

ESHB 1041 - S COMM AMD

By Committee on State Government & Elections

1 Strike everything after the enacting clause and insert the
2 following:

3 "Sec. 1. RCW 7.69A.020 and 1993 c 350 s 7 are each amended to
4 read as follows:

5 Unless the context clearly requires otherwise, the definitions in
6 this section apply throughout this chapter.

7 (1) "Crime" means an act punishable as a felony, gross
8 misdemeanor, or misdemeanor under the laws of this state or
9 equivalent federal or local law.

10 (2) "Child" means any living child under the age of eighteen
11 years.

12 (3) "Victim" means a living person against whom a crime has been
13 committed.

14 (4) "Witness" means a person who has been or is expected to be
15 summoned to testify for the prosecution in a criminal action, or who
16 by reason of having relevant information is subject to call or likely
17 to be called as a witness for the prosecution, whether or not an
18 action or proceeding has been commenced.

19 (5) "Family member" means child, parent, or legal guardian.

20 (6) "Advocate" means any person, including a family member not
21 accused of a crime, who provides support to a child victim or child
22 witness during any legal proceeding.

23 (7) "Court proceedings" means any court proceeding conducted
24 during the course of the prosecution of a crime committed against a
25 child victim, including pretrial hearings, trial, sentencing, or
26 appellate proceedings.

27 (8) "Identifying information" ~~((means))~~ of a living child victim
28 or witness, includes the child's name, ~~((address))~~ home and other
29 physical addresses, telephone number, email address, social media
30 identifier, image, location ~~((, and photograph, and in cases in which~~
31 ~~the child is a relative or stepchild of the alleged perpetrator,~~

1 identification of) of the child (except the location of the assault
2 when it is not the child's address), and the surname of the child's
3 parent if it is the same as the child's and the parent is not the
4 alleged perpetrator. In cases where the child victim is a victim of
5 sexual assault, "identifying information" also includes the
6 relationship between the child and the alleged perpetrator when the
7 alleged perpetrator is a relative or step relative of the child
8 victim.

9 (9) "Crime victim/witness program" means any crime victim and
10 witness program of a county or local law enforcement agency or
11 prosecutor's office, any rape crisis center's sexual assault victim
12 advocacy program as provided in chapter 70.125 RCW, any domestic
13 violence program's legal and community advocate program for domestic
14 violence victims as provided in chapter 70.123 RCW, or any other
15 crime victim advocacy program which provides trained advocates to
16 assist crime victims during the investigation and prosecution of the
17 crime.

18 **Sec. 2.** RCW 7.69A.030 and 2004 c 120 s 9 are each amended to
19 read as follows:

20 In addition to the rights of victims and witnesses provided for
21 in RCW 7.69.030, there shall be every reasonable effort made by law
22 enforcement agencies, prosecutors, and judges to assure that child
23 victims and witnesses are afforded the rights enumerated in this
24 section. Except as provided in RCW 7.69A.050 regarding child victims
25 or child witnesses of violent crimes, sex crimes, or child abuse, the
26 enumeration of rights shall not be construed to create substantive
27 rights and duties, and the application of an enumerated right in an
28 individual case is subject to the discretion of the law enforcement
29 agency, prosecutor, or judge. Child victims and witnesses have the
30 following rights, which apply to any criminal court and/or juvenile
31 court proceeding:

32 (1) To have explained in language easily understood by the child,
33 all legal proceedings and/or police investigations in which the child
34 may be involved.

35 (2) With respect to child victims of sex or violent crimes or
36 child abuse, to have a crime victim advocate from a crime victim/
37 witness program, or any other support person of the victim's
38 choosing, present at any prosecutorial or defense interviews with the
39 child victim. This subsection applies if practical and if the

1 presence of the crime victim advocate or support person does not
2 cause any unnecessary delay in the investigation or prosecution of
3 the case. The role of the crime victim advocate is to provide
4 emotional support to the child victim and to promote the child's
5 feelings of security and safety.

6 (3) To be provided, whenever possible, a secure waiting area
7 during court proceedings and to have an advocate or support person
8 remain with the child prior to and during any court proceedings.

