2016 State Legislative Session
Regional Law, Safety, and Justice Issues

Issue	Status
Marijuana	**HB 2494** would have reduced the penalties for possession and delivery of marijuana to align with existing law. The bill did not pass. **SB 6375** which would have allowed MJ Vaping Lounges; the bill did not pass. **SHB 2368** would have allowed a pilot program in Seattle only to allow retail stores to obtain a license from the LCB to do delivery services from their retail stores. The bill did not pass. **HB 1438** and **HB 2998** would have preempted local authority to regulate and/or ban marijuana businesses; the bill did not pass.
Basic Law Enforcement Academy (BLEA)	An early version of the Senate budget proposal would have required agencies that hire, on average, more than ten officers per year (Seattle, Bellevue, Spokane, King County, Pierce County, and Spokane County) to pay a 75% match for training costs, up from the currently required 25% match. Agencies that hire an average of 5-9 recruits per year will have to pay a 50% match – this would have included Auburn, Kent, Renton, Kirkland, Everett, Yakima, Spokane, and others. Essentially, the Senate proposal cuts over $880,000 from BLEA and requires them to collect the balance from local jurisdictions. The **final budget did not include additional cost shifting** to local agencies and **did fund two additional BLEA classes**. The Criminal Justice Training Commission is currently seeking authority and funding to add 8 classes to reduce the existing and projected backlog.
Use of Deadly Force in Community Policing	**ESHB 2908** established a Task Force on Use of Deadly Force in Community Policing. The Task Force is comprised of diverse members and includes representatives from both cities and counties. The Task Force will **review laws, practices, and training programs** regarding the use of deadly force in Washington state and other states; **review current policies, practices, and tools** used by or otherwise available to law enforcement as an alternative to lethal uses of force, including tasers and other nonlethal weapons; and **recommend best practices** to reduce the number of violent interactions between law enforcement officers and members of the public. A **report** is due by December 1, 2016.
LEOFF 1 Pension Merger	**SB 6668** would have merged the LEOFF 1 and TRS 1 pension systems. The merger would have allowed the State to reduce their TRS 1 obligations and payments thanks to the surplus funds, estimated at approximately $1billion, in the LEOFF 1 system. The bill didn't pass, but a proviso was included in the final budget **directing the Select Committee on Pension Policy to study a LEOFF 1/TRS 1 merger** and to update a 2011 study on a possible LEOFF1/LEOFF 2 merger.

2016 State Legislative Session
Regional Law, Safety, and Justice Issues

Issue	Status
Behavioral Health	**ESSB 6656** seeks to improve practices at the state hospitals via increased oversight, wide-ranging consultant studies, and mandated diversion/discharge of certain populations. It **creates the Select Committee on Quality Improvement in State Hospitals (SQUISH)** as a new legislative and governor oversight committee. The bill **requires multiple studies** including potential pilot projects, to review how clients could be better treated at the state hospitals as well in the local community, when appropriate, rather than sending them to the state hospitals altogether. The **Behavioral Health Innovation Fund is created** to promote quality, patient outcomes, safety, and efficiency. A **report** with recommendations are due by December 1. This sets up the possibility for major changes to the state's mental health system for next year. **3SHB 1713** integrates the Involuntary Treatment Act for mental health and substance use disorders and provides the legal framework for the implementation of new secure detoxification facilities. The law will be phased in between now and 2026 as capacity becomes available. The state is projecting nine secure detoxification facilities statewide, with the first, Kent Recovery Center, to come online by 2018. Significant new investments were made including **$20 million for mental health capital** like increasing community inpatient/evaluation and treatment (E&T) capacity, crisis triage and stabilization facilities, secure detox, etc. ($12.4m will be distributed locally via competitive process). **$41 million for mental health operating** ($17.3m will be distributed locally via competitive process).
Law enforcement and fire fighter employment changes	**HB 2543** and **SSB 6319** would have extended local law enforcement and fire fighter employment opportunities to lawful permanent residents. SHB 2543 passed the House 89-7 but was never brought up for a Senate vote; SSB 6319 did not receive a Senate floor vote.
Certificates of Restoration of Opportunity (CROP)	**2ESHB 1553** creates a process to allow Superior Courts to issue CROPs for individuals who have demonstrated their commitment to remaining crime free, and fulfilling court obligations, to obtain a certificate signed by a judge. Employers and housing providers have the discretion to consider a CROP. The bill does not cover all professional licenses, for example it does not apply to accountants, criminal justice, long-term care workers, nursing home administrators, medical, teachers, behavioral health counselors, etc.
Replace 1% property tax cap	**Property tax reform** has been an issue that local governments have been teeing up for the 2017 session, to include as part of the legislature's response to *McCleary*. Specifically local governments are working to replace the arbitrary 1% cap on property taxes with a cap that limits revenue growth to the same economic factors influencing costs: inflation plus the rate of population growth, with a total cap at 5%.

