

---

SECOND SUBSTITUTE HOUSE BILL 1176

---

State of Washington

56th Legislature

1999 Regular Session

By House Committee on Appropriations (originally sponsored by Representatives O'Brien, Koster, Kagi, Ballasiotes, Cairnes, Lovick, Hurst, Tokuda, Dickerson, Kenney, Campbell, Ogden, Dunn, Santos, Conway, Esser, Lantz, Rockefeller and McIntire; by request of Department of Corrections)

Read first time 03/08/1999.

1 AN ACT Relating to retention of records pertaining to sexually  
2 violent offenses; and amending RCW 40.14.060, 40.14.070, and 42.17.310.

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

4 **Sec. 1.** RCW 40.14.060 and 1982 c 36 s 5 are each amended to read  
5 as follows:

6 (1) Any destruction of official public records shall be pursuant to  
7 a schedule approved under RCW 40.14.050. Official public records shall  
8 not be destroyed unless:

9 (a) Except as provided under RCW 40.14.070(2)(b), the records are  
10 six or more years old;

11 (b) The department of origin of the records has made a satisfactory  
12 showing to the state records committee that the retention of the  
13 records for a minimum of six years is both unnecessary and  
14 uneconomical, particularly if lesser federal retention periods for  
15 records generated by the state under federal programs have been  
16 established; or

17 (c) The originals of official public records less than six years  
18 old have been copied or reproduced by any photographic or other process

1 approved by the state archivist which accurately reproduces or forms a  
2 durable medium for so reproducing the original.

3 (2) Any lesser term of retention than six years must have the  
4 additional approval of the director of financial management, the state  
5 auditor and the attorney general, except when records have federal  
6 retention guidelines the state records committee may adjust the  
7 retention period accordingly. An automatic reduction of retention  
8 periods from seven to six years for official public records on record  
9 retention schedules existing on June 10, 1982, shall not be made, but  
10 the same shall be reviewed individually by the state records committee  
11 for approval or disapproval of the change to a retention period of six  
12 years.

13 Recommendations for the destruction or disposition of office files  
14 and memoranda shall be submitted to the records committee upon approved  
15 forms prepared by the records officer of the agency concerned and the  
16 archivist. The committee shall determine the period of time that any  
17 office file or memorandum shall be preserved and may authorize the  
18 division of archives and records management to arrange for its  
19 destruction or disposition.

20 **Sec. 2.** RCW 40.14.070 and 1995 c 301 s 71 are each amended to read  
21 as follows:

22 (1)(a) County, municipal, and other local government agencies may  
23 request authority to destroy noncurrent public records having no  
24 further administrative or legal value by submitting to the division of  
25 archives and records management lists of such records on forms prepared  
26 by the division. The archivist, a representative appointed by the  
27 state auditor, and a representative appointed by the attorney general  
28 shall constitute a committee, known as the local records committee,  
29 which shall review such lists and which may veto the destruction of any  
30 or all items contained therein.

31 (b) A local government agency, as an alternative to submitting  
32 lists, may elect to establish a records control program based on  
33 recurring disposition schedules recommended by the agency to the local  
34 records committee. The schedules are to be submitted on forms provided  
35 by the division of archives and records management to the local records  
36 committee, which may either veto, approve, or amend the schedule.  
37 Approval of such schedule or amended schedule shall be by unanimous  
38 vote of the local records committee. Upon such approval, the schedule

1 shall constitute authority for the local government agency to destroy  
2 the records listed thereon, after the required retention period, on a  
3 recurring basis until the schedule is either amended or revised by the  
4 committee.

5 (2)(a) Except as otherwise provided by law, no public records shall  
6 be destroyed until approved for destruction by the local records  
7 committee. Official public records shall not be destroyed unless:

8 ~~((1))~~ (i) The records are six or more years old;

9 ~~((2))~~ (ii) The department of origin of the records has made a  
10 satisfactory showing to the state records committee that the retention  
11 of the records for a minimum of six years is both unnecessary and  
12 uneconomical, particularly where lesser federal retention periods for  
13 records generated by the state under federal programs have been  
14 established; or

15 ~~((3))~~ (iii) The originals of official public records less than  
16 six years old have been copied or reproduced by any photographic,  
17 photostatic, microfilm, miniature photographic, or other process  
18 approved by the state archivist which accurately reproduces or forms a  
19 durable medium for so reproducing the original.

