

SENATE BILL REPORT

HB 1179

As Passed Senate, March 22, 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: Passed House: 1/26/23, 55-40.

Committee Activity: Law & