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SENATE BILL 5764

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State of Washington                      65th Legislature                      2017 Regular Session

By Senators Wellman, Hasegawa, and Rolfes

Read first time 02/08/17. Referred to Committee on Higher Education.

1            AN ACT Relating to higher education records; reenacting and  
2 amending RCW 42.56.240; adding a new section to chapter 28B.112 RCW;  
3 adding a new section to chapter 28B.10 RCW; and creating a new  
4 section.

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

6            NEW SECTION.    **Sec. 1.**    The legislature finds that the state,  
7 along with the federal government and the state's public colleges and  
8 universities, plays an important role in protecting college students  
9 on and off campus from violence, including sexual assault. This role  
10 includes protecting students from repeat offenders and ensuring that  
11 survivors can trust that their college or university has education  
12 record protocols that prioritize their safety on and off campus.

13            The legislature commends the final report produced by the task  
14 force established by Substitute Senate Bill No. 5719 in 2015. The  
15 task force brought together experts across a range of fields to  
16 highlight ways in which both institutions of higher education and the  
17 state can enact stronger policies around the issue of campus sexual  
18 assault. As representatives of our state's public colleges and  
19 universities said two years ago, this subject needs to be a high  
20 priority for the state and existing state law has gaps that need to  
21 be fixed. Therefore, the legislature intends to enact changes based

1 on several recommendations contained within the report to the  
2 legislature.

3 NEW SECTION. **Sec. 2.** A new section is added to chapter 28B.112  
4 RCW to read as follows:

5 (1) Survivor communications with, and records maintained by,  
6 campus-affiliated advocates, shall be confidential.

7 (2) Records maintained by a campus-affiliated advocate are not  
8 subject to public inspection and copying and are not subject to  
9 inspection or copying by an institution of higher education unless:

10 (a) The survivor consents to inspection or copying;

11 (b) There is a clear, imminent risk of serious physical injury or  
12 death of the survivor or another person;

13 (c) Inspection or copying is required by federal law; or

14 (d) A court of competent jurisdiction mandates that the record be  
15 available for inspection or copying.

16 (3) The definitions in this subsection apply throughout this  
17 section and RCW 42.56.240(16) unless the context clearly requires  
18 otherwise.

19 (a) "Campus-affiliated advocate" means a "sexual assault  
20 advocate" or "domestic violence advocate" as defined in RCW 5.60.060  
21 or a victim advocate, employed by or volunteering for an institution  
22 of higher education.

23 (b) "Survivor" means any student, faculty, staff, or  
24 administrator at an institution of higher education that believes  
25 they were a victim of a sexual assault, dating or domestic violence,  
26 or stalking.

27 NEW SECTION. **Sec. 3.** A new section is added to chapter 28B.10  
28 RCW to read as follows:

29 (1)(a) The registrar of each (i) private college or university  
30 that participates in the state need grant program pursuant to chapter  
31 28B.92 RCW and (ii) institution of higher education, or the other  
32 employee, office, or department of the institution that is  
33 responsible for maintaining student academic records, shall include a  
34 prominent notation on the academic transcript of each student who has  
35 been suspended for, has been permanently dismissed for, or withdraws  
36 from the institution while under investigation for an offense  
37 involving sexual violence under the institution's code, rules, or set  
38 of standards governing student conduct, stating that the student was

1 suspended for, was permanently dismissed for, or withdrew from the  
2 institution while under investigation for an offense involving sexual  
3 violence under the institution's code, rules, or set of standards.

4 (b) The notation required in (a) of this subsection shall be  
5 substantially in the following form: "[Suspended, Dismissed, or  
6 Withdrew while under investigation] for a violation of [insert name  
7 of institution's code, rules, or set of standards]."

8 (c) Each institution must:

9 (i) Notify each student that any such suspension, permanent  
10 dismissal, or withdrawal will be documented on the student's academic  
11 transcript; and

12 (ii) Adopt a procedure for removing such notation from the  
13 academic transcript of any student who is subsequently found not to  
14 have committed an offense involving sexual violence under the  
15 institution's code, rules, or set of standards governing student  
16 conduct.

17 (2) The institution must remove from a student's academic  
18 transcript any notation placed on the transcript pursuant to  
19 subsection (1) of this section due to the student's suspension if the  
20 student:

21 (a) Completed the term and any conditions of the suspension; and

22 (b) Has been determined by the institution to be in good standing  
23 according to the institution's code, rules, or set of standards  
24 governing such determination.

25 (3) This section applies only to a student who is taking or has  
26 taken a course at an institution of higher education or private  
27 college or university on a campus that is located in this state.

28 (4) For purposes of this section "sexual violence" means sexual  
29 assault, domestic violence, dating violence, or stalking.