2016 State Legislative Session
Regional Law, Safety, and Justice Issues

Issue	Status
Suicide prevention	**E2SHB 2793 creates a Safe Homes Task Force to** develop suicide awareness and prevention materials to be used by firearm dealers, gun ranges, pharmacies and in hunter safety classes. The task force will provide annual progress reports to the Legislature beginning December 2016. Additionally the **State Department of Health will develop a one-time training for pharmacists** on suicide assessment, treatment and management.
Extreme Risk Protection Orders	**HB 2461** and **SB 6352** would have allowed law enforcement and family members to seek an order temporarily restricting someone from possessing firearms if a court finds that they are a substantial risk of harming themselves or other people. The bill did not pass but I-1491 which seeks to implement similar protections will be on the November ballot. The bills did not pass out of either chamber.
Child Access Prevention	**HB 1747** and **SB 5789** would have created a liability if a child accesses a negligently stored firearm and harms themselves or someone else. The bill did not pass but will likely be pursued again next year. The bills did not pass out of either chamber.
Rape kit testing and tracking	**2SHB 2530** requires the State Patrol to **create a tracking system** to allow victims to know where their kits are in the process. Local law enforcement agencies, prosecutors, hospitals and the state patrol are required to participate in the system. Washington is the first state to take this step – this is a huge improvement for victims who, today, often have no way of knowing where their kit is in the system. Additionally, the bill **creates a fund** for accepting private donations to begin to deal with the 6000 untested rape kits currently in our system and for sexual assault nurse examiner services and training.
Law enforcement body worn cameras	**EHB 2362 creates privacy protections** for victims and community members in jurisdictions, like Seattle, who already have a body camera program in place. Specifically it protects certain types of footage from being released to the public – children, nudity, victim protective services, and if a party is not an interested party in the event, required to pay the costs of providing footage. The bill also **requires law enforcement agencies deploying body worn cameras to develop policies** governing when cameras are turned on/off, communication with people who may be recorded, and training and security rules. A **Task Force** is created of law enforcement, local governments, community members, victim services, and lawmakers to come up with recommendations for policies governing body cameras and for jurisdictions who wish to begin these programs in the future. The task force will make recommendations to the legislature by 12/1/2017. The first meeting of the task force is happening this week. This law **expires on 7/1/2019** with an expectation that by then, the task force will have completed its work and the legislature will adopt permanent policies governing body camera use.

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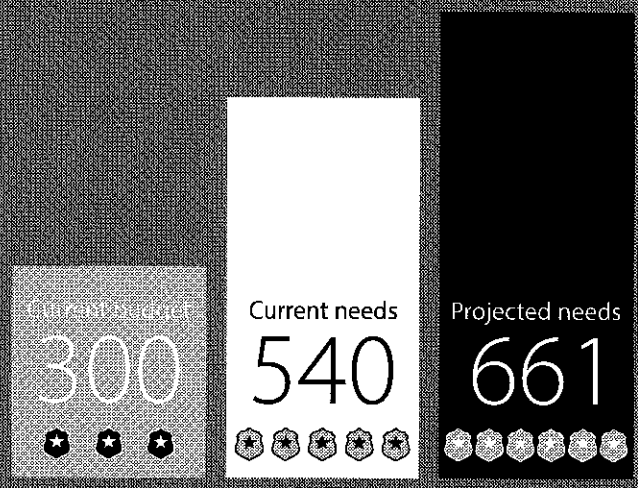
Basic Law Enforcement Academy

Local governments already fund law enforcement training

In order to meet the demand for training new police recruits, the CJTC needs to add eight BLEA classes in FY 2017. To do that, they need $2.4 million in the second supplemental budget. Without this funding, the training backlog will grow to more than 12 months, costing money in overtime and impacting public safety.



