

# SENATE BILL REPORT

## ESHB 1956

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As of February 16, 2022

**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:** House Committee on State Government & Tribal Relations (originally sponsored by Representatives Hackney, Valdez, Davis, Simmons, Goodman, Peterson, Dolan and Macri).

**Brief History:** Passed House: 2/9/22, 57-38.

**Committee Activity:** State Government & Elections: 2/18/22.

### Brief Summary of Bill

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

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## SENATE COMMITTEE ON STATE GOVERNMENT & ELECTIONS

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

**Background:** Public Records Act. The Public Records Act (PRA), enacted in 1972 as part of Initiative 276, requires all state and local government agencies to 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.

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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.*

Disclosure of Health Records. 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.

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. Under the UHCIA, 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.

Prison Rape Elimination Act. The federal Prison Rape Elimination Act (PREA), passed in 2003, is intended to develop and implement national standards for the detection, prevention, reduction, and punishment of prison rape and data collection on the incidence of prison rape to improve management and administration of correctional facilities.

States must provide processes for agency staff to privately report sexual abuse and harassment of inmates and for inmates to privately report sexual abuse and harassment, retaliation by other inmates or staff for reporting sexual abuse and sexual harassment, or staff neglect or violation of duties that may have contributed to such incidents. If a state falls out of compliance with national standards and cannot assure that it will achieve full compliance, it will lose 5 percent of grant funding for certain prison purposes.

**Summary of Bill:** Exemption Created. The following records maintained by the Department of Corrections related to currently and formerly incarcerated persons are exempt from public disclosure requirements:

- body scanner images;
- records or information created or maintained under PREA, other than violation or infraction records or records contained in referrals to law enforcement; and
- health information in records other than the person's medical, mental health, or dental files.

Records collected under PREA and health information may be disclosed to the individual who is the subject of those records, their personal representative, or another person with the individual's written permission.

Health Information Defined. The following health information, in records other than medical, mental health, or dental files, is exempt from public disclosure requirements:

- information that identifies an incarcerated individual directly related to a medical or mental health diagnosis or condition;
- physical capacity codes;
- treatment or programming by a health care provider; and
- the person's gender nonconforming status, sexual orientation, genital anatomy, gender-affirming care, or other accommodations except for preferred pronouns.

The following health information is not covered by the exemption created in the bill:

- information subject to the UHCIA;
- whether an incarcerated individual participated in or completed court-ordered treatment or programming toward an early release;
- images or descriptions of an injury contained in a violation or infraction record; or
- information related to death, irreversible coma, or persistent vegetative state of an incarcerated individual.

Retroactivity Clause. The exemptions created in the bill apply to any public records request made prior to the bill's effective date where records disclosure has not been completed.

**Appropriation:** None.

**Fiscal Note:** Available.

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

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