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**SUBSTITUTE HOUSE BILL 1871**

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**State of Washington**

**66th Legislature**

**2019 Regular Session**

**By** House Public Safety (originally sponsored by Representatives Klippert, Goodman, and Appleton; by request of Department of Corrections)

READ FIRST TIME 02/22/19.

1 AN ACT Relating to prison safety; amending RCW 9.94.045; and  
2 reenacting and amending RCW 42.56.240.

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

4 **Sec. 1.** RCW 9.94.045 and 1979 c 121 s 4 are each amended to read  
5 as follows:

6 (1) A person, other than a ((person serving a sentence in a penal  
7 institution of this state)) prisoner in a state correctional  
8 institution, is guilty of possession of contraband on the premises of  
9 a state correctional institution in the second degree if, without  
10 authorization to do so, the person:

11 (a) Knowingly possesses or has under his or her control any  
12 narcotic drug or controlled substance, as defined in chapter 69.50  
13 RCW, on or in the buildings, grounds, or any other real property  
14 subject to the care, control, or supervision of a state correctional  
15 institution; or

16 (b) Delivers or possesses with intent to deliver to a prisoner in  
17 a state correctional institution any alcohol, intoxicant, or a cell  
18 phone or other form of an electronic telecommunications device.

19 (2) Possession of contraband on the premises of a state  
20 correctional institution in the second degree is a class C felony.

1       **Sec. 2.** RCW 42.56.240 and 2018 c 285 s 1 and 2018 c 171 s 7 are  
2 each reenacted and amended to read as follows:

3       The following investigative, law enforcement, and crime victim  
4 information is exempt from public inspection and copying under this  
5 chapter:

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

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

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

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

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

37       (6) Information contained in a local or regionally maintained  
38 gang database (~~as well as~~), the statewide gang database referenced  
39 in RCW 43.43.762, and the department of corrections' security threat  
40 group database;

1 (7) Data from the electronic sales tracking system established in  
2 RCW 69.43.165;

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

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

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

16 (11) The identity of a state employee or officer who has in good  
17 faith filed a complaint with an ethics board, as provided in RCW  
18 42.52.410, or who has in good faith reported improper governmental  
19 action, as defined in RCW 42.40.020, to the auditor or other public  
20 official, as defined in RCW 42.40.020;

21 (12) The following security threat group information collected  
22 and maintained by the department of corrections pursuant to RCW  
23 72.09.745: (a) Information that could lead to the identification of a  
24 person's security threat group status, affiliation, or activities;  
25 (b) information that reveals specific security threats associated  
26 with the operation and activities of security threat groups; and (c)  
27 information that identifies the number of security threat group  
28 members, affiliates, or associates;

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

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

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

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

3 (I) A patient is registered to receive treatment, receiving  
4 treatment, waiting for treatment, or being transported in the course  
5 of treatment; or

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

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

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

14 (iii) An intimate image;

15 (iv) A minor;

16 (v) The body of a deceased person;

17 (vi) The identity of or communications from a victim or witness  
18 of an incident involving domestic violence as defined in RCW  
19 10.99.020 or sexual assault as defined in RCW 70.125.030, or  
20 disclosure of intimate images as defined in RCW 9A.86.010. If at the  
21 time of recording the victim or witness indicates a desire for  
22 disclosure or nondisclosure of the recorded identity or  
23 communications, such desire shall govern; or

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

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

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

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

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

39 (ii) Provide the incident or case number;

1 (iii) Provide the date, time, and location of the incident or  
2 incidents; or

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

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

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

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

34 (f)(i) A law enforcement or corrections agency responding to a  
35 request to disclose body worn camera recordings may require any  
36 requester not listed in (e) of this subsection to pay the reasonable  
37 costs of redacting, altering, distorting, pixelating, suppressing, or  
38 otherwise obscuring any portion of the body worn camera recording  
39 prior to disclosure only to the extent necessary to comply with the  
40 exemptions in this chapter or any applicable law.

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

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

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

13 (i) "Body worn camera recording" means a video and/or sound  
14 recording that is made by a body worn camera attached to the uniform  
15 or eyewear of a law enforcement or corrections officer while in the  
16 course of his or her official duties; and

17 (ii) "Intimate image" means an individual or individuals engaged  
18 in sexual activity, including sexual intercourse as defined in RCW  
19 9A.44.010 and masturbation, or an individual's intimate body parts,  
20 whether nude or visible through less than opaque clothing, including  
21 the genitals, pubic area, anus, or postpubescent female nipple.

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

26 (i) Nothing in this section is intended to modify the obligations  
27 of prosecuting attorneys and law enforcement under *Brady v. Maryland*,  
28 373 U.S. 83, 83 S. Ct. 1194, 10 L. Ed. 2d 215 (1963), *Kyles v.*  
29 *Whitley*, 541 U.S. 419, 115 S. Ct. 1555, 131 L. Ed.2d 490 (1995), and  
30 the relevant Washington court criminal rules and statutes.

31 (j) A law enforcement or corrections agency must retain body worn  
32 camera recordings for at least sixty days and thereafter may destroy  
33 the records in accordance with the applicable records retention  
34 schedule;

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

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

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

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

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

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

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

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

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

16 (18) Any and all audio or video recordings of child forensic  
17 interviews as defined in chapter 26.44 RCW. Such recordings are  
18 confidential and may only be disclosed pursuant to a court order  
19 entered upon a showing of good cause and with advance notice to the  
20 child's parent, guardian, or legal custodian. However, if the child  
21 is an emancipated minor or has attained the age of majority as  
22 defined in RCW 26.28.010, advance notice must be to the child.  
23 Failure to disclose an audio or video recording of a child forensic  
24 interview as defined in chapter 26.44 RCW is not grounds for  
25 penalties or other sanctions available under this chapter.

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