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**SENATE BILL 5859**

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**State of Washington**

**67th Legislature**

**2022 Regular Session**

**By** Senators C. Wilson, Hunt, Nguyen, Nobles, and Pedersen

Read first time 01/13/22. Referred to Committee on State Government & Elections.

1 AN ACT Relating to exempting from public disclosure sensitive  
2 records pertaining to current and formerly incarcerated individuals'  
3 dignity and safety; amending RCW 42.56.080, 42.56.210, and 70.02.250;  
4 adding a new section to chapter 42.56 RCW; and creating a new  
5 section.

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

7 NEW SECTION. **Sec. 1.** A new section is added to chapter 42.56  
8 RCW to read as follows:

9 (1) Sensitive records, as defined in subsection (6) of this  
10 section, maintained by the department of corrections are exempt from  
11 public inspection and copying under this chapter, except as provided  
12 under subsection (4) of this section. This exemption does not prevent  
13 the disclosure of information relating to sensitive records in  
14 aggregate form if the data does not alone or in combination with any  
15 other records reveal the identity of an incarcerated individual.

16 (2) The exemption in subsection (1) of this section does not  
17 prohibit the department of corrections from including in a public  
18 registry an incarcerated individual's name, age, department of  
19 corrections number, and current facility location. The exemption in  
20 subsection (1) of this section does not apply to court records in the  
21 possession of the department of corrections including but not limited

1 to an individual's judgment and sentence, or the disclosure of  
2 sensitive records as otherwise permitted or limited by law.

3 (3) Sensitive records listed in subsection (6)(a)(i) and (iv) of  
4 this section are not subject to the requirements of RCW 42.56.210(3).  
5 The department of corrections is not required to acknowledge the  
6 existence or withholding of records listed in subsection (6)(a)(i)  
7 and (iv) of this section. In response to all public records requests,  
8 the department of corrections shall notify requestors that sensitive  
9 records listed in subsection (6)(a)(i) and (iv) of this section are  
10 not subject to RCW 42.56.210(3) and that the department of  
11 corrections neither confirms nor denies the existence or withholding  
12 of records described in subsection (6)(a)(i) and (iv) of this  
13 section.

14 (4) A public records request for sensitive records described in  
15 subsection (6)(a)(iii) and (iv) of this section must be made  
16 available upon the written permission of the subject of the record  
17 requested. Requests for information or records contained within an  
18 incarcerated individual's department of corrections medical, mental  
19 health, and dental file shall be managed pursuant to chapter 70.02  
20 RCW.

21 (5) Jail records maintained by the department of corrections in  
22 the course of operating a jail as described in RCW 70.48.100 are  
23 subject to RCW 70.48.100.

24 (6) For the purpose of this section:

25 (a) "Sensitive records" are:

26 (i) Records that would disclose the identity of a confidential  
27 informant;

28 (ii) Body scanner images;

29 (iii) Records that would disclose an incarcerated individual's  
30 disability or health information that are outside of an incarcerated  
31 individual's department of corrections medical, mental health, and  
32 dental file;

33 (iv) Records that would disclose information about an  
34 incarcerated individual's transgender, intersex, nonbinary, or gender  
35 nonconforming status; sexual orientation; genital anatomy; or gender-  
36 affirming care or accommodations other than an incarcerated  
37 individual's preferred name and pronouns; and

38 (v) Records that would disclose information about an incarcerated  
39 individual's victimization risk assessment, risk identification,

1 sexual abuse and harassment reports, or monitoring plan pursuant to  
2 34 U.S.C. Sec. 30301 et. seq.

3 (b) "Incarcerated individual" has the same meaning as "inmate"  
4 under RCW 72.09.015 and includes currently or formerly incarcerated  
5 individuals.

6 (c) "Disability" has the meaning provided in RCW 49.60.040.

