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HOUSE BILL 1505

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AS AMENDED BY THE SENATE

Passed Legislature - 2019 Regular Session

State of Washington                      66th Legislature                      2019 Regular Session

By Representatives Klippert, Kraft, and Appleton

Read first time 01/23/19. Referred to Committee on Public Safety.

1            AN ACT Relating to confidential information of child victims of  
2 sexual assault; amending RCW 10.97.130; and reenacting and amending  
3 RCW 42.56.240.

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

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

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

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

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

1 nondisclosure, such desire shall govern. However, all complaints  
2 filed with the commission about any elected official or candidate for  
3 public office must be made in writing and signed by the complainant  
4 under oath;

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

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

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

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

27 (7) Data from the electronic sales tracking system established in  
28 RCW 69.43.165;

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

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

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

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

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

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

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

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

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

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

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

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

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

1 (iii) An intimate image;  
2 (iv) A minor;  
3 (v) The body of a deceased person;  
4 (vi) The identity of or communications from a victim or witness  
5 of an incident involving domestic violence as defined in RCW  
6 10.99.020 or sexual assault as defined in RCW 70.125.030, or  
7 disclosure of intimate images as defined in RCW 9A.86.010. If at the  
8 time of recording the victim or witness indicates a desire for  
9 disclosure or nondisclosure of the recorded identity or  
10 communications, such desire shall govern; or  
11 (vii) The identifiable location information of a community-based  
12 domestic violence program as defined in RCW 70.123.020, or emergency  
13 shelter as defined in RCW 70.123.020.  
14 (b) The presumptions set out in (a) of this subsection may be  
15 rebutted by specific evidence in individual cases.  
16 (c) In a court action seeking the right to inspect or copy a body  
17 worn camera recording, a person who prevails against a law  
18 enforcement or corrections agency that withholds or discloses all or  
19 part of a body worn camera recording pursuant to (a) of this  
20 subsection is not entitled to fees, costs, or awards pursuant to RCW  
21 42.56.550 unless it is shown that the law enforcement or corrections  
22 agency acted in bad faith or with gross negligence.  
23 (d) A request for body worn camera recordings must:  
24 (i) Specifically identify a name of a person or persons involved  
25 in the incident;  
26 (ii) Provide the incident or case number;  
27 (iii) Provide the date, time, and location of the incident or  
28 incidents; or  
29 (iv) Identify a law enforcement or corrections officer involved  
30 in the incident or incidents.  
31 (e)(i) A person directly involved in an incident recorded by the  
32 requested body worn camera recording, an attorney representing a  
33 person directly involved in an incident recorded by the requested  
34 body worn camera recording, a person or his or her attorney who  
35 requests a body worn camera recording relevant to a criminal case  
36 involving that person, or the executive director from either the  
37 Washington state commission on African-American affairs, Asian  
38 Pacific American affairs, or Hispanic affairs, has the right to  
39 obtain the body worn camera recording, subject to any exemption under  
40 this chapter or any applicable law. In addition, an attorney who

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

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

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

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

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

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

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

39 (i) "Body worn camera recording" means a video and/or sound  
40 recording that is made by a body worn camera attached to the uniform

1 or eyewear of a law enforcement or corrections officer while in the  
2 course of his or her official duties; and

3 (ii) "Intimate image" means an individual or individuals engaged  
4 in sexual activity, including sexual intercourse as defined in RCW  
5 9A.44.010 and masturbation, or an individual's intimate body parts,  
6 whether nude or visible through less than opaque clothing, including  
7 the genitals, pubic area, anus, or postpubescent female nipple.

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

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

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

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

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

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

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

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

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

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

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

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

1 (18) Any and all audio or video recordings of child forensic  
2 interviews as defined in chapter 26.44 RCW. Such recordings are  
3 confidential and may only be disclosed pursuant to a court order  
4 entered upon a showing of good cause and with advance notice to the  
5 child's parent, guardian, or legal custodian. However, if the child  
6 is an emancipated minor or has attained the age of majority as  
7 defined in RCW 26.28.010, advance notice must be to the child.  
8 Failure to disclose an audio or video recording of a child forensic  
9 interview as defined in chapter 26.44 RCW is not grounds for  
10 penalties or other sanctions available under this chapter.

11 **Sec. 2.** RCW 10.97.130 and 1992 c 188 s 8 are each amended to  
12 read as follows:

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

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

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