More details

Why was the Criminal Justice Training Commission created?
In the early 1970s, numerous basic law enforcement trainings were being held around the state – independently taught without standardized curriculum. In response, the Washington Legislature established the Washington State Criminal Justice Training Commission (CJTC), to provide standardized, mandatory training for law enforcement agencies statewide. Washington was the first state to provide mandated law enforcement training through the Basic Law Enforcement Academy (BLEA).

How is the Basic Law Enforcement Academy funded?
To pay for the mandated training, Washington State and local governments agreed that the training would be funded through an added percentage to every traffic ticket written by local law enforcement. In 1984, the state created a special account – the Public Safety and Education Account (PSEA) – where funds were placed to pay for BLEA and other public safety uses. In 2009, the state eliminated the PSEA account and began depositing the dedicated traffic ticket revenue into the general fund. As a result, the funding for BLEA and the CJTC was shifted to the general fund.

How much money do locals send to the PSEA?
With PSEA's elimination, it is much more difficult to track the funds. However, cities and counties sent the state's general fund more than $30 million in traffic ticket revenue in FY 2015. It costs the CJTC $4.6 million dollars per year to provide mandated training (BLEA and other courses) to local law enforcement.

How much are cities now paying?
For more than 30 years, the traffic ticket revenue sent from local police to the state was used to cover the full cost of training local law enforcement officers, as agreed to when the training mandate was established. The state now requires local governments to pay 25% of the BLEA cost - $3,187 per cadet trained, plus the cost of ammunition. Cities also pay the new recruits' salary and benefits.

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Public Records Act Considerations for Body Worn Video

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Director of Transparency and Privacy

A. Why Washington's PRA is Unique

The Washington Public Records Act, RCW Chapt. 42.56 (PRA), contains a unique combination of provisions. Although the Federal Freedom of Information Act and open records laws of other states may contain one or more of the following provisions, only the PRA contains all of them:

1. **An agency may charge only the actual cost of copying records. It may not charge for searching, redacting, or otherwise processing requests.**

2. **An agency can't deny a request for identifiable public records solely because the request is too broad.**

3. **An agency must produce databases upon request.**

4. **The PRA's privacy protections are limited and generally only allow an agency to redact the individual's identity and require it to disclose the rest of the record.**

5. **The PRA does not address the potential for violating privacy by aggregating information.**

6. **A litigant and/or a litigant's attorney may submit PRA requests for records related to litigation and pursue discovery at the same time.**

7. **The PRA imposes strict liability for violations. Even a good faith error will result in liability for attorney fees, costs, and may result in daily penalties calculated on a per page per day basis.**

B. What's so hard about police videos?

Law enforcement agencies are faced with managing mounting volumes of videos. They create and collect recordings made by in-car video systems (ICV), body worn video systems (BWV), cell phones, and surveillance cameras while balancing transparency

and privacy obligations. At the same time they must review videos, identify redactable content, and redact video without efficient tools.

Washington voters adopted what is now the PRA in 1972 before digital video, cell phones, and other forms of electronic records existed. Even though agencies are generating videos at a rate faster than they can process and provide them in response to disclosure requests, they still must comply with the PRA's obligations or incur attorney fees, costs, plus penalties of up to $100 per day for each violation.

Fisher Broadcasting v. City of Seattle, 180 Wn.2d 515, 326 P3d 688 (2014) stemmed from SPD's denial of records requests made by KOMO-TV reporter Tracy Vedder for ICV database information plus all videos tagged for retention during a three-year period. The Washington Supreme Court ultimately accepted direct review and issued an opinion in June 2014. Agencies can draw several lessons from *Fisher*:

1. Agencies must be able to provide responsive public records regardless whether they are electronic or digital;
2. Agencies should understand the capabilities and limitations of their systems and be able to communicate these to requestors;
3. Technical barriers do not warrant denying a request;
4. An agency must produce at least "partially responsive" records even if the precise record requested does not exist;
5. Courts will interpret exemptions narrowly regardless of the effort required to provide records.

Requestors can, and do, request massive volumes of video. The request at issue in *Fisher* was for hundreds of thousands of ICV. SPD currently has over one million hours of ICV. Any agency that adopts video must be prepared to handle requests for any and all its video.

Beyond volume, video presents other problems that differ in scope and nature from print records. Video systems rarely communicate with report systems, making it a challenge to correlate videos to particular incidents. Unlike print records, videos cannot be searched by keyword for content, so there is no simple way to identify sensitive content that must be redacted. Agencies often lack software or systems that allow fast-forwarding through video; thus, the only way to locate potentially exempt content is to view and listen to the video in real time. Each hour of video often requires far more than an hour of staff time to review.

