S-3594.1

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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

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

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

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

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

(2) The exemption in subsection (1) of this section does not prohibit the department of corrections from including in a public registry an incarcerated individual's name, age, department of corrections number, and current facility location. The exemption in subsection (1) of this section does not apply to court records in the possession of the department of corrections including but not limited to an individual's judgment and sentence, or the disclosure of sensitive records as otherwise permitted or limited by law.

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

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

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

(6) For the purpose of this section:

(a) "Sensitive records" are:

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

(ii) Body scanner images;

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

(iv) Records that would disclose information about an incarcerated individual's 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 and pronouns; and

(v) Records that would disclose information about an incarcerated individual's victimization risk assessment, risk identification, sexual abuse and harassment reports, or monitoring plan pursuant to 34 U.S.C. Sec. 30301 et. seq.

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

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

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

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

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

(C) Behavioral health treatment records.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) The information to be released to the department of corrections must include all relevant records and reports, as defined by rule, necessary for the department of corrections to carry out its duties, including those records and reports identified in subsection (1) of this section.

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

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

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

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

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

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

(7) Whenever federal law or federal regulations restrict the release of information contained in the treatment records of any patient who receives treatment for alcoholism or drug dependency, the release of the information may be restricted as necessary to comply with federal law and regulations.

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

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

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