

# HOUSE BILL REPORT

## ESHB 1533

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### As Amended by the Senate

**Title:** An act relating to exempting the disclosure of certain information of agency employees or their dependents who are survivors of domestic violence, sexual assault, harassment, or stalking.

**Brief Description:** Exempting the disclosure of certain information of agency employees or their dependents who are survivors of domestic violence, sexual assault, harassment, or stalking.

**Sponsors:** House Committee on State Government & Tribal Relations (originally sponsored by Representatives Mena, Davis, Reed, Doglio, Fosse, Berg, Taylor, Ryu, Peterson, Berry, Walen, Alvarado, Ramel, Simmons, Griffey, Morgan, Gregerson, Shavers, Ormsby, Pollet, Fey, Kloba, Bateman and Macri).

**Brief History:**

**Committee Activity:**

State Government & Tribal Relations: 2/3/23, 2/10/23 [DPS].

**Floor Activity:**

Passed House: 3/6/23, 80-15.

Senate Amended.

Passed Senate: 4/7/23, 48-0.

**Brief Summary of Engrossed Substitute Bill**

- Exempts from disclosure under the Public Records Act personally identifying information of certain agency employees or their dependents who are survivors of domestic violence, sexual assault, harassment, or stalking.

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### HOUSE COMMITTEE ON STATE GOVERNMENT & TRIBAL RELATIONS

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass.

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*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.*

Signed by 7 members: Representatives Ramos, Chair; Stearns, Vice Chair; Abbarno, Ranking Minority Member; Christian, Assistant Ranking Minority Member; Gregerson, Low and Mena.

**Staff:** Devon Mann (786-7290) and Desiree Omli (786-7105).

**Background:**

The Public Records Act.

The Public Records Act (PRA) requires that all public records maintained by state and local agencies be made available to all members of the public, except for records specifically exempt under the PRA or other statute. A public record is defined as any writing that is prepared, owned, used, or retained by any state or local government agency, and which contains information that relates to the conduct of government, or the performance of any governmental or proprietary function. The term "writing" is broadly defined to include not only traditional written records, but also photos, maps, videos, voicemails, webpage and social media content, emails, text messages, and tweets. Within five business days of receiving the request, the agency must either provide the records, provide a reasonable estimate of the time the agency will take to respond to this request, or deny the request. Provisions under the PRA are construed liberally, and the exemptions must be construed narrowly.

The PRA provides for various exemptions related to personally identifiable information or a person's right to privacy. For example, the PRA prohibits agencies from disclosing lists of individuals when that list is requested for commercial purposes. Personal information in employee files maintained by an agency is also exempt to the extent that disclosure would violate their right to privacy. A person's right to privacy is violated if the disclosure of the information: (1) would be highly offensive to a reasonable person; and (2) is not of legitimate concern to the public. In addition, certain employment information held by an agency in personnel records is also exempt under the PRA such as residential addresses, residential telephone numbers, personal wireless telephone numbers, personal email addresses, social security numbers, driver's license numbers, identicard numbers, payroll deductions, and emergency contact information of employees, and the names, dates of birth, residential addresses, residential telephone numbers, personal wireless telephone numbers, personal email addresses, social security numbers, and emergency contact information of dependents of employees. Further, client records maintained by an agency that is a domestic violence program or a community sexual assault program are exempt from disclosure under the PRA.

Address Confidentiality Program.

The Address Confidentiality Program (ACP) is a service administered by the Office of the Secretary of State to help people who fear for their safety maintain a confidential address from perpetrators who might locate their personal address through public records such as driver licenses, voter registries, and marriage records. Participants in the ACP are assigned

a P.O. Box address that they can use as their legal home, work, or school address. State, county, and city government agencies are legally required to accept the substitute address. Washington's ACP is available to state residents who are targets of stalking, domestic violence, trafficking, or sexual assault. In 2011 the program expanded to include criminal justice employees who have been threatened or harassed because of their work and expanded once more in 2022 to include state elections officials. Currently, the ACP serves more than 5,000 residents.

#### Domestic Violence.

Domestic violence is defined in the criminal procedure statute as including any of the following crimes when committed either by one family or household member against another family or household member, or one intimate partner against another intimate partner: assault, drive by shooting, reckless endangerment, coercion, burglary, criminal trespass, malicious mischief, kidnapping, unlawful imprisonment, violation of a no contact order, rape, stalking, or interference in reporting domestic violence. The definition of "domestic violence" under the civil protection order statute is similar, but also includes the infliction of fear of physical harm, coercive control, and unlawful harassment.

#### Sexual Assault.

Sexual assault is defined under the Victims of Sexual Assault Act as one or more of the following: rape or rape of a child, assault with intent to commit rape or rape of a child, incest or indecent liberties, child molestation, sexual misconduct with a minor, custodial sexual misconduct, crimes with a sexual motivation, sexual exploitation or commercial sex abuse of a minor, promoting prostitution, or an attempt to commit any of the aforementioned offenses. The civil protection order statute uses the term "sexual abuse," which generally has the same definition as "sexual assault" under the Victims of Sexual Assault Act, but also includes sexual coercion, sexually explicit photographing or recording, voyeurism, indecent exposure, and sexual harassment.

#### Stalking.

Under the criminal code, a person is guilty of stalking when: (1) they intentionally and repeatedly harass or follow another person; (2) the person being harassed or followed is placed in fear that the stalker intends to injure the person, another person, or property of the person or another person; and (3) the stalker either intends to frighten, intimidate, or harass the person or knows or reasonably should know that the person is afraid, intimidated, or harassed. The civil protection order statute has a similar definition of stalking, but also includes cyber harassment, attempts to contact, monitoring, tracking, surveillance, keeping under observation, and disrupting activities.