Redacting exempt content poses another challenge. Reviewing, redacting and releasing video is an expensive, time-consuming, and labor-intensive process. Technicians must review each video for exempt content, and then mask exempt content frame by frame. Also, they must listen to audio and edit out exempt portions. It may take an hour or more to redact a three-minute video. Automated software cannot guarantee that all sensitive content has been redacted, and no legal precedent has established the proper standard agencies should apply when redacting video.

The Legislature and the Courts apply the same privacy standards to video as they do to print records. A person's right to privacy under the PRA is invaded or violated only if disclosure of information about the person: (1) would be highly offensive to a reasonable person, **and** (2) is not of legitimate concern to the public." RCW 42.56.050. *Hearst v. Hoppe,* 90 Wn.2d 123, 580 P.2d 246 (1978). An agency must meet both prongs. It must disclose even embarrassing records if they are of legitimate public concern.

When a privacy exemption applies, an agency generally may redact only the individual's identity and must disclose the rest of the record. See, *Bainbridge Island Police Guild v. City of Puyallup,* 172 Wn.2d 398, 259 P.3d 190 (2011) (Only the subject officer's identity could be redacted from an internal investigation of alleged sexual misconduct even though the records were requested by the name of the officer); *see also, Koenig v. City of Des Moines,* 158 Wn.2d 173, 142 P.3d 162 (2006) (Similar result when investigation of sexual assault investigation was requested by the minor victim's name). Under this standard, an agency may only redact or blur the identity of the subject of a video and must disclose the remaining substance of the video no matter how embarrassing that content may be.

C. Recordings that do not violate the Privacy Act may violate the subjects' privacy rights.

The Washington Attorney General issued a formal opinion on video and audio recording of communications between citizens and law enforcement officers using body cameras (AGO 2014 Number 8). The Attorney General's formal opinions do not have the force of law, but courts are likely to find this AGO particularly persuasive because it is the first legal analysis of body cameras in Washington. News reports inaccurately suggested that the AGO says that BWV recordings in private residences do not violate the subjects' privacy rights. The AGO answers questions about how the Privacy Act, RCW Chapt. 9.73, applies to BWV. It does not answer questions about public disclosure of BWV, and it is ambiguous about constitutional or common-law privacy issues regarding the content of videos.

The Privacy Act does not address all aspects of privacy; rather, it addresses Washington's two-party consent requirement and imposes criminal and civil liability for intercepting or recording a private conversation without the consent of all parties unless a particular exception to the act applies. It also makes recordings made in violation of the act inadmissible in court.

RCW 9.73.090(1)(c), the section of the Privacy Act limiting disclosure of videos related to active, filed litigation, applies to in-car videos (ICV). The AGO does not address ICV, except to say that RCW 9.73.090(1)(c) might apply to an audio recording inside a home if it is made by a body-mounted microphone connected to the car-mounted ICV system. Because RCW 9.73.090(1)(c) rarely applies to BWV, most BWV recordings will be subject to public disclosure immediately. Also, BWV recordings require more labor-intensive review because they may be made in private residences or may capture more intimate interactions than ICV does. These factors highlight the importance of readily identifying BWV recordings that pose a privacy risk.

That a recording is proper under the Privacy Act does not mean that its disclosure is appropriate. Exemptions may apply to the content of a video warranting redaction or withholding. By noting that Washington courts have recognized a common-law action for invasion of privacy for improperly disclosing a private matter if disclosure would be highly offensive to a reasonable individual and of no legitimate interest to the public, the AGO acknowledges that disclosing a properly recorded BWV recording might violate a subject's right to privacy. The AGO does not say when an agency may disclose a video made inside a residence; it merely suggests third-party notice so the subject of the video can seek an injunction if the agency has any doubts about disclosure.

The AGO does not draw a bright-line that would prohibit BWV recording beyond the front door of a private residence. Instead, it analyzes the issue based on the individual's awareness that a conversation is being recorded. The AGO says that an officer who is a party to a conversation, whose presence is obvious, and who announces that she is recording does not violate the Privacy Act for that conversation; nor does an officer who intercepts the conversation of others who know of his presence.

