

CERTIFICATION OF ENROLLMENT

ENGROSSED HOUSE BILL 2362

64th Legislature
2016 Regular Session

Passed by the House March 8, 2016
Yeas 57 Nays 39

Speaker of the House of Representatives

Passed by the Senate March 4, 2016
Yeas 37 Nays 9

President of the Senate

Approved

Governor of the State of Washington

CERTIFICATE

I, Barbara Baker, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **ENGROSSED HOUSE BILL 2362** as passed by House of Representatives and the Senate on the dates hereon set forth.

Chief Clerk

FILED

**Secretary of State
State of Washington**

ENGROSSED HOUSE BILL 2362

AS AMENDED BY THE SENATE

Passed Legislature - 2016 Regular Session

State of Washington 64th Legislature 2016 Regular Session

By Representatives Hansen, Pettigrew, Nealey, and Kirby

Read first time 01/11/16. Referred to Committee on Judiciary.

1 AN ACT Relating to video and/or sound recordings made by law
2 enforcement or corrections officers; amending RCW 42.56.120;
3 reenacting and amending RCW 42.56.240 and 42.56.080; adding a new
4 chapter to Title 10 RCW; creating new sections; and providing
5 expiration dates.

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

7 NEW SECTION. **Sec. 1.** The legislature finds that technological
8 developments present opportunities for additional truth-finding,
9 transparency, and accountability in interactions between law
10 enforcement or corrections officers and the public. The legislature
11 intends to promote transparency and accountability by permitting
12 access to video and/or sound recordings of interactions with law
13 enforcement or corrections officers, while preserving the public's
14 reasonable expectation that the recordings of these interactions will
15 not be publicly disclosed to enable voyeurism or exploitation.

16 **Sec. 2.** RCW 42.56.240 and 2015 c 224 s 3 and 2015 c 91 s 1 are
17 each reenacted and amended to read as follows:

18 The following investigative, law enforcement, and crime victim
19 information is exempt from public inspection and copying under this
20 chapter:

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

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

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

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

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

32 (6) Information contained in a local or regionally maintained
33 gang database as well as the statewide gang database referenced in
34 RCW 43.43.762;

35 (7) Data from the electronic sales tracking system established in
36 RCW 69.43.165;

37 (8) Information submitted to the statewide unified sex offender
38 notification and registration program under RCW 36.28A.040(6) by a
39 person for the purpose of receiving notification regarding a

1 registered sex offender, including the person's name, residential
2 address, and email address;

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

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

11 (11) The identity of a state employee or officer who has in good
12 faith filed a complaint with an ethics board, as provided in RCW
13 42.52.410, or who has in good faith reported improper governmental
14 action, as defined in RCW 42.40.020, to the auditor or other public
15 official, as defined in RCW 42.40.020;

16 (12) The following security threat group information collected
17 and maintained by the department of corrections pursuant to RCW
18 72.09.745: (a) Information that could lead to the identification of a
19 person's security threat group status, affiliation, or activities;
20 (b) information that reveals specific security threats associated
21 with the operation and activities of security threat groups; and (c)
22 information that identifies the number of security threat group
23 members, affiliates, or associates; ((and))

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

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

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

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

38 (I) A patient is registered to receive treatment, receiving
39 treatment, waiting for treatment, or being transported in the course
40 of treatment; or

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

3 (B) Information that meets the definition of protected health
4 information for purposes of the health insurance portability and
5 accountability act of 1996 or health care information for purposes of
6 chapter 70.02 RCW;

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

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

10 (iv) A minor;

11 (v) The body of a deceased person;

12 (vi) The identity of or communications from a victim or witness
13 of an incident involving domestic violence as defined in RCW
14 10.99.020 or sexual assault as defined in RCW 70.125.030, or
15 disclosure of intimate images as defined in RCW 9A.86.010. If at the
16 time of recording the victim or witness indicates a desire for
17 disclosure or nondisclosure of the recorded identity or
18 communications, such desire shall govern; or

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

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

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

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

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

34 (ii) Provide the incident or case number;

35 (iii) Provide the date, time, and location of the incident or
36 incidents; or

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

39 (e)(i) A person directly involved in an incident recorded by the
40 requested body worn camera recording, an attorney representing a

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

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

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

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

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

39 (iii) In any case where an agency charges a requestor for the
40 costs of redacting a body worn camera recording under this subsection

1 (14)(f), the time spent on redaction of the recording shall not count
2 towards the agency's allocation of, or limitation on, time or costs
3 spent responding to public records requests under this chapter, as
4 established pursuant to local ordinance, policy, procedure, or state
5 law.

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

7 (i) "Body worn camera recording" means a video and/or sound
8 recording that is made by a body worn camera attached to the uniform
9 or eyewear of a law enforcement or corrections officer from a covered
10 jurisdiction while in the course of his or her official duties and
11 that is made on or after the effective date of this section and prior
12 to July 1, 2019; and

13 (ii) "Covered jurisdiction" means any jurisdiction that has
14 deployed body worn cameras as of the effective date of this section,
15 regardless of whether or not body worn cameras are being deployed in
16 the jurisdiction on the effective date of this section, including,
17 but not limited to, jurisdictions that have deployed body worn
18 cameras on a pilot basis.

