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**SUBSTITUTE HOUSE BILL 1956**

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**State of Washington 67th Legislature 2022 Regular Session**

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

AN ACT Relating to exempting from public disclosure sensitive records pertaining to current and formerly incarcerated individuals' dignity and safety; adding a new section to chapter 42.56 RCW; creating a new section; and declaring an emergency.

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) The following information or records created or maintained by the department of corrections is exempt from public inspection and copying under this chapter:

(a) Body scanner images from any system designed to detect and visualize contraband hidden in body cavities or beneath clothing, including backscatter X-ray, millimeter wave, and transmission X-ray systems;

(b) Records or information created or maintained pursuant to the federal prison rape elimination act, 34 U.S.C. Sec. 30301 et seq., and its regulations, about an incarcerated individual other than referrals to law enforcement or information contained in a violation or infraction record; and

(c) Health information in records other than an incarcerated individual's medical, mental health, or dental files.

(2) Information exempt under subsection (1) of this section must be made available for inspection and copying to the incarcerated individual who is the subject of the information, a requestor with the written permission of the incarcerated individual who is the subject of the information, or a personal representative of an incarcerated individual who is the subject of the information. For records disclosed pursuant to this subsection, the department of corrections may withhold information revealing the identity of other incarcerated individuals.

(3) An agency refusing, in whole or in part, inspection of a public record containing information listed in subsection (1)(c) of this section may identify the number of such pages withheld and cite to subsection (1)(c) of this section without further explanation when providing a brief explanation of how the exemption applies to the record withheld.

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

(5) For purposes of this section:

(a) "Health information" means any information that identifies or can readily be associated with the identity of an incarcerated individual and relates to the following: 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.

(b) The following information is not "health information" under this section: Health care information subject to RCW 42.56.360(2) and chapter 70.02 RCW; 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; images or descriptions of an injury contained in a violation or infraction record; or information related to the death, irreversible coma, or persistent vegetative state of an incarcerated individual.

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

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.

NEW SECTION. **Sec.**  This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately.

**--- END ---**