

# HOUSE BILL REPORT

## HB 1956

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**As Reported by House Committee On:**  
State Government & Tribal Relations

**Title:** An act relating to exempting from public disclosure sensitive records pertaining to current and formerly incarcerated individuals' dignity and safety.

**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 History:**

**Committee Activity:**

State Government & Tribal Relations: 1/24/22, 1/27/22 [DPS].

**Brief Summary of Substitute Bill**

- Exempts from public disclosure certain records relating to incarcerated individuals maintained by the Department of Corrections including body scanner images, records maintained pursuant to the Prison Rape Elimination Act, and certain health information.

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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. Signed by 4 members: Representatives Valdez, Chair; Lekanoff, Vice Chair; Dolan and Gregerson.

**Minority Report:** Without recommendation. Signed by 3 members: Representatives Volz, Ranking Minority Member; Walsh, Assistant Ranking Minority Member; Graham.

**Staff:** Desiree Omli (786-7105).

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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.*

## **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 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.

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

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

The following records related to currently and formerly incarcerated individuals maintained by the Department of Corrections (DOC) are exempt under the PRA:

- body scanner images;
- health information in records other than an incarcerated individuals' medical, mental health, or dental files; and
- records or information created or maintained pursuant to the PREA.

"Health information" is defined as any information that identifies or can be readily associated with the identity of an incarcerated individual that relates to a medical or mental health diagnosis or condition, treatment or programming by a health care provider, the person's gender nonconforming status, sexual orientation, genital anatomy, gender-affirming care, or other accommodations except for preferred pronouns.

Exempt information must be available to the incarcerated individual who is the subject of the information or someone who has written permission from that individual. However, the DOC may withhold information revealing the identity of other incarcerated individuals contained in the record.

Under the statutory requirement for an agency to provide a brief explanation of how the exemption applies to withheld records, the DOC only needs to identify the number of pages withheld and cite to the statute without further explanation when withholding exempt health information.

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.

### **Substitute Bill Compared to Original Bill:**

The category of "sensitive records" is removed and the list of exempt records is narrowed to include the following:

- body scanner images;
- records or information created or maintained pursuant to the PREA except for referrals to law enforcement or information contained in a violation or infraction record; and
- health information in records other than an incarcerated individual's medical, mental health, or dental files.

"Health information" as medical or mental health diagnoses, conditions, or PULHES codes;

treatment or programming provided, overseen, or coordinated by a health care provider, including requests for or complaints about such treatment or programming; transgender, intersex, nonbinary, or gender nonconforming status; sexual orientation; genital anatomy; or gender-affirming care or accommodations other than an incarcerated individual's preferred name, pronouns, and gender marker.

The exemption from the requirement under the PRA to disclose an exempt record if the information that would violate personal privacy or vital governmental interests can be redacted is removed, thereby making this requirement applicable to the exempt records.

The exemption from the requirement to provide a brief explanation of how a PRA exemption applies to a record or information being withheld is removed, and instead an agency that refuses the disclosure of exempt health information is authorized to only identify the number of pages withheld and provide a citation to the statutory authority for the exemption without further explanation.

All records, not just certain records, exempt under the act must be disclosed to the incarcerated individual who is the subject of the record or a requestor with the written permission of the subject of a record.

An emergency clause is added.

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**Appropriation:** None.

**Fiscal Note:** Not requested.

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

**Staff Summary of Public Testimony:**

(In support) The DOC collects extremely sensitive information about incarcerated people that is not protected by the PRA or federal or state privacy laws, such as body scanner images, certain health information, and records related to the PREA. Body scanner images show a person's body contour and genitalia in high definition. Health information held outside of patient files are crucial records used to house people safely, provide accommodations for those with learning disabilities, and identify those who are transgender. The DOC must also ask every person to disclose their medical and mental health conditions when they are sexually assaulted. Survivors of violence are victimized all over again when their personal stories and information are released to the public without their consent. Preventing the release of records created pursuant to the PREA is vital. Due to a person's prior sexual victimization history or sexual orientation, victims can be up to 13 times more likely to be subject to sexual abuse and assault. Failure to protect extremely

sensitive information will result in inmates failing to provide critical information needed by prison staff to investigate allegations of sexual abuse, make housing and classification decisions, and maintain the inmate's safety. This can impact the safety of the prison itself.

People of color are over-represented in prisons and are therefore at an increased risk of violence, discrimination, and psychological trauma if extremely sensitive information about them is released. Disclosure of this information can follow someone even after incarceration when trying to reenter society. Releasing information about person's transgender history forever outs a person. This means a lifetime of employment and housing discrimination while putting them at risk for gender-based violence. A person's reentry plan may fall apart if their family or transitional housing program knew about their transgender status. When so many sources are invested in reentry, it doesn't make sense to have policies that are contrary to successful reentry.

The policy in this bill aligns with Washington policy—jail records are strictly confidential. This policy does not prevent data from being released in the aggregate. It only prohibits extremely sensitive information about an individual from being released without their consent.

Last year, an anti-trans hate group along with several media companies requested sensitive information from the DOC. After a federal law suit was filed, the court found that responding to the request would likely violate the state and federal constitutions and the court issued a stay of proceedings. If the state does nothing, people may file lawsuits each time their information is requested which could be costly to the state.

(Opposed) Transgender inmates represent a small but significant portion of the incarcerated population which presents the DOC with certain challenges. Requests were made for information on how transgender people are being housed and treated in prisons. The media has an interest to make sure people are safely housed and serve their time in ways that don't treat them differently. Certain things are important to know, such as infractions, incidents that gets a person earned time, and court ordered treatments. In addition, when confinement results in injuries to people, it is important to know whether those people are being well treated.

**Persons Testifying:** (In support) SuYoung Yun, United Territories of Pacific Islanders Alliance Washington; Wendy Still; Julie Graham; Ethan Frenchman, Disability Rights Washington; Shannon Perez-Darby; Hailey Ockinga, Beyond These Walls; Alyssa Knight; Cindy Robinson; and Eric Matthes.

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

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