
SUBSTITUTE SENATE BILL 6387

State of Washington

65th Legislature

2018 Regular Session

By Senate Human Services & Corrections (originally sponsored by Senators Cleveland, Ranker, Rivers, Frockt, Keiser, Carlyle, and Kuderer)

READ FIRST TIME 02/01/18.

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; creating a new section;
5 prescribing penalties; providing an effective date; providing an
6 expiration date; and declaring an emergency.

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

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

10 The legislature recognizes an inherent privacy interest that a
11 child has with respect to the child's recorded voice and image when
12 describing the highly sensitive details of abuse or neglect upon the
13 child as defined in RCW 26.44.020. The legislature further finds that
14 reasonable restrictions on the dissemination of these recordings can
15 accommodate both privacy interests and due process. To that end, the
16 legislature intends to exempt these recordings from dissemination
17 under the public records act and provide additional sanction
18 authority for violations of protective orders that set forth such
19 terms and conditions as are necessary to protect the privacy of the
20 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 child abuse, child neglect, or exposure to violence.
32 This interview is conducted by a competently trained, neutral
33 professional utilizing techniques informed by research and best
34 practice as part of a larger investigative process.

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

37 The definitions in this section apply throughout this chapter
38 unless the context clearly requires otherwise.

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

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

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

25 (4) "Child protective services section" means the child
26 protective services section of the department.

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

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

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

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

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

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

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

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

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

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

37 (15) "Malice" or "maliciously" means an intent, wish, or design
38 to intimidate, annoy, or injure another person. Such malice may be
39 inferred from an act done in willful disregard of the rights of
40 another, or an act wrongfully done without just cause or excuse, or

1 an act or omission of duty betraying a willful disregard of social
2 duty.

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

17 (17) "Pharmacist" means any registered pharmacist under chapter
18 18.64 RCW, whether acting in an individual capacity or as an employee
19 or agent of any public or private organization or institution.

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

29 (19) "Professional school personnel" include, but are not limited
30 to, teachers, counselors, administrators, child care facility
31 personnel, and school nurses.

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

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

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

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

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

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

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

25 (27) "Child forensic interview" means a developmentally sensitive
26 and legally sound method of gathering factual information regarding
27 allegations of child abuse, child neglect, or exposure to violence.
28 This interview is conducted by a competently trained, neutral
29 professional utilizing techniques informed by research and best
30 practice as part of a larger investigative process.

31 NEW SECTION. Sec. 4. A new section is added to chapter 26.44
32 RCW to read as follows:

33 Any and all audio and video recordings of child forensic
34 interviews as defined in this chapter are exempt from disclosure
35 under the public records act, chapter 42.56 RCW. Such recordings are
36 confidential under chapter 13.50 RCW and federal law and may only be
37 disclosed pursuant to a court order entered upon a showing of good
38 cause and with advance notice to the child's parent, guardian, or
39 legal custodian. Failure to disclose an audio or video recording of a

1 child forensic interview as defined in this chapter is not grounds
2 for penalties or other sanctions available under chapter 42.56 RCW or
3 RCW 13.50.100(10). Nothing in this section is intended to restrict
4 the ability of the department or law enforcement to share child
5 welfare information as authorized or required by state or federal
6 law.

7 **Sec. 5.** RCW 26.44.185 and 2010 c 176 s 3 are each amended to
8 read as follows:

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

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

29 NEW SECTION. **Sec. 6.** A new section is added to chapter 26.44
30 RCW to read as follows:

31 (1) Any and all audio and video recordings of child forensic
32 interviews disclosed in a criminal or civil proceeding must be
33 subject to a protective order, or other such order, unless the court
34 finds good cause that the interview should not be subject to such an
35 order. The protective order shall include the following: (a) That the
36 recording be used only for the purposes of conducting the party's
37 side of the case, unless otherwise agreed by the parties or ordered
38 by the court; (b) that the recording not be copied, photographed,

1 duplicated, or otherwise reproduced except as a written transcript
2 that does not reveal the identity of the child; (c) that the
3 recording not be given, displayed, or in any way provided to a third
4 party, except as permitted in (d) or (e) of this subsection or as
5 necessary at trial; (d) that the recording remain in the exclusive
6 custody of the attorneys, their employees, or agents, including
7 expert witnesses retained by either party, who shall be provided a
8 copy of the protective order; (e) that, if the party is not
9 represented by an attorney, the party, their employees, and agents,
10 including expert witnesses, shall not be given a copy of the
11 recording but shall be given reasonable access to view the recording
12 by the custodian of the recording; and (f) that upon termination of
13 representation or upon disposition of the matter at the trial court
14 level, attorneys and other custodians of recordings promptly return
15 all copies of the recording.

