental health, drug and alcohol treatment, and domestic  
17 violence programs, whether in an individual capacity, or as an  
18 employee or agent of any public or private organization or  
19 institution.

20 (25) "Supervising agency" means an agency licensed by the state  
21 under RCW 74.15.090 or an Indian tribe under RCW 74.15.190 that has  
22 entered into a performance-based contract with the department to  
23 provide child welfare services.

24 (26) "Unfounded" means the determination following an  
25 investigation by the department that available information indicates  
26 that, more likely than not, child abuse or neglect did not occur, or  
27 that there is insufficient evidence for the department to determine  
28 whether the alleged child abuse did or did not occur.

29 (27) "Child forensic interview" means a developmentally sensitive  
30 and legally sound method of gathering factual information regarding  
31 allegations of abuse or exposure to violence. This interview is  
32 conducted by a competently trained, neutral professional utilizing  
33 techniques informed by research and best practice as part of a larger  
34 investigative process. A child forensic interview digital recording  
35 and recordings of other child interviews that depict or describe  
36 allegations of abuse or exposure to violence are exempt from  
37 disclosure under the public records act, chapter 42.56 RCW, except by  
38 court order upon a showing of good cause and only with advance notice  
39 to the child's guardian.

1       **Sec. 4.** RCW 26.44.185 and 2010 c 176 s 3 are each amended to  
2 read as follows:

3       (1) Each county shall revise and expand its existing child sexual  
4 abuse investigation protocol to address investigations of child  
5 fatality, child physical abuse, and criminal child neglect cases and  
6 to incorporate the statewide guidelines for first responders to child  
7 fatalities developed by the criminal justice training commission. The  
8 protocols shall address the coordination of child fatality, child  
9 physical abuse, and criminal child neglect investigations between the  
10 county and city prosecutor's offices, law enforcement, children's  
11 protective services, children's advocacy centers, where available,  
12 local advocacy groups, emergency medical services, and any other  
13 local agency involved in the investigation of such cases. The  
14 protocol shall include the handling of child forensic interview  
15 digital recordings in accordance with section 5 of this act. The  
16 protocol revision and expansion shall be developed by the prosecuting  
17 attorney in collaboration with the agencies referenced in this  
18 section.

19       (2) Revised and expanded protocols under this section shall be  
20 adopted and in place by July 1, 2008. Thereafter, the protocols shall  
21 be reviewed every two years to determine whether modifications are  
22 needed.

23       NEW SECTION. **Sec. 5.** A new section is added to chapter 26.44  
24 RCW to read as follows:

25       Any digital recording of a child forensic interview or child  
26 interview that is disclosed in a criminal or civil proceeding is  
27 subject to a protective order, or other such order as appropriate.  
28 The court issuing the protective order shall provide: (1) That the  
29 recording be used only for the purposes of conducting the party's  
30 side of the case, unless otherwise agreed by the parties or ordered  
31 by the court; (2) that the recording not be copied, photographed,  
32 duplicated, or otherwise reproduced; (3) that the recording not be  
33 given, displayed, or in any way provided to a third party, except as  
34 permitted in subsection (4) of this section or as necessary at trial;  
35 (4) that the recording remain in the exclusive custody of the  
36 attorneys, their employees, or agents, including expert witnesses  
37 retained by either party, who shall be provided a copy of the  
38 protective order; and (5) that upon termination of representation or  
39 upon disposition of the matter at the trial court level, defense

1 counsel promptly return all copies of the recording. A violation of a  
2 court order is subject to a civil penalty of up to ten thousand  
3 dollars, in addition to any other appropriate sanction by the court.

4 **Sec. 6.** RCW 42.56.240 and 2017 c 261 s 7 and 2017 c 72 s 3 are  
5 each reenacted and amended to read as follows:

6 The following investigative, law enforcement, and crime victim  
7 information is exempt from public inspection and copying under this  
8 chapter:

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

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

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

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

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

1 (6) Information contained in a local or regionally maintained  
2 gang database as well as the statewide gang database referenced in  
3 RCW 43.43.762;

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

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

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

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

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

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

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

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

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

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

6 (I) A patient is registered to receive treatment, receiving  
7 treatment, waiting for treatment, or being transported in the course  
8 of treatment; or

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

11 (B) Information that meets the definition of protected health  
12 information for purposes of the health insurance portability and  
13 accountability act of 1996 or health care information for purposes of  
14 chapter 70.02 RCW;

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

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

18 (iv) A minor;

19 (v) The body of a deceased person;

20 (vi) The identity of or communications from a victim or witness  
21 of an incident involving domestic violence as defined in RCW  
22 10.99.020 or sexual assault as defined in RCW 70.125.030, or  
23 disclosure of intimate images as defined in RCW 9A.86.010. If at the  
24 time of recording the victim or witness indicates a desire for  
25 disclosure or nondisclosure of the recorded identity or  
26 communications, such desire shall govern; or

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

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

32 (c) In a court action seeking the right to inspect or copy a body  
33 worn camera recording, a person who prevails against a law  
34 enforcement or corrections agency that withholds or discloses all or  
35 part of a body worn camera recording pursuant to (a) of this  
36 subsection is not entitled to fees, costs, or awards pursuant to RCW  
37 42.56.550 unless it is shown that the law enforcement or corrections  
38 agency acted in bad faith or with gross negligence.

