

# FINAL BILL REPORT

## ESHB 1956

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C 272 L 22  
Synopsis as Enacted

**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).

**House Committee on State Government & Tribal Relations**  
**Senate Committee on State Government & Elections**

### **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 the 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.

Under federal law, 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 the 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

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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 prohibits a health care provider from disclosing health care information about a patient unless there is a statutory exception or a written authorization by the patient.

In addition, 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.

#### 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. Under adopted rules, 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. A state will lose five percent of certain grants it would otherwise receive for prison purposes if it does not certify that it has adopted and is in full compliance with the national standards or assure that it will achieve full compliance in the future.

#### **Summary:**

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 that are risk assessments, risk indicators, monitoring plans, reports of sexual abuse or sexual harassment, records of open PREA investigations, or the identities of persons in closed PREA investigation reports and related materials except for that of DOC staff, contractors, volunteers, and accused individuals in cases where the allegation is substantiated.

"Health information" is defined as any information that identifies or can be readily associated with the identity of an incarcerated individual that directly relates to a medical, mental health, or dental diagnosis, condition, service, treatment, or procedure including

requests for or complaints about such services, treatments, or procedures; 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.

Exempt health information does not include health care information subject to the UHCIA or information related to injuries unless the injury is related to medical procedures or genital anatomy and is information contained in an incident, infraction, or use of force report that is prepared by a DOC staff who is not a health care provider.

The exemptions related to health information and records created or maintained pursuant to the PREA do not apply to a public records request made by the incarcerated individual who is the subject of the information or someone who has written permission from that individual, meaning that the DOC must disclose the record or information to such individuals in accordance with the PRA unless another exemption applies. However, when disclosing such records or information, the DOC may withhold information revealing the identity of other incarcerated individuals contained in the record.

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

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.

**Votes on Final Passage:**

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|--------|----|----|-------------------|
| House  | 57 | 38 |                   |
| Senate | 28 | 20 | (Senate amended)  |
| House  | 55 | 43 | (House concurred) |

**Effective:** March 31, 2022