16 (2) A violation of a court order pursuant to this section is
17 subject to a civil penalty of up to ten thousand dollars, in addition
18 to any other appropriate sanction by the court.

19 (3) Nothing in this section is intended to restrict the ability
20 of the department or law enforcement to share child welfare
21 information as authorized or required by state or federal law.

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

24 The following investigative, law enforcement, and crime victim
25 information is exempt from public inspection and copying under this
26 chapter:

27 (1) Specific intelligence information and specific investigative
28 records compiled by investigative, law enforcement, and penology
29 agencies, and state agencies vested with the responsibility to
30 discipline members of any profession, the nondisclosure of which is
31 essential to effective law enforcement or for the protection of any
32 person's right to privacy;

33 (2) Information revealing the identity of persons who are
34 witnesses to or victims of crime or who file complaints with
35 investigative, law enforcement, or penology agencies, other than the
36 commission, if disclosure would endanger any person's life, physical
37 safety, or property. If at the time a complaint is filed the
38 complainant, victim, or witness indicates a desire for disclosure or
39 nondisclosure, such desire shall govern. However, all complaints

1 filed with the commission about any elected official or candidate for
2 public office must be made in writing and signed by the complainant
3 under oath;

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

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

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

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

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

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

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

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

37 (11) The identity of a state employee or officer who has in good
38 faith filed a complaint with an ethics board, as provided in RCW
39 42.52.410, or who has in good faith reported improper governmental

1 action, as defined in RCW 42.40.020, to the auditor or other public
2 official, as defined in RCW 42.40.020;

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

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

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

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

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

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

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

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

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

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

37 (iv) A minor;

38 (v) The body of a deceased person;

39 (vi) The identity of or communications from a victim or witness
40 of an incident involving domestic violence as defined in RCW

1 10.99.020 or sexual assault as defined in RCW 70.125.030, or
2 disclosure of intimate images as defined in RCW 9A.86.010. If at the
3 time of recording the victim or witness indicates a desire for
4 disclosure or nondisclosure of the recorded identity or
5 communications, such desire shall govern; or

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

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

11 (c) In a court action seeking the right to inspect or copy a body
12 worn camera recording, a person who prevails against a law
13 enforcement or corrections agency that withholds or discloses all or
14 part of a body worn camera recording pursuant to (a) of this
15 subsection is not entitled to fees, costs, or awards pursuant to RCW
16 42.56.550 unless it is shown that the law enforcement or corrections
17 agency acted in bad faith or with gross negligence.

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

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

21 (ii) Provide the incident or case number;

22 (iii) Provide the date, time, and location of the incident or
23 incidents; or

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

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

1 exemption under this chapter or any applicable law. The attorney must
2 explain the relevancy of the requested body worn camera recording to
3 the cause of action and specify that he or she is seeking relief from
4 redaction costs under this subsection (14)(e).

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

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

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

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

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

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

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

39 (ii) "Covered jurisdiction" means any jurisdiction that has
40 deployed body worn cameras as of June 9, 2016, regardless of whether

1 or not body worn cameras are being deployed in the jurisdiction on
2 June 9, 2016, including, but not limited to, jurisdictions that have
3 deployed body worn 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 (15) Any records and information contained within the statewide
17 sexual assault kit tracking system established in RCW 43.43.545;
18 ((and))

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

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

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

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

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

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

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

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

36 (18) Any and all audio or video recordings of child forensic
37 interviews as defined in chapter 26.44 RCW. Such recordings are
38 confidential and may only be disclosed pursuant to a court order
39 entered upon a showing of good cause and with advance notice to the
40 child's parent, guardian, or legal custodian. Failure to disclose an

1 audio or video recording of a child forensic interview as defined in
2 chapter 26.44 RCW is not grounds for penalties or other sanctions
3 available under this chapter.

4 NEW SECTION. **Sec. 8.** Section 7 of this act applies
5 retroactively to all outstanding public records requests submitted
6 prior to the effective date of this section.

7 NEW SECTION. **Sec. 9.** Section 2 of this act expires July 1,
8 2018.

9 NEW SECTION. **Sec. 10.** Section 3 of this act takes effect July
10 1, 2018.

11 NEW SECTION. **Sec. 11.** Except for section 3 of this act, this
12 act is necessary for the immediate preservation of the public peace,
13 health, or safety, or support of the state government and its
14 existing public institutions, and takes effect immediately.

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