30 **Sec. 4.** RCW 42.56.240 and 2016 c 173 s 8 and 2016 c 163 s 2 are  
31 each reenacted and amended to read as follows:

32 The following investigative, law enforcement, and crime victim  
33 information is exempt from public inspection and copying under this  
34 chapter:

35 (1) Specific intelligence information and specific investigative  
36 records compiled by investigative, law enforcement, and penology  
37 agencies, and state agencies vested with the responsibility to  
38 discipline members of any profession, the nondisclosure of which is

1 essential to effective law enforcement or for the protection of any  
2 person's right to privacy;

3 (2) Information revealing the identity of persons who are  
4 witnesses to or victims of crime or who file complaints with  
5 investigative, law enforcement, or penology agencies, other than the  
6 commission, if disclosure would endanger any person's life, physical  
7 safety, or property. If at the time a complaint is filed the  
8 complainant, victim, or witness indicates a desire for disclosure or  
9 nondisclosure, such desire shall govern. However, all complaints  
10 filed with the commission about any elected official or candidate for  
11 public office must be made in writing and signed by the complainant  
12 under oath;

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

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

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

28 (6) Information contained in a local or regionally maintained  
29 gang database as well as the statewide gang database referenced in  
30 RCW 43.43.762;

31 (7) Data from the electronic sales tracking system established in  
32 RCW 69.43.165;

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

38 (9) Personally identifying information collected by law  
39 enforcement agencies pursuant to local security alarm system programs  
40 and vacation crime watch programs. Nothing in this subsection shall

1 be interpreted so as to prohibit the legal owner of a residence or  
2 business from accessing information regarding his or her residence or  
3 business;

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

6 (11) The identity of a state employee or officer who has in good  
7 faith filed a complaint with an ethics board, as provided in RCW  
8 42.52.410, or who has in good faith reported improper governmental  
9 action, as defined in RCW 42.40.020, to the auditor or other public  
10 official, as defined in RCW 42.40.020;

11 (12) The following security threat group information collected  
12 and maintained by the department of corrections pursuant to RCW  
13 72.09.745: (a) Information that could lead to the identification of a  
14 person's security threat group status, affiliation, or activities;  
15 (b) information that reveals specific security threats associated  
16 with the operation and activities of security threat groups; and (c)  
17 information that identifies the number of security threat group  
18 members, affiliates, or associates;

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

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

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

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

33 (I) A patient is registered to receive treatment, receiving  
34 treatment, waiting for treatment, or being transported in the course  
35 of treatment; or

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

38 (B) Information that meets the definition of protected health  
39 information for purposes of the health insurance portability and

1 accountability act of 1996 or health care information for purposes of  
2 chapter 70.02 RCW;

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

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

6 (iv) A minor;

7 (v) The body of a deceased person;

8 (vi) The identity of or communications from a victim or witness  
9 of an incident involving domestic violence as defined in RCW  
10 10.99.020 or sexual assault as defined in RCW 70.125.030, or  
11 disclosure of intimate images as defined in RCW 9A.86.010. If at the  
12 time of recording the victim or witness indicates a desire for  
13 disclosure or nondisclosure of the recorded identity or  
14 communications, such desire shall govern; or

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

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

20 (c) In a court action seeking the right to inspect or copy a body  
21 worn camera recording, a person who prevails against a law  
22 enforcement or corrections agency that withholds or discloses all or  
23 part of a body worn camera recording pursuant to (a) of this  
24 subsection is not entitled to fees, costs, or awards pursuant to RCW  
25 42.56.550 unless it is shown that the law enforcement or corrections  
26 agency acted in bad faith or with gross negligence.

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

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

30 (ii) Provide the incident or case number;

31 (iii) Provide the date, time, and location of the incident or  
32 incidents; or

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

35 (e)(i) A person directly involved in an incident recorded by the  
36 requested body worn camera recording, an attorney representing a  
37 person directly involved in an incident recorded by the requested  
38 body worn camera recording, a person or his or her attorney who  
39 requests a body worn camera recording relevant to a criminal case  
40 involving that person, or the executive director from either the

1 Washington state commission on African-American affairs, Asian  
2 Pacific American affairs, or Hispanic affairs, has the right to  
3 obtain the body worn camera recording, subject to any exemption under  
4 this chapter or any applicable law. In addition, an attorney who  
5 represents a person regarding a potential or existing civil cause of  
6 action involving the denial of civil rights under the federal or  
7 state Constitution, or a violation of a United States department of  
8 justice settlement agreement, has the right to obtain the body worn  
9 camera recording if relevant to the cause of action, subject to any  
10 exemption under this chapter or any applicable law. The attorney must  
11 explain the relevancy of the requested body worn camera recording to  
12 the cause of action and specify that he or she is seeking relief from  
13 redaction costs under this subsection (14)(e).

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

19 (iii) A law enforcement or corrections agency may require any  
20 person requesting a body worn camera recording pursuant to this  
21 subsection (14)(e) to identify himself or herself to ensure he or she  
22 is a person entitled to obtain the body worn camera recording under  
23 this subsection (14)(e).

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

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

35 (iii) In any case where an agency charges a requestor for the  
36 costs of redacting a body worn camera recording under this subsection  
37 (14)(f), the time spent on redaction of the recording shall not count  
38 towards the agency's allocation of, or limitation on, time or costs  
39 spent responding to public records requests under this chapter, as

1 established pursuant to local ordinance, policy, procedure, or state  
2 law.

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

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

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

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

18 (i) Nothing in this section is intended to modify the obligations  
19 of prosecuting attorneys and law enforcement under *Brady v. Maryland*,  
20 373 U.S. 83, 83 S. Ct. 1194, 10 L. Ed. 2d 215 (1963), *Kyles v.*  
21 *Whitley*, 541 U.S. 419, 115 S. Ct. 1555, 131 L. Ed.2d 490 (1995), and  
22 the relevant Washington court criminal rules and statutes.

23 (j) A law enforcement or corrections agency must retain body worn  
24 camera recordings for at least sixty days and thereafter may destroy  
25 the records; (~~and~~)

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

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

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

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

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

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

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



1        (c) "Campus-affiliated advocate" and "survivor" have the  
2 definitions in section 2 of this act.

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