
**State Government & Tribal Relations
Committee**

HB 1956

Brief Description: Exempting from public disclosure sensitive records pertaining to current and formerly incarcerated individuals' dignity and safety.

Sponsors: Representatives Hackney, Valdez, Davis, Simmons, Goodman, Peterson, Dolan and Macri.

Brief Summary of Bill

- Creates a new Public Records Act exemption for sensitive records pertaining to current and formerly incarcerated individuals maintained by the Department of Corrections.

Hearing Date: 1/24/22

Staff: Desiree Omli (786-7105).

Background:

Public Records Act.

The Public Records Act (PRA) requires that all state and local governmental entities make all public records available to the public, unless a specific exemption applies or disclosure is prohibited. Public records are records prepared or retained by a governmental entity that relate to the conduct of government or the performance of governmental or proprietary functions. The PRA must be liberally construed; any exemptions to the disclosure requirement must be interpreted narrowly. Exemptions are permissive, meaning that an agency, although not required to disclose, has the discretion to provide an exempt record. Exemptions under the PRA are inapplicable to the extent that information, the disclosure of which would violate personal privacy or vital governmental interests, can be redacted from specific requested records. An

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

agency that refuses, in whole or in part, inspection of any public record must include a statement of the specific exemption authorizing the withholding and a brief explanation of how the exemption applies to the record or information withheld.

Investigative Records.

Specific intelligence information and investigative records compiled by investigative, law enforcement, and penology agencies are exempt if the nondisclosure is essential to effective law enforcement or for the protection of any person's right to privacy. A person's right to privacy is invaded or violated only if disclosure of the information: (1) would be highly offensive to a reasonable person, and (2) is not of legitimate concern to the public.

Information revealing the identity of persons who are witnesses to or victims of a crime or who file complaints with investigative, law enforcement, or penology agencies are exempt if disclosure would endanger any person's life, physical safety, or property. A victim's or witness' desire for disclosure or nondisclosure at the time a complaint is filed shall govern the disclosure of that record or information.

Disclosure of Health Information.

The Health Insurance Portability and Accountability Act of 1996 (HIPAA) establishes nationwide standards for the use, disclosure, storage, and transfer of protected health information. Entities covered by HIPAA must have a patient's authorization to use or disclose health care information unless there is a specified exception. The HIPAA allows a state to establish standards that are more stringent than its provisions.

In Washington, the Uniform Health Care Information Act (UHCIA) governs the disclosure of health care information by health care providers and their agents or employees. The UHCIA provides that a health care provider may not disclose health care information about a patient unless there is a statutory exception or a written authorization by the patient.

There are several statutory exemptions in the PRA for records that contain certain health care and medical information, including certain information collected, obtained, or maintained by the Department of Health and other state agencies.

Disclosure of Jail Records.

A department of corrections responsible for the operation of a jail must maintain a jail register. With certain exceptions, the records of a person confined in jail is confidential and may only be made available to criminal justice agencies.

Prison Rape Elimination Act.

The federal Prison Rape Elimination Act (PREA) was passed in 2003. The stated purpose of the act is to, among other things, develop and implement national standards for the detection prevention, reduction, and punishment of prison rape; increase the available data and information on the incidence of prison rape to improve management and administration of correctional facilities; and standardize definitions used for collecting data on the incidence of prison rape.

The Attorney General establishes by rule national standards for the detection, prevention, reduction, and punishment of prison rape.

Summary of Bill:

Sensitive records of a current or formerly incarcerated individual maintained by the Department of Corrections (DOC) are exempt from disclosure, with exceptions. "Sensitive records" are:

- records that would disclose the identity of a confidential informant;
- body scanner images;
- records that would disclose an incarcerated individual's disability or health information outside of that person's medical file;
- records that would disclose information about an incarcerated individual's transgender, intersex, nonbinary, or gender nonconforming status; sexual orientation; genital anatomy; or gender-affirming care or accommodations other than that person's preferred name and pronouns; and
- records that would disclose information related to an incarcerated individual's victimization risk assessment, risk identification, sexual abuse and harassment reports, or monitoring plan under the PREA.

If the DOC refuses the disclosure of sensitive records that would disclose the identity of a confidential informant or information about an incarcerated individual's gender nonconforming status, sexual orientation, genital anatomy, or gender-affirming care, it is not required to provide a statement of the specific exemption authorizing the withholding or a brief explanation of how the exemption applies to the record or information withheld. Instead, in response to all public record requests, the DOC must notify requestors that this category of sensitive information is not subject to the statutory requirement and that the DOC neither confirms nor denies the existence or withholding of such records.

Sensitive records are not subject to the redaction requirement for exemptions under the PRA.

Records that would disclose an incarcerated individual's disability or health information outside of that person's medical file or information about an incarcerated individual's gender nonconforming status, sexual orientation, genital anatomy, or gender-affirming care must be made available upon the written permission of the subject of the record being requested.

The exemptions provided apply to any public records request made prior to the effective date of the act for which disclosure of records has not already occurred.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.