

CERTIFICATION OF ENROLLMENT

**ENGROSSED HOUSE BILL 2362**

64th Legislature  
2016 Regular Session

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

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**Speaker of the House of Representatives**

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

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**President of the Senate**

Approved

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**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.

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**Chief Clerk**

FILED

**Secretary of State  
State of Washington**

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ENGROSSED HOUSE BILL 2362

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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.

--- END ---