9 (4) To ~~((not have the names, addresses, nor photographs of the))~~
10 exempt from public disclosure under chapter 42.56 RCW, identifying
11 information as defined in RCW 7.69A.020, of a living child victim or
12 witness, and to not have identifying information disclosed by any law
13 enforcement agency, prosecutor's office, or state agency without the
14 permission of the child victim, child witness, parents, or legal
15 guardians to anyone except another law enforcement agency,
16 prosecutor, defense counsel, or private or governmental agency that
17 provides services to the child victim or witness.

18 (5) To allow an advocate to make recommendations to the
19 prosecuting attorney about the ability of the child to cooperate with
20 prosecution and the potential effect of the proceedings on the child.

21 (6) To allow an advocate to provide information to the court
22 concerning the child's ability to understand the nature of the
23 proceedings.

24 (7) To be provided information or appropriate referrals to social
25 service agencies to assist the child and/or the child's family with
26 the emotional impact of the crime, the subsequent investigation, and
27 judicial proceedings in which the child is involved.

28 (8) To allow an advocate to be present in court while the child
29 testifies in order to provide emotional support to the child.

30 (9) To provide information to the court as to the need for the
31 presence of other supportive persons at the court proceedings while
32 the child testifies in order to promote the child's feelings of
33 security and safety.

34 (10) To allow law enforcement agencies the opportunity to enlist
35 the assistance of other professional personnel such as child
36 protection services, victim advocates or prosecutorial staff trained
37 in the interviewing of the child victim.

38 (11) With respect to child victims of violent or sex crimes or
39 child abuse, to receive either directly or through the child's parent
40 or guardian if appropriate, at the time of reporting the crime to law

1 enforcement officials, a written statement of the rights of child
2 victims as provided in this chapter. The written statement shall
3 include the name, address, and telephone number of a county or local
4 crime victim/witness program, if such a crime victim/witness program
5 exists in the county.

6 **Sec. 3.** RCW 10.97.130 and 2019 c 300 s 2 are each amended to
7 read as follows:

8 (1) Information revealing the specific details that describe the
9 alleged or proven child victim of sexual assault under age eighteen,
10 or the identity or contact information of an alleged or proven child
11 victim under age eighteen is confidential and not subject to release
12 to the press or public without the permission of the child victim and
13 the child's legal guardian. Identifying information (~~includes the~~
14 ~~child victim's name, addresses, location, photographs, and in cases~~
15 ~~in which the child victim is a relative, stepchild, or stepsibling of~~
16 ~~the alleged perpetrator, identification of the relationship between~~
17 ~~the child and the alleged perpetrator~~) is defined in RCW 7.69A.020.
18 Contact information includes phone numbers, email addresses, social
19 media profiles, and user names and passwords. Contact information or
20 information identifying the child victim of sexual assault may be
21 released to law enforcement, prosecutors, judges, defense attorneys,
22 or private or governmental agencies that provide services to the
23 child victim of sexual assault. Prior to release of any criminal
24 history record information, the releasing agency shall delete any
25 contact information or information identifying a child victim of
26 sexual assault from the information except as provided in this
27 section.

28 (2) This section does not apply to court documents or other
29 materials admitted in open judicial proceedings.

30 **Sec. 4.** RCW 13.50.050 and 2014 c 175 s 3 are each amended to
31 read as follows:

32 (1) This section and RCW 13.50.260 and 13.50.270 govern records
33 relating to the commission of juvenile offenses, including records
34 relating to diversions.

35 (2) The official juvenile court file of any alleged or proven
36 juvenile offender shall be open to public inspection, unless sealed
37 pursuant to RCW 13.50.260.

1 (3) All records other than the official juvenile court file are
2 confidential and may be released only as provided in this
3 chapter(~~(7)~~) and RCW 13.40.215 and 4.24.550.

4 (4) Except as otherwise provided in this chapter, records
5 retained or produced by any juvenile justice or care agency may be
6 released to other participants in the juvenile justice or care system
7 only when an investigation or case involving the juvenile in question
8 is being pursued by the other participant or when that other
9 participant is assigned the responsibility for supervising the
10 juvenile.

