

# SENATE BILL REPORT

## SB 5098

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As of January 26, 2022

**Title:** An act relating to certain reports.

**Brief Description:** Concerning certain reports.

**Sponsors:** Senator Hunt; by request of Public Records Exemptions Accountability Committee.

**Brief History:**

**Committee Activity:** State Government & Elections: 1/26/22.

**Brief Summary of Bill**

- Implements recommendations of the Public Records Exemptions Accountability Committee, modifying disclosure requirements for grand jury records, nonprofit investigations, and information about motor vehicle accidents.

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### SENATE COMMITTEE ON STATE GOVERNMENT & ELECTIONS

**Staff:** Samuel Brown (786-7470)

**Background:** The Public Records Act (PRA), enacted in 1972 as part of Initiative 276, requires that all state and local government agencies make all public records available for public inspection and copying unless certain statutory exemptions apply. Over 500 specific references in the PRA, or other statutes, remove certain information from application of the PRA, provide exceptions to the public disclosure and copying of certain information, or designate certain information as confidential. The provisions requiring public records disclosure must be interpreted liberally while the exemptions are interpreted narrowly to effectuate the general policy favoring disclosure.

Sunshine Committee. The Public Records Exemption Accountability Committee, known as the Sunshine Committee, was created in 2007 to review these exemptions from public

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disclosure and provide recommendations as to whether exemptions should be continued, modified, or terminated.

Quality Improvement Committees. Hospitals must maintain quality improvement committees to improve the quality of health care services and prevent medical malpractice. Quality improvement proceedings review medical staff privileges and employee competency, collect information related to negative health care outcomes, and conduct safety improvement activities. Provider groups and medical facilities other than hospitals are encouraged to conduct similar activities. The proceedings, reports, and written records of quality improvement committees, committee members, employees, staff, and investigators are not subject to review or disclosure.

Court Procedures. Testimony before a grand jury may not be disclosed, except when required to compare its contents with the contents of testimony before the trial court, when the person providing testimony has been charged with perjury, or when otherwise permitted in the furtherance of justice. Grand jury reports may only be released to the public upon a determination that:

- the report findings deal with a matter of public policy affecting the public interest and do not identify or criticize an individual;
- release would be in the public interest and further the ends of justice; and
- release would not prejudice any trial or investigation.

Under statute, family courts may close case files in part or in their entirety when disclosure is deemed contrary to public policy or injurious to the interests of children or the public morals. Under General Rule 15, courts may only seal court case files to the extent necessary to protect privacy interests, after determining at a hearing that the privacy interests outweigh the public interest.

Nonprofits. In 2021, the Legislature passed SSB 5034, modifying the Washington Nonprofit Corporation Act, updating record keeping and filing requirements with the Secretary of State and procedures for issuing interrogatories to nonprofit companies during investigations.

Labor Statistics Reports. Employers must report to the Department of Labor and Industries (L&I) periodically for compiling statistics about the state's labor force. L&I is prohibited from using the names of individuals, firms, or corporations providing labor statistics, and any individual employee who violates this provision may be punished by a fine up to \$500 and a jail term up to 364 days.

Office of Financial Management. The Office of Financial Management (OFM), originally named the Office of Program Planning and Fiscal Management, was created in 1969, as a division of the Office of the Governor, to integrate the short and long-term planning and fiscal activities of state government. OFM must periodically make confidential reports to the Governor recommending improvements, repairs, and new methods for improving the

efficiency of state agencies.

Motor Vehicle Reports. Coroners must submit to the state toxicologist blood samples from all drivers and pedestrians killed in traffic accidents whose deaths occur within four hours of the accident to determine alcohol and drug concentrations. The state toxicologist's reports and records are provided to the Washington State Patrol (WSP) and the prosecutor and law enforcement agency with jurisdiction. The results of the analysis may be made available to parties to any relevant civil or criminal action upon application to the court.

Law enforcement officers must make reports for any motor vehicle accidents which they investigate. Reports are for the confidential use of the county prosecutor, chief of police or county sheriff, and the director of the Department of Licensing (DOL) and the chief of WSP, though the officer may disclose details of the accident to persons involved in the accident, their insurers, and attorneys. The director of DOL must make a report of all motor vehicle accidents, cross-referencing each accident to the individuals involved, which is only available for the confidential use of the chief of WSP, the director of the Washington Traffic Safety Commission, and law enforcement officers as designated.

Youth Records. The Department of Social and Health Services and the Department of Children, Youth, and Families are required to produce a report with statistics and other data about children who are committed to institutions in the state, and the extent, kind, and causes of behavior problems in children. The reports may be disclosed only to the Governor and superior court judges.

**Summary of Bill:** The bill as referred to committee not considered.

**Summary of Bill (Proposed Substitute):** Health Information. Any records created by or for, or maintained by, a quality improvement committee are not subject to review or disclosure. The exemption from disclosure requirements for information involving birthing centers is removed.

Courts. Disclosure of a grand jury report may not be prohibited on the basis that the report identifies or criticizes an individual. Testimony in front of grand juries may not be disclosed when prohibited by the court. The statutory reference to when family courts may close case files is removed.

Nonprofits. The exemption from disclosure requirements for interrogatories to and responses from nonprofit companies is removed.

Labor Statistics Reports. The penalties for improper disclosure of personal information in labor statistics reports are eliminated.

Office of Financial Management. OFM reports to the Governor recommending improvements to the efficiency of state agency operations may no longer be confidential.

Motor Vehicle Reports. The results of the state toxicologist's analysis of the drug and alcohol concentrations of drivers and pedestrians killed in traffic accidents are no longer confidential, and must be made available to parties to any relevant civil or criminal action. Motor vehicle accident reports may be disclosed in response to a public records request if all identifying information of persons involved in the accident is redacted. The DOL director's motor vehicle accident report is no longer confidential.

Youth Reports. Statistical reports on behavior problems of children and numbers of children in state institutions are no longer confidential.

**Appropriation:** None.

**Fiscal Note:** Not requested.

**Creates Committee/Commission/Task Force that includes Legislative members:** No.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Staff Summary of Public Testimony On Proposed Substitute:** PRO: This is the work of the Sunshine Committee, combining two years' worth of recommendations.

OTHER: We are glad the 2021 committee recommendations are in the proposed substitute. An amendment is suggested to coordinate the quality improvement committee language with other statutes, referencing information and documents, instead of records, and adding a reference to materials collected by the quality improvement committees.

**Persons Testifying:** PRO: Senator Sam Hunt, Prime Sponsor.

OTHER: Katherine George, Johnston George LLP; Cara Helmer, Washington State Hospital Association.

**Persons Signed In To Testify But Not Testifying:** None.