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SENATE BILL 6173

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State of Washington

65th Legislature

2018 Regular Session

By Senators Takko, Padden, Fortunato, Wilson, Rivers, Zeiger, and Schoesler

1 AN ACT Relating to public records act exemptions regarding  
2 concealed pistol licenses; and reenacting and amending RCW 42.56.240.

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

4 **Sec. 1.** RCW 42.56.240 and 2017 c 261 s 7 and 2017 c 72 s 3 are  
5 each reenacted and amended to read as follows:

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

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

15 (2) Information revealing the identity of persons who are  
16 witnesses to or victims of crime or who file complaints with  
17 investigative, law enforcement, or penology agencies, other than the  
18 commission, if disclosure would endanger any person's life, physical  
19 safety, or property. If at the time a complaint is filed the  
20 complainant, victim, or witness indicates a desire for disclosure or  
21 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, licenses, notices of license denials,  
11 and any documents associated with a license or license application,  
12 under RCW 9.41.070; copies of license applications or information on  
13 the applications may be released to law enforcement or corrections  
14 agencies;

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

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

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

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

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

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

39 (11) The identity of a state employee or officer who has in good  
40 faith filed a complaint with an ethics board, as provided in RCW

1 42.52.410, or who has in good faith reported improper governmental  
2 action, as defined in RCW 42.40.020, to the auditor or other public  
3 official, as defined in RCW 42.40.020;

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

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

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

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

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

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

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

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

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

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

38 (iv) A minor;

39 (v) The body of a deceased person;

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

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

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

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

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

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

23 (ii) Provide the incident or case number;

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

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

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

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

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

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

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

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

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

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

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

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

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

10 (i) Nothing in this section is intended to modify the obligations  
11 of prosecuting attorneys and law enforcement under *Brady v. Maryland*,  
12 373 U.S. 83, 83 S. Ct. 1194, 10 L. Ed. 2d 215 (1963), *Kyles v.*  
13 *Whitley*, 541 U.S. 419, 115 S. Ct. 1555, 131 L. Ed.2d 490 (1995), and  
14 the relevant Washington court criminal rules and statutes.

15 (j) A law enforcement or corrections agency must retain body worn  
16 camera recordings for at least sixty days and thereafter may destroy  
17 the records;

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

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

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

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

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

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

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

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

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

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