The AGO also says that an officer probably won't be subject to Privacy Act liability for continuing to record after the other party withdraws consent. The AGO does not say whether an officer should have the flexibility to turn off the camera; rather, it leaves this to the department's policy and to the Legislature.

Recordings made while executing a search warrant raise particular concerns. The Fourth Amendment requires police actions inside a home in execution of a warrant to be related to the objectives of the authorized intrusion. Because police must meet Fourth Amendment requirements to obtain a warrant, the recording during the execution of the warrant must meet similar requirements to be admissible or otherwise not violate the resident's rights. The AGO suggests that officers seek the court's permission to record without consent at the same time they seek the warrant.

The U.S. Supreme Court has held that "it is a violation of the Fourth Amendment for police to bring members of the media or other third parties into a home during the execution of a warrant when the presence of the third parties in the home was not in aid of the execution of the warrant." *Wilson v. Layne,* 526 U.S. 603, 614, 119 S.Ct. 1692, 143 L.Ed.2d 818 (1999). In *Layne*, the mere presence of the media during execution of the search warrant was a Fourth Amendment violation. Agencies should be cautious about disclosing videos made in private residences pursuant to execution of search warrants.

The AGO addresses other issues, including recording an officer's "off-duty" conversations and the potential need to re-notify an individual of the recording once he or she is placed under arrest. Agencies implementing a BWV program should carefully read the AGO and adopt policies that reflect its guidance.

BODY WORN CAMERAS
Engrossed House Bill #2362
RCW 42.56.240 (14)

A. Requester must ask for the video by providing one of the following

- ☐ Specifically identifying a name of a person or persons involved in the incident;
- ☐ Provide the incident or case number;
- ☐ Provide the date, time, and location of the incident; OR
- ☐ Identify a law enforcement or corrections officer involved in the incident:

B. Who is requesting the video? *If any of the people below, Agency cannot charge redaction costs.*

- ☐ A person directly involved in the incident recorded by the requested body worn camera recording;
- ☐ An attorney representing a person directly involved in an incident recoded by the requested body worn camera recording;
- ☐ A person or his/her attorney who requests a body worn camera recording relevant to a criminal case involving that person;
- ☐ An executive director from either the Washington state commission on African-American affairs, Asian Pacific American Affairs, Hispanic affairs;
- ☐ An attorney who represents a person regarding a potential or existing civil cause of action involving the denial of civil rights under the federal or state constitution or a violation of a U.S. D.O.J. settlement (attorney must explain the relevancy and request relief from redaction costs).

C. Is there a privacy interest? *TEST: Is it: (1) Highly offensive to a reasonable person AND (2) Not of legitimate concern to the public?*

(1) Is it highly offensive to a reasonable person? It is presumed highly offensive to a reasonable person if it depicts:

- ☐ Any areas of a medical facility, counseling, or therapeutic program office where
  - A patient is registered to receive treatment, receiving treatment, waiting for treatment, or being transported in the course of treatment;
  - Health care information is shared with a patient;
- ☐ Information that meets the definition of protected health information[1] for purposes of HIPAA or 70.02 RCW;
- ☐ The interior of a place of residence where a person has a reasonable expectation of privacy;
- ☐ An intimate image as defined in RCW 9A.86.010[2]:
- ☐ A minor;
- ☐ The body of a deceased person;
- ☐ The identity of or communications from a victim or witness of an incident involving domestic violence as defined in RCW 10.99.020[3] or sexual assault as defined in RCW 70.125.030[4], or

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[1] "**Health care information**" means any information, whether oral or recorded in any form or medium, that identifies or can readily be associated with the identity of a patient and directly relates to the patient's health care, including a patient's deoxyribonucleic acid and identified sequence of chemical base pairs. The term includes any required accounting of disclosures of health care information. RCW 70.02.010

[2] "**Intimate image**" means any photograph, motion picture film, videotape, digital image, or any other recording or transmission of another person who is identifiable from the image itself or from information displayed with or otherwise connected to the image, and that was taken in a private setting, is not a matter of public concern, and depicts: (i) Sexual activity, including sexual intercourse as defined in RCW 9A.44.010 and masturbation; or (ii) A person's intimate body parts, whether nude or visible through less than opaque clothing, including the genitals, pubic area, anus, or post-pubescent female nipple.

disclosure of intimate images as defined in RCW 9A.86.010. If victim/witness indicates disclosure or nondisclosure of recorded image or communications at the time of recording, their desire shall govern; OR

☐ The identifiable location information of a community-based domestic violence program as defined in RCW 70.123.020[5], or emergency shelter as defined in RCW 70.123.020[6].