7 (d) (i) "Health information" means any information, whether oral  
8 or recorded in any form or medium, created by or derived from a  
9 health care provider, incarcerated individual, department of  
10 corrections employee or agent, or other person, that identifies or  
11 can readily be associated with the identity of an incarcerated  
12 individual and relates to or describes:

13 (A) The past, present, or future physical or mental health or  
14 condition of an individual;

15 (B) The provision of health care to an incarcerated individual;  
16 or

17 (C) Behavioral health treatment records.

18 (ii) Information described in (d) (i) of this subsection contained  
19 in an incarcerated individual's program records or documents is  
20 health information under this section. Whether an incarcerated  
21 individual participated in, failed to participate in, was terminated  
22 from, or satisfactorily completed court-ordered treatment or  
23 programming eligible for earned release time as determined by the  
24 department of corrections pursuant to RCW 9.94A.729 is not health  
25 information.

26 (e) "Health care" means preventive, diagnostic, therapeutic,  
27 rehabilitative, maintenance, or palliative care, services,  
28 procedures, tests, or counseling that:

29 (i) Relates to the physical, mental, or behavioral health or  
30 condition of an individual;

31 (ii) Affects the structure or function of the human body or any  
32 part of the human body; or

33 (iii) Prescribes, dispenses, or furnishes to an individual drugs  
34 or biologicals, or medical devices or health care equipment and  
35 supplies.

36 (f) "Behavioral health treatment" means services that are  
37 provided, overseen, or coordinated by a person licensed under chapter  
38 18.57, 18.57A, 18.71, 18.71A, 18.83, 18.205, 18.225, or 18.79 RCW.

1       **Sec. 2.** RCW 42.56.080 and 2017 c 304 s 2 are each amended to  
2 read as follows:

3       (1) A public records request must be for identifiable records. A  
4 request for all or substantially all records prepared, owned, used,  
5 or retained by an agency is not a valid request for identifiable  
6 records under this chapter, provided that a request for all records  
7 regarding a particular topic or containing a particular keyword or  
8 name shall not be considered a request for all of an agency's  
9 records.

10       (2) Public records shall be available for inspection and copying,  
11 and agencies shall, upon request for identifiable public records,  
12 make them promptly available to any person including, if applicable,  
13 on a partial or installment basis as records that are part of a  
14 larger set of requested records are assembled or made ready for  
15 inspection or disclosure. Agencies shall not deny a request for  
16 identifiable public records solely on the basis that the request is  
17 overbroad. Agencies shall not distinguish among persons requesting  
18 records, and such persons shall not be required to provide  
19 information as to the purpose for the request except to establish  
20 whether inspection and copying would violate RCW 42.56.070(8) (~~(e)~~),  
21 42.56.240(14), or section 1(4) of this act, or other statute which  
22 exempts or prohibits disclosure of specific information or records to  
23 certain persons. Agency facilities shall be made available to any  
24 person for the copying of public records except when and to the  
25 extent that this would unreasonably disrupt the operations of the  
26 agency. Agencies shall honor requests received in person during an  
27 agency's normal office hours, or by mail or email, for identifiable  
28 public records unless exempted by provisions of this chapter. No  
29 official format is required for making a records request; however,  
30 agencies may recommend that requestors submit requests using an  
31 agency provided form or web page.

32       (3) An agency may deny a bot request that is one of multiple  
33 requests from the requestor to the agency within a twenty-four hour  
34 period, if the agency establishes that responding to the multiple  
35 requests would cause excessive interference with other essential  
36 functions of the agency. For purposes of this subsection, "bot  
37 request" means a request for public records that an agency reasonably  
38 believes was automatically generated by a computer program or script.

1       **Sec. 3.** RCW 42.56.210 and 2005 c 274 s 402 are each amended to  
2 read as follows:

3       (1) Except for information described in RCW 42.56.230(~~(3)~~) (4)  
4 (a), section 1 of this act, and confidential income data exempted  
5 from public inspection pursuant to RCW 84.40.020, the exemptions of  
6 this chapter are inapplicable to the extent that information, the  
7 disclosure of which would violate personal privacy or vital  
8 governmental interests, can be deleted from the specific records  
9 sought. No exemption may be construed to permit the nondisclosure of  
10 statistical information not descriptive of any readily identifiable  
11 person or persons.