11 (5) Except as provided in RCW 4.24.550, information not in an
12 official juvenile court file concerning a juvenile or a juvenile's
13 family may be released to the public only when that information could
14 not reasonably be expected to identify the juvenile or the juvenile's
15 family.

16 (6) Notwithstanding any other provision of this chapter, the
17 release, to the juvenile or his or her attorney, of law enforcement
18 and prosecuting attorneys' records pertaining to investigation,
19 diversion, and prosecution of juvenile offenses shall be governed by
20 the rules of discovery and other rules of law applicable in adult
21 criminal investigations and prosecutions.

22 (~~(7) ((Upon the decision to arrest or the arrest, law enforcement
23 and prosecuting attorneys may cooperate with schools in releasing
24 information to a school pertaining to the investigation, diversion,
25 and prosecution of a juvenile attending the school.))~~) Upon the
26 decision to arrest or the arrest, unredacted incident reports may be
27 released to a school, unless (~~((releasing the records would
28 jeopardize))~~) redaction is necessary to avoid jeopardizing the
29 investigation or prosecution or (~~((endanger))~~) endangering witnesses(~~((
30 If release of incident reports would jeopardize the investigation or
31 prosecution or endanger witnesses, law enforcement and prosecuting
32 attorneys may release information to the maximum extent possible to
33 assist schools in protecting))~~), other students, staff, ((and)) or
34 school property.

35 (8) The juvenile court and the prosecutor may set up and maintain
36 a central recordkeeping system which may receive information on all
37 alleged juvenile offenders against whom a complaint has been filed
38 pursuant to RCW 13.40.070 whether or not their cases are currently
39 pending before the court. The central recordkeeping system may be
40 computerized. If a complaint has been referred to a diversion unit,

1 the diversion unit shall promptly report to the juvenile court or the
2 prosecuting attorney when the juvenile has agreed to diversion. An
3 offense shall not be reported as criminal history in any central
4 recordkeeping system without notification by the diversion unit of
5 the date on which the offender agreed to diversion.

6 (9) Upon request of the victim of a crime or the victim's
7 immediate family, (~~the identity of an alleged or proven juvenile~~
8 ~~offender alleged or found to have committed a crime against the~~
9 ~~victim and the identity of the alleged or proven juvenile offender's~~
10 ~~parent, guardian, or custodian and the circumstance of the alleged or~~
11 ~~proven crime)) incident reports shall be released to the victim of
12 the crime or the victim's immediate family.~~

13 (10) Subject to the rules of discovery applicable in adult
14 criminal prosecutions, the juvenile offense records of an adult
15 criminal defendant or witness in an adult criminal proceeding shall
16 be released upon request to prosecution and defense counsel after a
17 charge has actually been filed. The juvenile offense records of any
18 adult convicted of a crime and placed under the supervision of the
19 adult corrections system shall be released upon request to the adult
20 corrections system.

21 (11) Any juvenile to whom the provisions of this section or RCW
22 13.50.260 or 13.50.270 may apply shall be given written notice of his
23 or her rights under this section at the time of his or her
24 disposition hearing or during the diversion process.

25 (12) Nothing in this section or RCW 13.50.260 or 13.50.270 may be
26 construed to prevent a crime victim or a member of the victim's
27 family from divulging the identity of the alleged or proven juvenile
28 offender or his or her family when necessary in a civil proceeding.

29 (13) Except as provided in RCW 13.50.270(2), no identifying
30 information held by the Washington state patrol in accordance with
31 chapter 43.43 RCW is subject to destruction or sealing under this
32 section. For the purposes of this subsection, identifying information
33 includes photographs, fingerprints, palmprints, soleprints, toeprints
34 and any other data that identifies a person by physical
35 characteristics, name, birthdate or address, but does not include
36 information regarding criminal activity, arrest, charging, diversion,
37 conviction or other information about a person's treatment by the
38 criminal justice system or about the person's behavior.