(2) Is it of legitimate concern to the public?

2. RCW 42.56.240(14) DEFINITIONS:

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

B. "Covered jurisdiction" means any jurisdiction that has deployed body worn cameras as of the effective date of this section, regardless of whether or not body worn cameras are being deployed in the jurisdiction on the effective date of this section, including, but not limited to, jurisdictions that have deployed body worn cameras on a pilot basis. – This means that if you don't have a program by June 9, your agency is not a "covered jurisdiction."

3. BODY WORN CAMERA RETENTION

A law enforcement or corrections agency must retain body worn camera recordings for at least sixty days and thereafter may destroy the records. RCW 42.56.240 (14)(j).

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[3] "**Domestic violence**" includes but is not limited to any of the following crimes when committed by one family or household member against another:(a) Assault in the first degree (RCW 9A.36.011);(b) Assault in the second degree (RCW 9A.36.021); (c) Assault in the third degree (RCW 9A.36.031);(d) Assault in the fourth degree (RCW 9A.36.041);(e) Drive-by shooting (RCW 9A.36.045);(f) Reckless endangerment (RCW 9A.36.050);(g) Coercion (RCW 9A.36.070);(h) Burglary in the first degree (RCW 9A.52.020);(i) Burglary in the second degree (RCW 9A.52.030);(j) Criminal trespass in the first degree (RCW 9A.52.070);(k) Criminal trespass in the second degree (RCW 9A.52.080);(l) Malicious mischief in the first degree (RCW 9A.48.070);(m) Malicious mischief in the second degree (RCW 9A.48.080);(n) Malicious mischief in the third degree (RCW 9A.48.090);(o) Kidnapping in the first degree (RCW 9A.40.020);(p) Kidnapping in the second degree (RCW 9A.40.030);(q) Unlawful imprisonment (RCW 9A.40.040);(r) Violation of the provisions of a restraining order, no-contact order, or protection order restraining or enjoining the person or restraining the person from going onto the grounds of or entering a residence, workplace, school, or day care, or prohibiting the person from knowingly coming within, or knowingly remaining within, a specified distance of a location (RCW 10.99.040, 10.99.050, 26.09.300, 26.10.220, 26.26.138, 26.44.063, 26.44.150, 26.50.060, 26.50.070, 26.50.130, 26.52.070, or 74.34.145);(s) Rape in the first degree (RCW 9A.44.040);(t) Rape in the second degree (RCW 9A.44.050);(u) Residential burglary (RCW 9A.52.025);(v) Stalking (RCW 9A.46.110); and(w) Interference with the reporting of domestic violence (RCW 9A.36.150).

[4] "**Sexual assault**" means one or more of the following:(a) Rape or rape of a child;(b) Assault with intent to commit rape or rape of a child;(c) Incest or indecent liberties;(d) Child molestation;(e) Sexual misconduct with a minor;(f) Custodial sexual misconduct;(g) Crimes with a sexual motivation; (h) Sexual exploitation or commercial sex abuse of a minor;(i) Promoting prostitution; or(j) An attempt to commit any of the aforementioned offenses.

[5] "**Domestic violence program**" means an agency, organization, or program with a primary purpose and a history of effective work in providing advocacy, safety assessment and planning, and self-help services for domestic violence in a supportive environment, and includes, but is not limited to, a community-based domestic violence program, emergency shelter, or domestic violence transitional housing program.

[6] "**Emergency shelter**" means a place of supportive services and safe, temporary lodging offered on a twenty-four hour, seven-day per week basis to victims of domestic violence and their children.

4. BODY WORN CAMERA POLICY REQUIREMENTS:

If BWC's are deployed as of the effective date of the law, jurisdictions have 120 days to have policies in place. For BWC's deployed after, the following policies must be in place before deployment:

A. When a body worn camera must be activated and deactivated, and when a law enforcement or corrections officer has the discretion to activate and deactivate the body worn camera;
B. How a law enforcement or corrections officer is to respond to circumstances when it would be reasonably anticipated that a person may be unwilling or less willing to communicate with an officer who is recording the communication with a body worn camera;
C. How a law enforcement or corrections officer will document when and why a body worn camera was deactivated prior to the conclusion of an interaction with a member of the public while conducting official law enforcement or corrections business;
D. How, and under what circumstances, a law enforcement or corrections officer is to inform a member of the public that he or she is being recorded, including in situations where the person is a non-English speaker or has limited English proficiency, or where the person is deaf or hard of hearing;
E. How officers are to be trained on body worn camera usage and how frequently the training is to be reviewed or renewed; and
F. Security rules to protect data collected and stored from body worn cameras.