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

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

3 (ii) Provide the incident or case number;

4 (iii) Provide the date, time, and location of the incident or  
5 incidents; or

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

8 (e)(i) A person directly involved in an incident recorded by the  
9 requested body worn camera recording, an attorney representing a  
10 person directly involved in an incident recorded by the requested  
11 body worn camera recording, a person or his or her attorney who  
12 requests a body worn camera recording relevant to a criminal case  
13 involving that person, or the executive director from either the  
14 Washington state commission on African-American affairs, Asian  
15 Pacific American affairs, or Hispanic affairs, has the right to  
16 obtain the body worn camera recording, subject to any exemption under  
17 this chapter or any applicable law. In addition, an attorney who  
18 represents a person regarding a potential or existing civil cause of  
19 action involving the denial of civil rights under the federal or  
20 state Constitution, or a violation of a United States department of  
21 justice settlement agreement, has the right to obtain the body worn  
22 camera recording if relevant to the cause of action, subject to any  
23 exemption under this chapter or any applicable law. The attorney must  
24 explain the relevancy of the requested body worn camera recording to  
25 the cause of action and specify that he or she is seeking relief from  
26 redaction costs under this subsection (14)(e).

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

32 (iii) A law enforcement or corrections agency may require any  
33 person requesting a body worn camera recording pursuant to this  
34 subsection (14)(e) to identify himself or herself to ensure he or she  
35 is a person entitled to obtain the body worn camera recording under  
36 this subsection (14)(e).

37 (f)(i) A law enforcement or corrections agency responding to a  
38 request to disclose body worn camera recordings may require any  
39 requester not listed in (e) of this subsection to pay the reasonable  
40 costs of redacting, altering, distorting, pixelating, suppressing, or

1 otherwise obscuring any portion of the body worn camera recording  
2 prior to disclosure only to the extent necessary to comply with the  
3 exemptions in this chapter or any applicable law.

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

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

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

16 (i) "Body worn camera recording" means a video and/or sound  
17 recording that is made by a body worn camera attached to the uniform  
18 or eyewear of a law enforcement or corrections officer from a covered  
19 jurisdiction while in the course of his or her official duties and  
20 that is made on or after June 9, 2016, and prior to July 1, 2019; and

21 (ii) "Covered jurisdiction" means any jurisdiction that has  
22 deployed body worn cameras as of June 9, 2016, regardless of whether  
23 or not body worn cameras are being deployed in the jurisdiction on  
24 June 9, 2016, including, but not limited to, jurisdictions that have  
25 deployed body worn cameras on a pilot basis.

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

30 (i) Nothing in this section is intended to modify the obligations  
31 of prosecuting attorneys and law enforcement under *Brady v. Maryland*,  
32 373 U.S. 83, 83 S. Ct. 1194, 10 L. Ed. 2d 215 (1963), *Kyles v.*  
33 *Whitley*, 541 U.S. 419, 115 S. Ct. 1555, 131 L. Ed.2d 490 (1995), and  
34 the relevant Washington court criminal rules and statutes.

35 (j) A law enforcement or corrections agency must retain body worn  
36 camera recordings for at least sixty days and thereafter may destroy  
37 the records;

38 (15) Any records and information contained within the statewide  
39 sexual assault kit tracking system established in RCW 43.43.545;  
40 ((and))

1 (16)(a) Survivor communications with, and survivor records  
2 maintained by, campus-affiliated advocates.

3 (b) Nothing in this subsection shall be construed to restrict  
4 access to records maintained by a campus-affiliated advocate in the  
5 event that:

6 (i) The survivor consents to inspection or copying;

7 (ii) There is a clear, imminent risk of serious physical injury  
8 or death of the survivor or another person;

9 (iii) Inspection or copying is required by federal law; or

10 (iv) A court of competent jurisdiction mandates that the record  
11 be available for inspection or copying.

12 (c) "Campus-affiliated advocate" and "survivor" have the  
13 definitions in RCW 28B.112.030; (~~and~~)

14 (17) Information and records prepared, owned, used, or retained  
15 by the Washington association of sheriffs and police chiefs and  
16 information and records prepared, owned, used, or retained by the  
17 Washington state patrol pursuant to chapter 261, Laws of 2017; and

18 (18) Any recording of a child forensic interview digital  
19 recording or recording of other child interview that depicts or  
20 describes allegations of abuse or exposure to violence, except by  
21 court order upon a showing of good cause and only with advance notice  
22 to the child's guardian.

23 NEW SECTION. Sec. 7. Section 2 of this act expires July 1,  
24 2018.

25 NEW SECTION. Sec. 8. Section 3 of this act takes effect July 1,  
26 2018.

--- END ---