39 (14) Information identifying child victims under age eighteen who
40 are victims of sexual assaults by juvenile offenders is confidential

1 and not subject to release to the press or public without the
2 permission of the child victim or the child's legal guardian.
3 Identifying information includes the child victim's name, addresses,
4 location, photographs, and in cases in which the child victim is a
5 relative of the alleged perpetrator, identification of the
6 relationship between the child and the alleged perpetrator.
7 Information identifying a child victim of sexual assault may be
8 released to law enforcement, prosecutors, judges, defense attorneys,
9 or private or governmental agencies that provide services to the
10 child victim of sexual assault.

11 **Sec. 5.** RCW 42.56.230 and 2021 c 89 s 1 are each amended to read
12 as follows:

13 The following personal information is exempt from public
14 inspection and copying under this chapter:

15 (1) (a) Personal information in any files maintained for students
16 in public schools, patients or clients of public institutions or
17 public health agencies, or welfare recipients.

18 (b) Personal information of children under this subsection (1)
19 may be disclosed if the agency has received consent for disclosure
20 from the child's parent or guardian, except records governed by other
21 laws where consent from the child is required;

22 (2) (a) Personal information:

23 (i) For a child enrolled in licensed child care in any files
24 maintained by the department of children, youth, and families;

25 (ii) For a child enrolled in a public or nonprofit program
26 serving or pertaining to children, adolescents, or students,
27 including but not limited to early learning or child care services,
28 parks and recreation programs, youth development programs, and after-
29 school programs;

30 (iii) For the family members or guardians of a child who is
31 subject to the exemption under this subsection (2) if the family
32 member or guardian has the same last name as the child or if the
33 family member or guardian resides at the same address as the child
34 and disclosure of the family member's or guardian's information would
35 result in disclosure of the personal information exempted under
36 (a) (i) and (ii) of this subsection; or

37 (iv) For substitute caregivers who are licensed or approved to
38 provide overnight care of children by the department of children,
39 youth, and families.

1 (b) Emergency contact information under this subsection (2) may
2 be provided to appropriate authorities and medical personnel for the
3 purpose of treating the individual during an emergency situation.

4 (c) Personal information of children under this subsection (2)
5 may be disclosed if the agency has received consent for disclosure
6 from the child's parent or guardian;

7 (3) Personal information in files maintained for employees,
8 appointees, or elected officials of any public agency to the extent
9 that disclosure would violate their right to privacy;

10 (4) Information required of any taxpayer in connection with the
11 assessment or collection of any tax if the disclosure of the
12 information to other persons would: (a) Be prohibited to such persons
13 by RCW 84.08.210, 82.32.330, 84.40.020, 84.40.340, or any ordinance
14 authorized under RCW 35.102.145; or (b) violate the taxpayer's right
15 to privacy or result in unfair competitive disadvantage to the
16 taxpayer;

17 (5) Credit card numbers, debit card numbers, electronic check
18 numbers, card expiration dates, or bank or other financial
19 information as defined in RCW 9.35.005 including social security
20 numbers, except when disclosure is expressly required by or governed
21 by other law;

22 (6) Personal and financial information related to a small loan or
23 any system of authorizing a small loan in RCW 31.45.093;

24 (7)(a) Any record used to prove identity, age, residential
25 address, social security number, or other personal information
26 required to apply for a driver's license or identicard.

27 (b) Information provided under RCW 46.20.111 that indicates that
28 an applicant declined to register with the selective service system.

29 (c) Any record pertaining to a vehicle license plate, driver's
30 license, or identicard issued under RCW 46.08.066 that, alone or in
31 combination with any other records, may reveal the identity of an
32 individual, or reveal that an individual is or was, performing an
33 undercover or covert law enforcement, confidential public health
34 work, public assistance fraud, or child support investigative
35 activity. This exemption does not prevent the release of the total
36 number of vehicle license plates, drivers' licenses, or identicards
37 that, under RCW 46.08.066, an agency or department has applied for,
38 been issued, denied, returned, destroyed, lost, and reported for
39 misuse.