#### Harassment.

Under the criminal code, harassment occurs when, without lawful authority, a person knowingly threatens to: (1) cause bodily injury immediately or in the future to another; (2) cause physical damage to the property of another; (3) subject the person threatened or any other person to physical confinement or restraint; or (4) maliciously do any other act which

is intended to substantially harm the person threatened or another with respect to his or her physical or mental health or safety. The perpetrator of the harassment, by words or conduct, must have placed the person threatened in reasonable fear that the threat will be carried out. The civil protection order statute includes a similar definition of harassment, but also includes conduct directed at a specific person that seriously alarms, annoys, harasses, or is detrimental to such person, that serves no legitimate or lawful purpose and which would cause a reasonable person to suffer substantial emotional distress.

### **Summary of Engrossed Substitute Bill:**

Personally identifiable information about a state agency employee or a kindergarten through twelfth grade (K-12) public school employee including birthdate, job title, addresses of work stations and locations, work email address, work phone number, or bargaining unit, is exempt from disclosure under the PRA if:

1. the state agency employee or K-12 public school employee, or their dependent, is a survivor of domestic violence, sexual assault, sexual abuse, stalking, or harassment, as defined under the specified criminal procedure statute, Victims of Sexual Assault Act, civil protection order statute, or criminal code;
2. the information is maintained in personnel records or systems of a state agency or a K-12 public school, or is responsive to a request for a list of individuals which is subject to the commercial purpose prohibition; and
3. the state agency employee or K-12 public school employee provides to their employer proof of participation in the ACP, or a sworn statement that must be renewed every two years and signed under penalty of perjury, that the employee or the employee's dependent are a survivor of domestic violence, sexual assault, sexual abuse, stalking, or harassment and that the employee has a reasonable basis to believe that the risk of domestic violence, sexual assault, sexual abuse, stalking, or harassment continues to exist.

Any documentation maintained by an agency to administer the exemption is confidential and may not be disclosed. State agencies and K-12 public schools are permitted to provide information to their employees on how to anonymize their work email address.

### **EFFECT OF SENATE AMENDMENT(S):**

#### The Senate striking amendment:

- expands application of the exemption created under the act to personal information of any employee maintained by any agency in personnel-related records or systems, rather than only applying the exemption to personal information of state agency employees and employees of a public school maintained in the personnel-related records or systems of a state agency or a public school;
- requires that the sworn statement provided by the employee be verified by the employing agency's director or the director's designee by confirming that the sworn statement identifies the alleged perpetrator by name and, if possible, image or

- likeness, or obtaining certain documentation of the allegations;
- specifies that the exemption under the act does not apply to public records requests from the news media;
- authorizes the disclosure of otherwise confidential documents maintained by an agency to administer the exemption created under the act if the employee who submitted the documents provides consent for such release;
- requires that the employee describe in the sworn statement why they have a reasonable basis to believe that the risk of domestic violence, sexual assault, sexual abuse, stalking, or harassment continues to exist, rather than requiring that the employee only attest that they have a reasonable basis that the risk continues to exist; and
- requires, by May 1, 2025, the Joint Legislative Audit and Review Committee to analyze and report on the impacts of the exemption created under the act and consult with survivors with direct lived experience when preparing its analysis and report to determine whether the exemption effectively protects covered employees and their dependents while maintaining transparency and whether the exemption should be maintained or modified.

**Appropriation:** None.

**Fiscal Note:** Not requested.

**Effective Date:** The bill contains an emergency clause and takes effect immediately.

**Staff Summary of Public Testimony:**

(In support) This is an important act that addresses a big problem in need of solution. Many domestic violence survivors spend the majority of their day at work and need avenues to protect them when they are there. Many also cannot maintain jobs because it makes them vulnerable to being found by their abusers. This act would help keep survivors safe at work and make employment more accessible for them.

The current practice of going to court for an injunction to stop the release of a person's information is too lengthy, time consuming, and expensive if you need a lawyer. A case currently on appeal to the Washington Supreme Court might make it necessary for employees seeking the protection of their work information to request an injunction on an individual case-by-case basis under the current law, which would be an inefficient way to protect workers.

Government transparency is important but exempting this information would not interfere with transparency and will serve the important function of protecting employee safety. Government transparency and safety are not mutually exclusive.

This act has clear eligibility requirements and implementation requirements and is fixing a

commonsense problem. Many survivors do not report their abuse; for those that do, the PRA is a way for abusers to get around protection orders for the survivors. The bill would be improved if the existing definitions are expanded to include the definitions of domestic violence, sexual abuse, harassment, and stalking found in the civil protection order statute.

(Opposed) This act would not protect an employee's information from being made public through a public records request because it only protects information held by the employee's employing agency. If the employee's information was given to an outside agency, it would not be protected. If the bill was amended to extend this protection to outside agencies, it would be extremely complicated to implement.

**Persons Testifying:** (In support) Representative Sharlett Mena, prime sponsor; Juliane Williams, Washington Public Employee Association; Simone Boe, Washington Education Association; Erin Haick; Kathleen Barnard; Shontrana Gates-Wertman, Sexual Violence Law Center; Danielle Plessler; and Kati Durkin, Washington Federation of State Employees.

(Opposed) Rowland Thompson, Allied Daily Newspapers of Washington, Washington Newspaper Publishers Association, and Washington State Association of Broadcasters.

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