12       (2) Inspection or copying of any specific records exempt under  
13 the provisions of this chapter may be permitted if the superior court  
14 in the county in which the record is maintained finds, after a  
15 hearing with notice thereof to every person in interest and the  
16 agency, that the exemption of such records is clearly unnecessary to  
17 protect any individual's right of privacy or any vital governmental  
18 function.

19       (3) (~~Agency~~) Except as provided in section 1(3) of this act,  
20 agency responses refusing, in whole or in part, inspection of any  
21 public record shall include a statement of the specific exemption  
22 authorizing the withholding of the record (or part) and a brief  
23 explanation of how the exemption applies to the record withheld.

24       **Sec. 4.** RCW 70.02.250 and 2019 c 325 s 5021 are each amended to  
25 read as follows:

26       (1) Information and records related to mental health services  
27 delivered to a person subject to chapter 9.94A or 9.95 RCW must be  
28 released, upon request, by a mental health service agency to  
29 department of corrections personnel for whom the information is  
30 necessary to carry out the responsibilities of their office. The  
31 information must be provided only for the purpose of completing  
32 presentence investigations, supervision of an incarcerated person,  
33 planning for and provision of supervision of a person, or assessment  
34 of a person's risk to the community. The request must be in writing  
35 and may not require the consent of the subject of the records.

36       (2) The information to be released to the department of  
37 corrections must include all relevant records and reports, as defined  
38 by rule, necessary for the department of corrections to carry out its

1 duties, including those records and reports identified in subsection  
2 (1) of this section.

3 (3) The authority shall, subject to available resources,  
4 electronically, or by the most cost-effective means available,  
5 provide the department of corrections with the names, last dates of  
6 services, and addresses of specific behavioral health administrative  
7 services organizations, managed care organizations contracted with  
8 the authority under chapter 74.09 RCW, and mental health service  
9 agencies that delivered mental health services to a person subject to  
10 chapter 9.94A or 9.95 RCW pursuant to an agreement between the  
11 authority and the department of corrections.

12 (4) The authority, in consultation with the department, the  
13 department of corrections, behavioral health administrative services  
14 organizations, managed care organizations contracted with the  
15 authority under chapter 74.09 RCW, mental health service agencies as  
16 defined in RCW 70.02.010, mental health consumers, and advocates for  
17 persons with mental illness, shall adopt rules to implement the  
18 provisions of this section related to the type and scope of  
19 information to be released. These rules must:

20 (a) Enhance and facilitate the ability of the department of  
21 corrections to carry out its responsibility of planning and ensuring  
22 community protection with respect to persons subject to sentencing  
23 under chapter 9.94A or 9.95 RCW, including accessing and releasing or  
24 disclosing information of persons who received mental health services  
25 as a minor; and

26 (b) Establish requirements for the notification of persons under  
27 the supervision of the department of corrections regarding the  
28 provisions of this section.

29 (5) The information received by the department of corrections  
30 under this section must remain confidential and subject to the  
31 limitations on disclosure outlined in chapter 71.34 RCW, except as  
32 provided in RCW 72.09.585 and section 1(4) of this act.

33 (6) No mental health service agency or individual employed by a  
34 mental health service agency may be held responsible for information  
35 released to or used by the department of corrections under the  
36 provisions of this section or rules adopted under this section.

37 (7) Whenever federal law or federal regulations restrict the  
38 release of information contained in the treatment records of any  
39 patient who receives treatment for alcoholism or drug dependency, the

1 release of the information may be restricted as necessary to comply  
2 with federal law and regulations.

3 (8) This section does not modify the terms and conditions of  
4 disclosure of information related to sexually transmitted diseases  
5 under this chapter.

6 NEW SECTION. **Sec. 5.** This act is remedial, curative, and  
7 retroactive, and the exemptions in section 1 of this act apply  
8 retroactively to any public records request made prior to the  
9 effective date of this section for which disclosure of records has  
10 not already occurred.

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