20 An automatic reduction of retention periods from seven to six years  
21 for official public records on record retention schedules existing on  
22 June 10, 1982, shall not be made, but the same shall be reviewed  
23 individually by the local records committee for approval or disapproval  
24 of the change to a retention period of six years.

25 The state archivist may furnish appropriate information,  
26 suggestions, and guidelines to local government agencies for their  
27 assistance in the preparation of lists and schedules or any other  
28 matter relating to the retention, preservation, or destruction of  
29 records under this chapter. The local records committee may adopt  
30 appropriate regulations establishing procedures to be followed in such  
31 matters.

32 Records of county, municipal, or other local government agencies,  
33 designated by the archivist as of primarily historical interest, may be  
34 transferred to a recognized depository agency.

35 (b) Records of investigative reports prepared by any state, county,  
36 municipal, or other law enforcement agency pertaining to sexually  
37 violent offenses contained within chapter 9A.44 RCW that are not  
38 required in the current operation of the law enforcement agency or for  
39 pending judicial proceedings shall, following the expiration of the

1 applicable schedule of the law enforcement agency's retention of the  
2 records, be transferred to the Washington association of sheriffs and  
3 police chiefs for permanent electronic retention and retrieval. Upon  
4 electronic retention of any document, the association shall be  
5 permitted to destroy the paper copy of the document. Any records,  
6 regardless of format, may be destroyed upon the death of the offender.

7 (c) Any record transferred to the Washington association of  
8 sheriffs and police chiefs pursuant to (b) of this subsection shall be  
9 deemed to no longer constitute a public record pursuant to RCW  
10 42.17.020 and shall be exempt from public disclosure. Such records  
11 shall be disseminated only to criminal justice agencies as defined in  
12 RCW 10.97.030 for the sole purpose of determining if a sex offender met  
13 the criteria of a sexually violent predator as defined in chapter 71.09  
14 RCW.

15 **Sec. 3.** RCW 42.17.310 and 1998 c 69 s 1 are each amended to read  
16 as follows:

17 (1) The following are exempt from public inspection and copying:

18 (a) Personal information in any files maintained for students in  
19 public schools, patients or clients of public institutions or public  
20 health agencies, or welfare recipients.

21 (b) Personal information in files maintained for employees,  
22 appointees, or elected officials of any public agency to the extent  
23 that disclosure would violate their right to privacy.

24 (c) Information required of any taxpayer in connection with the  
25 assessment or collection of any tax if the disclosure of the  
26 information to other persons would (i) be prohibited to such persons by  
27 RCW 84.08.210, 82.32.330, 84.40.020, or 84.40.340 or (ii) violate the  
28 taxpayer's right to privacy or result in unfair competitive  
29 disadvantage to the taxpayer.

30 (d) Specific intelligence information and specific investigative  
31 records compiled by investigative, law enforcement, and penology  
32 agencies, and state agencies vested with the responsibility to  
33 discipline members of any profession, the nondisclosure of which is  
34 essential to effective law enforcement or for the protection of any  
35 person's right to privacy.

36 (e) Information revealing the identity of persons who are witnesses  
37 to or victims of crime or who file complaints with investigative, law  
38 enforcement, or penology agencies, other than the public disclosure

1 commission, if disclosure would endanger any person's life, physical  
2 safety, or property. If at the time a complaint is filed the  
3 complainant, victim or witness indicates a desire for disclosure or  
4 nondisclosure, such desire shall govern. However, all complaints filed  
5 with the public disclosure commission about any elected official or  
6 candidate for public office must be made in writing and signed by the  
7 complainant under oath.

8 (f) Test questions, scoring keys, and other examination data used  
9 to administer a license, employment, or academic examination.

10 (g) Except as provided by chapter 8.26 RCW, the contents of real  
11 estate appraisals, made for or by any agency relative to the  
12 acquisition or sale of property, until the project or prospective sale  
13 is abandoned or until such time as all of the property has been  
14 acquired or the property to which the sale appraisal relates is sold,  
15 but in no event shall disclosure be denied for more than three years  
16 after the appraisal.

17 (h) Valuable formulae, designs, drawings, and research data  
18 obtained by any agency within five years of the request for disclosure  
19 when disclosure would produce private gain and public loss.

20 (i) Preliminary drafts, notes, recommendations, and intra-agency  
21 memorandums in which opinions are expressed or policies formulated or  
22 recommended except that a specific record shall not be exempt when  
23 publicly cited by an agency in connection with any agency action.