This section expires July 1, 2019 (*See Title 10*)

5. ADDITIONAL RELEVANT POINTS:

- If an agency deploys a BWC program after the effective date of the bill, the City is encouraged to adopt an ordinance or resolution authorizing such use. In such ordinance or resolution, community involvement process for providing input into the development of operational policies governing the use of BWC's should be identified. (*See Title 10 of RCW's*).
- Nothing in RCW 42.56.240(14) is intended to modify the obligations under *Brady v. Maryland* (exculpatory evidence must be released to the defense), *Kyles v. Whitley* (prosecutor has an affirmative duty to disclose evidence favorable to the defendant), and the relevant Washington court criminal rules and statutes. *(See RCW 42.56.240 (14)(i)).*
- If an agency charges redaction costs, it must use redaction technology that provides the least costly commercially available method, to the extent possible and reasonable.
- For state and local agencies, a body worn camera may only be used by a general authority Washington law enforcement agency as defined in RCW 10.93.020[7], any officer employed by the department of corrections, and personnel for jails as defined in RCW 70.48.020[8] and detention facilities as defined in RCW 13.40.020. (*See Title 10 of RCW's*).

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[7] "**General authority Washington law enforcement agency**" means any agency, department, or division of a municipal corporation, political subdivision, or other unit of local government of this state, and any agency, department, or division of state government, having as its primary function the detection and apprehension of persons committing infractions or violating the traffic or criminal laws in general, as distinguished from a limited authority Washington law enforcement agency, and any other unit of government expressly designated by statute as a general authority Washington law enforcement agency. The Washington state patrol and the department of fish and wildlife are general authority Washington law enforcement agencies.

[8] "**Jail**" means any holding, detention, special detention, or correctional facility as defined in this section. "**Holding facility**" means a facility operated by a governing unit primarily designed, staffed, and used for the temporary housing of adult persons charged with a criminal offense prior to trial or sentencing and for the temporary housing of such persons during or after trial and/or sentencing, but in no instance shall the housing exceed thirty days. "**Detention facility**" means a facility operated by a governing unit primarily designed, staffed, and used for the temporary housing of adult persons charged with a criminal offense prior to trial or sentencing and for the housing of adult persons for purposes of punishment and correction after sentencing or persons serving terms not to exceed ninety days. "**Special detention facility**" means a minimum security facility operated by a governing unit primarily designed, staffed, and used for the housing of special populations of sentenced persons who do not require the level of security normally

- In a court action seeking the right to inspect or copy a body worn camera recording, a person who prevails against a law enforcement agency that withholds or discloses all or part of a body worn camera recording pursuant to RCW 42.56.240 (14)(a) – using the presumption that it is highly offensive to a reasonable person under the privacy test under the certain categories listed there – that person is not entitled to fees, costs, or awards pursuant to 42.56.550 unless they show that the agency acted in bad faith or with gross negligence[9]. (*See RCW 42.56.240 (14)(c)).*
- A large task force (34 people) is created by this bill. A report of the task force is due December 1, 2017. The report must include, but is not limited to, findings and recommendations regarding costs assessed to requesters, policies adopted by agencies, retention and retrieval of data, model policies regarding body worn cameras that at a minimum address the issues identified in section 5 (requiring policies police are required to put in place regarding use of cameras), and the use of body worn cameras for gathering evidence, surveillance, and police accountability. The section creating the task force expires June 1, 2019.
- Effective Date: June 9, 2016

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provided in detention and correctional facilities including, but not necessarily limited to, persons convicted of offenses under RCW 46.61.502 or 46.61.504. "**Correctional facility**" means a facility operated by a governing unit primarily designed, staffed, and used for the housing of adult persons serving terms not exceeding one year for the purposes of punishment, correction, and rehabilitation following conviction of a criminal offense.

[9] "**Gross Negligence**" is defined as, "The intentional failure to perform a manifest duty in reckless disregard of the consequences as affecting the life or property of another." (*See Black's Law Dictionary*)