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

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

28 (j) A law enforcement or corrections agency must retain body worn
29 camera recordings for at least sixty days and thereafter may destroy
30 the records.

31 **Sec. 3.** RCW 42.56.080 and 2005 c 483 s 1 and 2005 c 274 s 285
32 are each reenacted and amended to read as follows:

33 Public records shall be available for inspection and copying, and
34 agencies shall, upon request for identifiable public records, make
35 them promptly available to any person including, if applicable, on a
36 partial or installment basis as records that are part of a larger set
37 of requested records are assembled or made ready for inspection or
38 disclosure. Agencies shall not deny a request for identifiable public
39 records solely on the basis that the request is overbroad. Agencies

1 shall not distinguish among persons requesting records, and such
2 persons shall not be required to provide information as to the
3 purpose for the request except to establish whether inspection and
4 copying would violate RCW 42.56.070(9) or 42.56.240(14), or other
5 statute which exempts or prohibits disclosure of specific information
6 or records to certain persons. Agency facilities shall be made
7 available to any person for the copying of public records except when
8 and to the extent that this would unreasonably disrupt the operations
9 of the agency. Agencies shall honor requests received by mail for
10 identifiable public records unless exempted by provisions of this
11 chapter.

12 **Sec. 4.** RCW 42.56.120 and 2005 c 483 s 2 are each amended to
13 read as follows:

14 No fee shall be charged for the inspection of public records(~~(-~~
15 ~~No fee shall be charged for)~~) or locating public documents and making
16 them available for copying, except as provided in RCW 42.56.240(14).
17 A reasonable charge may be imposed for providing copies of public
18 records and for the use by any person of agency equipment or
19 equipment of the office of the secretary of the senate or the office
20 of the chief clerk of the house of representatives to copy public
21 records, which charges shall not exceed the amount necessary to
22 reimburse the agency, the office of the secretary of the senate, or
23 the office of the chief clerk of the house of representatives for its
24 actual costs directly incident to such copying. Agency charges for
25 photocopies shall be imposed in accordance with the actual per page
26 cost or other costs established and published by the agency. In no
27 event may an agency charge a per page cost greater than the actual
28 per page cost as established and published by the agency. To the
29 extent the agency has not determined the actual per page cost for
30 photocopies of public records, the agency may not charge in excess of
31 fifteen cents per page. An agency may require a deposit in an amount
32 not to exceed ten percent of the estimated cost of providing copies
33 for a request. If an agency makes a request available on a partial or
34 installment basis, the agency may charge for each part of the request
35 as it is provided. If an installment of a records request is not
36 claimed or reviewed, the agency is not obligated to fulfill the
37 balance of the request.

1 NEW SECTION. **Sec. 5.** (1) A law enforcement or corrections
2 agency that deploys body worn cameras must establish policies
3 regarding the use of the cameras. The policies must, at a minimum,
4 address:

5 (a) When a body worn camera must be activated and deactivated,
6 and when a law enforcement or corrections officer has the discretion
7 to activate and deactivate the body worn camera;

8 (b) How a law enforcement or corrections officer is to respond to
9 circumstances when it would be reasonably anticipated that a person
10 may be unwilling or less willing to communicate with an officer who
11 is recording the communication with a body worn camera;

12 (c) How a law enforcement or corrections officer will document
13 when and why a body worn camera was deactivated prior to the
14 conclusion of an interaction with a member of the public while
15 conducting official law enforcement or corrections business;

16 (d) How, and under what circumstances, a law enforcement or
17 corrections officer is to inform a member of the public that he or
18 she is being recorded, including in situations where the person is a
19 non-English speaker or has limited English proficiency, or where the
20 person is deaf or hard of hearing;

21 (e) How officers are to be trained on body worn camera usage and
22 how frequently the training is to be reviewed or renewed; and

23 (f) Security rules to protect data collected and stored from body
24 worn cameras.

25 (2) A law enforcement or corrections agency that deploys body
26 worn cameras before the effective date of this section must establish
27 the policies within one hundred twenty days of the effective date of
28 this section. A law enforcement or corrections agency that deploys
29 body worn cameras on or after the effective date of this section must
30 establish the policies before deploying body worn cameras.

31 (3) This section expires July 1, 2019.

32 NEW SECTION. **Sec. 6.** For a city or town that is not deploying
33 body worn cameras on the effective date of this section, a
34 legislative authority of a city or town is strongly encouraged to
35 adopt an ordinance or resolution authorizing the use of body worn
36 cameras prior to their use by law enforcement or a corrections
37 agency. Any ordinance or resolution authorizing the use of body worn
38 cameras should identify a community involvement process for providing

1 input into the development of operational policies governing the use
2 of body worn cameras.