24 (j) Records which are relevant to a controversy to which an agency  
25 is a party but which records would not be available to another party  
26 under the rules of pretrial discovery for causes pending in the  
27 superior courts.

28 (k) Records, maps, or other information identifying the location of  
29 archaeological sites in order to avoid the looting or depredation of  
30 such sites.

31 (l) Any library record, the primary purpose of which is to maintain  
32 control of library materials, or to gain access to information, which  
33 discloses or could be used to disclose the identity of a library user.

34 (m) Financial information supplied by or on behalf of a person,  
35 firm, or corporation for the purpose of qualifying to submit a bid or  
36 proposal for (i) a ferry system construction or repair contract as  
37 required by RCW 47.60.680 through 47.60.750 or (ii) highway  
38 construction or improvement as required by RCW 47.28.070.

1 (n) Railroad company contracts filed prior to July 28, 1991, with  
2 the utilities and transportation commission under RCW 81.34.070, except  
3 that the summaries of the contracts are open to public inspection and  
4 copying as otherwise provided by this chapter.

5 (o) Financial and commercial information and records supplied by  
6 private persons pertaining to export services provided pursuant to  
7 chapter 43.163 RCW and chapter 53.31 RCW, and by persons pertaining to  
8 export projects pursuant to RCW 43.23.035.

9 (p) Financial disclosures filed by private vocational schools under  
10 chapters 28B.85 and 28C.10 RCW.

11 (q) Records filed with the utilities and transportation commission  
12 or attorney general under RCW 80.04.095 that a court has determined are  
13 confidential under RCW 80.04.095.

14 (r) Financial and commercial information and records supplied by  
15 businesses or individuals during application for loans or program  
16 services provided by chapters 43.163, 43.160, 43.330, and 43.168 RCW,  
17 or during application for economic development loans or program  
18 services provided by any local agency.

19 (s) Membership lists or lists of members or owners of interests of  
20 units in timeshare projects, subdivisions, camping resorts,  
21 condominiums, land developments, or common-interest communities  
22 affiliated with such projects, regulated by the department of  
23 licensing, in the files or possession of the department.

24 (t) All applications for public employment, including the names of  
25 applicants, resumes, and other related materials submitted with respect  
26 to an applicant.

27 (u) The residential addresses and residential telephone numbers of  
28 employees or volunteers of a public agency which are held by the agency  
29 in personnel records, employment or volunteer rosters, or mailing lists  
30 of employees or volunteers.

31 (v) The residential addresses and residential telephone numbers of  
32 the customers of a public utility contained in the records or lists  
33 held by the public utility of which they are customers, except that  
34 this information may be released to the division of child support or  
35 the agency or firm providing child support enforcement for another  
36 state under Title IV-D of the federal social security act, for the  
37 establishment, enforcement, or modification of a support order.

38 (w)(i) The federal social security number of individuals governed  
39 under chapter 18.130 RCW maintained in the files of the department of

1 health, except this exemption does not apply to requests made directly  
2 to the department from federal, state, and local agencies of  
3 government, and national and state licensing, credentialing,  
4 investigatory, disciplinary, and examination organizations; (ii) the  
5 current residential address and current residential telephone number of  
6 a health care provider governed under chapter 18.130 RCW maintained in  
7 the files of the department, if the provider requests that this  
8 information be withheld from public inspection and copying, and  
9 provides to the department an accurate alternate or business address  
10 and business telephone number. On or after January 1, 1995, the  
11 current residential address and residential telephone number of a  
12 health care provider governed under RCW 18.130.140 maintained in the  
13 files of the department shall automatically be withheld from public  
14 inspection and copying unless the provider specifically requests the  
15 information be released, and except as provided for under RCW  
16 42.17.260(9).

17 (x) Information obtained by the board of pharmacy as provided in  
18 RCW 69.45.090.

19 (y) Information obtained by the board of pharmacy or the department  
20 of health and its representatives as provided in RCW 69.41.044,  
21 69.41.280, and 18.64.420.

22 (z) Financial information, business plans, examination reports, and  
23 any information produced or obtained in evaluating or examining a  
24 business and industrial development corporation organized or seeking  
25 certification under chapter 31.24 RCW.

26 (aa) Financial and commercial information supplied to the state  
27 investment board by any person when the information relates to the  
28 investment of public trust or retirement funds and when disclosure  
29 would result in loss to such funds or in private loss to the providers  
30 of this information.

