

HOUSE BILL REPORT

HB 1179

As Passed House:

January 26, 2023

Title: An act relating to authorizing the state auditor to receive nonconviction data.

Brief Description: Authorizing the state auditor to receive nonconviction data.

Sponsors: Representatives Ramos, Goodman, Leavitt, Ryu, Ortiz-Self, Bateman, Taylor, Callan and Macri; by request of State Auditor.

Brief History:

Committee Activity:

State Government & Tribal Relations: 1/11/23, 1/17/23 [DP].

Floor Activity:

Passed House: 1/26/23, 55-40.

Brief Summary of Bill

- Authorizes the release of nonconviction data to the Office of the State Auditor for the express purpose of conducting a process compliance audit procedure and review of any independent deadly force investigations required by law.

HOUSE COMMITTEE ON STATE GOVERNMENT & TRIBAL RELATIONS

Majority Report: Do pass. Signed by 4 members: Representatives Ramos, Chair; Stearns, Vice Chair; Gregerson and Mena.

Minority Report: Without recommendation. Signed by 3 members: Representatives Abbarno, Ranking Minority Member; Christian, Assistant Ranking Minority Member; Low.

Staff: Desiree Omli (786-7105).

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.

Background:

Independent Deadly Force Investigations.

Where the use of deadly force by a peace officer results in death, substantial bodily harm, or great bodily harm, an independent investigation must be completed to inform any determination of whether the use of deadly force met the statutory good faith standard and satisfied other applicable laws and policies. The Office of the State Auditor (SAO) has authority to conduct, in cooperation with the Washington State Criminal Justice Training Commission, a process compliance audit procedure and review of these independent deadly force investigations to determine whether the actions of the involved law enforcement agency, investigative body, and prosecutor's office are in compliance with the law.

Criminal Records Privacy Act.

Under the Public Records Act (PRA), each agency must make available for public inspection and copying all public records unless the record falls under an enumerated exemption under the PRA or other statute which exempts or prohibits disclosure of specific information or records. Certain investigative, law enforcement, and crime victim information is exempt from disclosure under the PRA. The Washington State Criminal Records Privacy Act (CRPA) specifies certain situations when criminal history record information, including nonconviction data, may be disseminated. "Nonconviction data" means all criminal history record information relating to an incident which has not led to a conviction or other disposition adverse to the subject of the record, and for which proceedings are no longer actively pending.

The CRPA specifies that conviction records and criminal history record information pertaining to an incident that occurred within the last 12 months for which a person is being processed by the criminal justice system may be disseminated without restriction. The CRPA also specifies that criminal history record information, including nonconviction data, may be disseminated:

- by a criminal justice agency to another criminal justice agency for any purpose associated with the administration of criminal justice, or in connection with the employment of the subject of the record by a criminal justice or juvenile justice agency, with an exception;
- by a criminal justice agency to implement a statute, ordinance, executive order, or a court rule, decision, or order which expressly refers to records of arrest, charges, or allegations of criminal conduct or other nonconviction data and authorizes or directs that it be disclosed for a specific purpose;
- to individuals and agencies pursuant to a contract with a criminal justice agency to provide services related to the administration of criminal justice; and
- to individuals and agencies for the express purpose of research, evaluative, or statistical activities pursuant to an agreement with a criminal justice agency.

Summary of Bill:

Criminal history record information that includes nonconviction data may be disseminated to the State Auditor under the CRPA solely for the express purpose of conducting a process compliance audit procedure and review of independent deadly force investigations required by law.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) The SAO conducts audits of the investigations of deadly force incidents to ensure that the procedures and regulations required by law have been followed by independent investigation teams (IITs). To conduct a thorough, accurate, and transparent audit, the SAO needs access to information that has been redacted in the incident reports received by the IITs. In cases where redactions have occurred, the authority to receive criminal history record information would allow the SAO to have open discussions with the IITs about the redacted information when access is needed for the purpose of completing the audits. The SAO already receives highly sensitive information on a regular and consistent basis, and has the infrastructure to ensure that the information is kept confidential. The SAO is also willing to receive additional training from the Washington State Patrol on the handling of this information. This policy does not create any law enforcement authority; it does not give the SAO direct access to the criminal justice database; nor does it allow the SAO to retain data. The data will be destroyed or returned once an audit is complete. The SAO has a backlog of about 100 cases and allowing the SAO to access the unredacted investigation files will help the SAO process these cases more efficiently. Removing the need to redact files is also a time saver.

(Other) Deadly use of force investigative files include more information than what is required to conduct the audits that the SAO is authorized to perform. The files contain residential addresses, social security numbers, graphic photos, sensitive witness statements, and other highly sensitive information. There is no reason why the SAO needs all the information contained in investigative files to perform the audits of the independent investigations. Additional time is needed to discuss with the SAO exactly what type of information was redacted that they believe is needed to conduct the audit in order to pinpoint the type of information that is actually needed.

Persons Testifying: (In support) Representative Bill Ramos, prime sponsor; Leslie Cushman, Washington Coalition for Police Accountability; and Scott Nelson and Sadie Armijo, Office of the Washington State Auditor.

(Other) James McMahan, Washington Association Sheriffs and Police Chiefs.

Persons Signed In To Testify But Not Testifying: None.