1 (d) Any record pertaining to a vessel registration issued under
2 RCW 88.02.330 that, alone or in combination with any other records,
3 may reveal the identity of an individual, or reveal that an
4 individual is or was, performing an undercover or covert law
5 enforcement activity. This exemption does not prevent the release of
6 the total number of vessel registrations that, under RCW 88.02.330,
7 an agency or department has applied for, been issued, denied,
8 returned, destroyed, lost, and reported for misuse.

9 Upon request by the legislature, the department of licensing
10 shall provide a report to the legislature containing all of the
11 information in (c) of this subsection (7) and this subsection (7)(d)
12 that is subject to public disclosure;

13 (8) All information related to individual claim resolution
14 settlement agreements submitted to the board of industrial insurance
15 appeals under RCW 51.04.063, other than final orders from the board
16 of industrial insurance appeals. The board of industrial insurance
17 appeals shall provide to the department of labor and industries
18 copies of all final claim resolution settlement agreements;

19 (9) Voluntarily submitted information contained in a database
20 that is part of or associated with enhanced 911 emergency
21 communications systems, or information contained or used in emergency
22 notification systems as provided under RCW 38.52.575 and 38.52.577;

23 (10) Until the person reaches eighteen years of age, information,
24 otherwise disclosable under chapter 29A.08 RCW, that relates to a
25 future voter, except for the purpose of processing and delivering
26 ballots;

27 (11) All information submitted by a person to the state, either
28 directly or through a state-licensed gambling establishment, or
29 Indian tribes, or tribal enterprises that own gambling operations or
30 facilities with class III gaming compacts, as part of the self-
31 exclusion program established in RCW 9.46.071 or 67.70.040 for people
32 with a gambling problem or gambling disorder; and

33 (12) Names, addresses, or other personal information of
34 individuals who participated in the bump-fire stock buy-back program
35 under RCW 43.43.920.

36 **Sec. 6.** RCW 42.56.240 and 2019 c 300 s 1 are each amended to
37 read as follows:

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

4 (1) ~~((Specific))~~ (a) Except as provided in (b) of this
5 subsection, specific intelligence information and specific
6 investigative records compiled by investigative, law enforcement, and
7 penology agencies, and state agencies vested with the responsibility
8 to discipline members of any profession, the nondisclosure of which
9 is essential to effective law enforcement or for the protection of
10 any person's right to privacy;

11 (b) For the department of children, youth, and families, records
12 regarding an on-going child protective services investigation in
13 conjunction with an early learning licensing complaint inspection,
14 the records must remain exempt during the course of the child
15 protective services investigation. At the conclusion of the child
16 protective services investigation, all responsive records must be
17 made available to the public when requested;

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

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

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

37 (5) Identifying information ~~((revealing the specific details that~~
38 ~~describe an alleged or proven child victim of sexual assault under~~
39 ~~age eighteen, or the identity or contact information of an alleged or~~
40 ~~proven child victim of sexual assault who is under age eighteen.~~

1 ~~Identifying information includes the child victim's name, addresses,~~
2 ~~location, photograph, and in cases in which the child victim is a~~
3 ~~relative, stepchild, or stepsibling of the alleged perpetrator,~~
4 ~~identification of the relationship between the child and the alleged~~
5 ~~perpetrator. Contact information includes phone numbers, email~~
6 ~~addresses, social media profiles, and usernames and passwords)), as~~
7 ~~defined in RCW 7.69A.020, of child victims and witnesses;~~

8 (6) Information contained in a local or regionally maintained
9 gang database as well as the statewide gang database referenced in
10 RCW 43.43.762;

11 (7) Data from the electronic sales tracking system established in
12 RCW 69.43.165;

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

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

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

26 (11) The identity of a state employee or officer who has in good
27 faith filed a complaint with an ethics board, as provided in RCW
28 42.52.410, or who has in good faith reported improper governmental
29 action, as defined in RCW 42.40.020, to the auditor or other public
30 official, as defined in RCW 42.40.020;