31 (bb) Financial and valuable trade information under RCW 51.36.120.

32 (cc) Client records maintained by an agency that is a domestic  
33 violence program as defined in RCW 70.123.020 or 70.123.075 or a rape  
34 crisis center as defined in RCW 70.125.030.

35 (dd) Information that identifies a person who, while an agency  
36 employee: (i) Seeks advice, under an informal process established by  
37 the employing agency, in order to ascertain his or her rights in  
38 connection with a possible unfair practice under chapter 49.60 RCW

1 against the person; and (ii) requests his or her identity or any  
2 identifying information not be disclosed.

3 (ee) Investigative records compiled by an employing agency  
4 conducting a current investigation of a possible unfair practice under  
5 chapter 49.60 RCW or of a possible violation of other federal, state,  
6 or local laws prohibiting discrimination in employment.

7 (ff) Business related information protected from public inspection  
8 and copying under RCW 15.86.110.

9 (gg) Financial, commercial, operations, and technical and research  
10 information and data submitted to or obtained by the clean Washington  
11 center in applications for, or delivery of, program services under  
12 chapter 70.95H RCW.

13 (hh) Information and documents created specifically for, and  
14 collected and maintained by a quality improvement committee pursuant to  
15 RCW 43.70.510, regardless of which agency is in possession of the  
16 information and documents.

17 (ii) Personal information in files maintained in a data base  
18 created under RCW 43.07.360.

19 (jj) Financial and commercial information requested by the public  
20 stadium authority from any person or organization that leases or uses  
21 the stadium and exhibition center as defined in RCW 36.102.010.

22 (kk) Names of individuals residing in emergency or transitional  
23 housing that are furnished to the department of revenue or a county  
24 assessor in order to substantiate a claim for property tax exemption  
25 under RCW 84.36.043.

26 (ll) The names, residential addresses, residential telephone  
27 numbers, and other individually identifiable records held by an agency  
28 in relation to a vanpool, carpool, or other ride-sharing program or  
29 service. However, these records may be disclosed to other persons who  
30 apply for ride-matching services and who need that information in order  
31 to identify potential riders or drivers with whom to share rides.

32 (mm) Proprietary financial and commercial information that the  
33 submitting entity, with review by the department of health,  
34 specifically identifies at the time it is submitted and that is  
35 provided to or obtained by the department of health in connection with  
36 an application for, or the supervision of, an antitrust exemption  
37 sought by the submitting entity under RCW 43.72.310. If a request for  
38 such information is received, the submitting entity must be notified of  
39 the request. Within ten business days of receipt of the notice, the

1 submitting entity shall provide a written statement of the continuing  
2 need for confidentiality, which shall be provided to the requester.  
3 Upon receipt of such notice, the department of health shall continue to  
4 treat information designated under this section as exempt from  
5 disclosure. If the requester initiates an action to compel disclosure  
6 under this chapter, the submitting entity must be joined as a party to  
7 demonstrate the continuing need for confidentiality.

8 (nn) Records maintained by the board of industrial insurance  
9 appeals that are related to appeals of crime victims' compensation  
10 claims filed with the board under RCW 7.68.110.

11 (oo) Financial and commercial information supplied by or on behalf  
12 of a person, firm, corporation, or entity under chapter 28B.95 RCW  
13 relating to the purchase or sale of tuition units and contracts for the  
14 purchase of multiple tuition units.

15 (pp) Any records of investigative reports prepared by any state,  
16 county, municipal, or other law enforcement agency pertaining to  
17 sexually violent offenses contained within chapter 9A.44 RCW, which  
18 have been transferred to the Washington association of sheriffs and  
19 police chiefs for permanent electronic retention and retrieval pursuant  
20 to RCW 40.14.070(2)(b).

21 (2) Except for information described in subsection (1)(c)(i) of  
22 this section and confidential income data exempted from public  
23 inspection pursuant to RCW 84.40.020, the exemptions of this section  
24 are inapplicable to the extent that information, the disclosure of  
25 which would violate personal privacy or vital governmental interests,  
26 can be deleted from the specific records sought. No exemption may be  
27 construed to permit the nondisclosure of statistical information not  
28 descriptive of any readily identifiable person or persons.

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

35 (4) Agency responses refusing, in whole or in part, inspection of  
36 any public record shall include a statement of the specific exemption

1 authorizing the withholding of the record (or part) and a brief  
2 explanation of how the exemption applies to the record withheld.

--- **END** ---