3 NEW SECTION. **Sec. 7.** (1) The legislature shall convene a task
4 force with the following voting members to examine the use of body
5 worn cameras by law enforcement and corrections agencies:

6 (a) One member from each of the two largest caucuses of the
7 senate, appointed by the president of the senate;

8 (b) One member from each of the two largest caucuses in the house
9 of representatives, appointed by the speaker of the house of
10 representatives;

11 (c) A representative from the governor's office;

12 (d) Two representatives from the Washington association of
13 prosecuting attorneys;

14 (e) A representative from the Washington defender association;

15 (f) A representative of the Washington association of criminal
16 defense lawyers;

17 (g) A representative from the American civil liberties union of
18 Washington;

19 (h) A representative from the Washington association of sheriffs
20 and police chiefs;

21 (i) Four chief local law enforcement officers, at least two of
22 whom must be from local law enforcement agencies that have deployed
23 body worn cameras, appointed jointly by the president of the senate
24 and the speaker of the house of representatives;

25 (j) Three law enforcement officers, one representing the council
26 of metropolitan police and sheriffs and two representing the
27 Washington council of police and sheriffs;

28 (k) Two representatives of local governments responsible for
29 oversight of law enforcement, appointed jointly by the president of
30 the senate and the speaker of the house of representatives;

31 (l) A representative from the Washington coalition for open
32 government;

33 (m) A representative of the news media, appointed jointly by the
34 president of the senate and the speaker of the house of
35 representatives;

36 (n) A representative of victims advocacy groups, appointed
37 jointly by the president of the senate and the speaker of the house
38 of representatives;

1 (o) Two representatives with experience in interactions between
2 law enforcement and the public, appointed by the Washington state
3 commission on African-American affairs;

4 (p) Two representatives with experience in interactions between
5 law enforcement and the public, appointed by the Washington state
6 commission on Asian Pacific American affairs;

7 (q) Two representatives with experience in interactions between
8 law enforcement and the public, appointed by the Washington state
9 commission on Hispanic affairs;

10 (r) One representative of immigrant or refugee communities,
11 appointed jointly by the president of the senate and the speaker of
12 the house of representatives;

13 (s) One person with expertise in the technology of retaining and
14 redacting body worn camera recordings, appointed jointly by the
15 president of the senate and the speaker of the house of
16 representatives;

17 (t) Two representatives of the tribal communities with experience
18 in interactions between law enforcement and the public, appointed
19 jointly by the president of the senate and the speaker of the house
20 of representatives;

21 (u) A public member, appointed jointly by the president of the
22 senate and the speaker of the house of representatives; and

23 (v) A representative of the Washington state fraternal order of
24 police.

25 (2) The task force shall choose two cochairs from among its
26 legislative members.

27 (3) The task force may request such information, recordings, and
28 other records from agencies as the task force deems appropriate for
29 it to effectuate this section. A participating agency must provide
30 such information, recordings, or records upon request subject to
31 exemptions under chapter 42.56 RCW or any applicable law.

32 (4) Staff support for the task force shall be provided by the
33 senate committee services and the house of representatives office of
34 program research.

35 (5) Legislative members of the task force may be reimbursed for
36 travel expenses in accordance with RCW 44.04.120. Nonlegislative
37 members, except those representing an employer, governmental entity,
38 or other organization, are entitled to be reimbursed for travel
39 expenses as provided in RCW 43.03.050 and 43.03.060.

1 (6) The expenses of the task force shall be paid jointly by the
2 senate and the house of representatives. Task force expenditures are
3 subject to approval by the senate facilities and operations committee
4 and the house executive rules committee, or their successor
5 committees.

6 (7) The task force shall hold public meetings in locations that
7 include rural and urban communities and communities in the eastern
8 and western parts of the state.

9 (8) The task force shall specifically consider and report on the
10 use of body worn cameras in health care facilities subject to the
11 health insurance portability and accountability act of 1996, P.L.
12 104-191, and the uniform health care information act, chapter 70.02
13 RCW. The task force shall consult with subject matter experts,
14 including, but not limited to, the Washington state hospital
15 association and the Washington state medical association, and any
16 findings or recommendations must be consistent with the obligations
17 of health care facilities under both federal and state law.

18 (9) The task force shall report its findings and recommendations
19 to the governor and the appropriate committees of the legislature by
20 December 1, 2017. The report must include, but is not limited to,
21 findings and recommendations regarding costs assessed to requesters,
22 policies adopted by agencies, retention and retrieval of data, model
23 policies regarding body worn cameras that at a minimum address the
24 issues identified in section 5 of this act, and the use of body worn
25 cameras for gathering evidence, surveillance, and police
26 accountability. The task force must allow a minority report to be
27 included with the task force report if requested by a member of the
28 task force.

29 (10) This section expires June 1, 2019.

30 NEW SECTION. **Sec. 8.** (1) For state and local agencies, a body
31 worn camera may only be used by officers employed by a general
32 authority Washington law enforcement agency as defined in RCW
33 10.93.020, any officer employed by the department of corrections, and
34 personnel for jails as defined in RCW 70.48.020 and detention
35 facilities as defined in RCW 13.40.020.

36 (2) This section expires July 1, 2019.

1 NEW SECTION. **Sec. 9.** Sections 5, 6, and 8 of this act
2 constitute a new chapter in Title 10 RCW.

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