31 (12) The following security threat group information collected
32 and maintained by the department of corrections pursuant to RCW
33 72.09.745: (a) Information that could lead to the identification of a
34 person's security threat group status, affiliation, or activities;
35 (b) information that reveals specific security threats associated
36 with the operation and activities of security threat groups; and (c)
37 information that identifies the number of security threat group
38 members, affiliates, or associates;

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

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

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

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

15 (I) A patient is registered to receive treatment, receiving
16 treatment, waiting for treatment, or being transported in the course
17 of treatment; or

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

20 (B) Information that meets the definition of protected health
21 information for purposes of the health insurance portability and
22 accountability act of 1996 or health care information for purposes of
23 chapter 70.02 RCW;

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

26 (iii) An intimate image;

27 (iv) A minor;

28 (v) The body of a deceased person;

29 (vi) The identity of or communications from a victim or witness
30 of an incident involving domestic violence as defined in RCW
31 10.99.020 or sexual assault as defined in RCW 70.125.030, or
32 disclosure of intimate images as defined in RCW 9A.86.010. If at the
33 time of recording the victim or witness indicates a desire for
34 disclosure or nondisclosure of the recorded identity or
35 communications, such desire shall govern; or

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

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

1 (c) In a court action seeking the right to inspect or copy a body
2 worn camera recording, a person who prevails against a law
3 enforcement or corrections agency that withholds or discloses all or
4 part of a body worn camera recording pursuant to (a) of this
5 subsection is not entitled to fees, costs, or awards pursuant to RCW
6 42.56.550 unless it is shown that the law enforcement or corrections
7 agency acted in bad faith or with gross negligence.

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

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

11 (ii) Provide the incident or case number;

12 (iii) Provide the date, time, and location of the incident or
13 incidents; or

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

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

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

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

6 (f)(i) A law enforcement or corrections agency responding to a
7 request to disclose body worn camera recordings may require any
8 requester not listed in (e) of this subsection to pay the reasonable
9 costs of redacting, altering, distorting, pixelating, suppressing, or
10 otherwise obscuring any portion of the body worn camera recording
11 prior to disclosure only to the extent necessary to comply with the
12 exemptions in this chapter or any applicable law.

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

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

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

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

29 (ii) "Intimate image" means an individual or individuals engaged
30 in sexual activity, including sexual intercourse as defined in RCW
31 9A.44.010 and masturbation, or an individual's intimate body parts,
32 whether nude or visible through less than opaque clothing, including
33 the genitals, pubic area, anus, or postpubescent female nipple.

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

38 (i) Nothing in this section is intended to modify the obligations
39 of prosecuting attorneys and law enforcement under *Brady v. Maryland*,
40 373 U.S. 83, 83 S. Ct. 1194, 10 L. Ed. 2d 215 (1963), *Kyles v.*

1 *Whitley*, 541 U.S. 419, 115 S. Ct. 1555, 131 L. Ed.2d 490 (1995), and
2 the relevant Washington court criminal rules and statutes.

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

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

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

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

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

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

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

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

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

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

26 (18) Any and all audio or video recordings of child forensic
27 interviews as defined in chapter 26.44 RCW. Such recordings are
28 confidential and may only be disclosed pursuant to a court order
29 entered upon a showing of good cause and with advance notice to the
30 child's parent, guardian, or legal custodian. However, if the child
31 is an emancipated minor or has attained the age of majority as
32 defined in RCW 26.28.010, advance notice must be to the child.
33 Failure to disclose an audio or video recording of a child forensic
34 interview as defined in chapter 26.44 RCW is not grounds for
35 penalties or other sanctions available under this chapter."

ESHB 1041 - S COMM AMD

By Committee on State Government & Elections

1 On page 1, line 2 of the title, after "juveniles;" strike the
2 remainder of the title and insert "and amending RCW 7.69A.020,
3 7.69A.030, 10.97.130, 13.50.050, 42.56.230, and 42.56.240."

EFFECT: (1) Eliminates requirement that consent to disclosure of a child's records be written.

(2) Clarifies that parents or guardians cannot consent to disclosure of personal information in public school, public institution, public health agency, or welfare files where consent from a child is required by another statute.

--- END ---