
SUBSTITUTE HOUSE BILL 1991

State of Washington

67th Legislature

2022 Regular Session

By House Civil Rights & Judiciary (originally sponsored by Representatives Taylor, Hansen, Fitzgibbon, Gregerson, J. Johnson, Senn, and Bateman)

READ FIRST TIME 02/03/22.

1 AN ACT Relating to body worn cameras; and amending RCW 42.56.240.

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

3 **Sec. 1.** RCW 42.56.240 and 2019 c 300 s 1 are each amended to
4 read as follows:

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

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

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

1 public office must be made in writing and signed by the complainant
2 under oath;

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

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

12 (5) Information revealing the specific details that describe an
13 alleged or proven child victim of sexual assault under age eighteen,
14 or the identity or contact information of an alleged or proven child
15 victim of sexual assault who is under age eighteen. Identifying
16 information includes the child victim's name, addresses, location,
17 photograph, and in cases in which the child victim is a relative,
18 stepchild, or stepsibling of the alleged perpetrator, identification
19 of the relationship between the child and the alleged perpetrator.
20 Contact information includes phone numbers, email addresses, social
21 media profiles, and user names and passwords;

22 (6) Information contained in a local or regionally maintained
23 gang database as well as the statewide gang database referenced in
24 RCW 43.43.762;

25 (7) Data from the electronic sales tracking system established in
26 RCW 69.43.165;

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

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

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

1 (11) The identity of a state employee or officer who has in good
2 faith filed a complaint with an ethics board, as provided in RCW
3 42.52.410, or who has in good faith reported improper governmental
4 action, as defined in RCW 42.40.020, to the auditor or other public
5 official, as defined in RCW 42.40.020;

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

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

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

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

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

28 (I) A patient is registered to receive treatment, receiving
29 treatment, waiting for treatment, or being transported in the course
30 of treatment; or

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

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

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

39 (iii) An intimate image;

40 (iv) A minor;

1 (v) The body of a deceased person;
2 (vi) The identity of or communications from a victim or witness
3 of an incident involving domestic violence as defined in RCW
4 10.99.020 or sexual assault as defined in RCW 70.125.030, or
5 disclosure of intimate images as defined in RCW 9A.86.010. If at the
6 time of recording the victim or witness indicates a desire for
7 disclosure or nondisclosure of the recorded identity or
8 communications, such desire shall govern; or

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

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

14 (c) In a court action seeking the right to inspect or copy a body
15 worn camera recording, a person who prevails against a law
16 enforcement or corrections agency that withholds or discloses all or
17 part of a body worn camera recording pursuant to (a) of this
18 subsection is not entitled to fees, costs, or awards pursuant to RCW
19 42.56.550 unless it is shown that the law enforcement or corrections
20 agency acted in bad faith or with gross negligence.

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

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

24 (ii) Provide the incident or case number;

25 (iii) Provide the date, time, and location of the incident or
26 incidents; or

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

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

1 state Constitution, or a violation of a United States department of
2 justice settlement agreement, has the right to obtain the body worn
3 camera recording if relevant to the cause of action, subject to any
4 exemption under this chapter or any applicable law. The attorney must
5 explain the relevancy of the requested body worn camera recording to
6 the cause of action and specify that he or she is seeking relief from
7 redaction costs under this subsection (14)(e).

8 (ii) A law enforcement or corrections agency responding to
9 requests under this subsection (14)(e) may not require the requesting
10 individual to pay costs of any redacting, altering, distorting,
11 pixelating, suppressing, or otherwise obscuring any portion of a body
12 worn camera recording, except that an agency may charge the
13 requesting individual for such costs of redaction if the requesting
14 individual is entitled to receive an unredacted copy under (f) of
15 this subsection. Any individual receiving an unredacted copy under
16 (f) of this subsection must not be required to pay costs for an
17 unredacted copy.

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

23 (f)(i) Notwithstanding (a) and (e) of this subsection, an agency
24 may provide an unredacted copy of body worn camera recordings to a
25 defendant's attorney, attorneys, or defense agency in a criminal
26 matter without the disclosure being considered highly offensive, if
27 the defendant's attorney, attorneys, or defense agency would
28 otherwise be entitled to receive an unredacted copy in the course of
29 discovery in a criminal matter.

30 (ii) A defendant's attorney, attorneys, or defense agency in a
31 criminal matter that receives an unredacted copy of a body worn
32 camera recording pursuant to (f)(i) of this subsection:

33 (A) Shall sign a written agreement that the attorney, attorneys,
34 or defense agency will: (I) Maintain exclusive custody of the
35 unredacted recording, except that copies of the unredacted recording
36 may be provided to others when authorized by this subsection (14)(f);
37 (II) use the unredacted recording only for the purposes of conducting
38 the defendant's side of the criminal case as if it had been furnished
39 in discovery; and (III) treat the unredacted recording as
40 confidential as a matter of law;

1 (B) May provide a copy of the body worn camera recording to the
2 defendant after making redactions consistent with the requirements of
3 this chapter;

4 (C) May provide a copy of the unredacted recording to consulting
5 expert witnesses and defense investigators. Defense expert witnesses
6 and investigators shall abide by the same conditions of disclosure as
7 the defense attorney;

8 (D) May provide a copy of the unredacted recording to the court
9 under seal and may use a copy of the unredacted recording during
10 court proceedings conducted in camera or during a closed hearing,
11 subject to the requirements of any order entered by the court; and

12 (E) Shall not disclose or publish the recording, except as
13 authorized by this subsection (14)(f) or court order. Any requests by
14 a third party to the defense, unrelated to the case, seeking access
15 to or production of the unredacted recording, shall be referred to
16 the original provider of the materials.

17 (iii) Unredacted body worn camera recordings provided under a
18 written agreement pursuant to this subsection (14)(f) shall not be
19 considered published or otherwise exposed to the public eye. Any
20 violation of the written agreement or this subsection (14)(f) that
21 results in redisclosure of unredacted body worn camera recordings is
22 presumed to be highly offensive to the extent it depicts elements
23 outlined in (a) of this subsection or is otherwise considered highly
24 offensive under law. In any private cause of action resulting from
25 improper redisclosure of the recordings, the attorney may not use the
26 receipt of the recording under this subsection (14)(f) as a defense.
27 A violation of the written agreement or this subsection (14)(f) may
28 also result in sanctions under the civil or criminal court rules.

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

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

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

8 ~~((g))~~ (h) For purposes of this subsection (14):

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

13 (ii) "Intimate image" means an individual or individuals engaged
14 in sexual activity, including sexual intercourse as defined in RCW
15 9A.44.010 and masturbation, or an individual's intimate body parts,
16 whether nude or visible through less than opaque clothing, including
17 the genitals, pubic area, anus, or postpubescent female nipple.

18 ~~((h))~~ (i) Nothing in this subsection shall be construed to
19 restrict access to body worn camera recordings as otherwise permitted
20 by law for official or recognized civilian and accountability bodies
21 or pursuant to any court order.

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

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

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

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

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

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

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

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

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

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

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

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

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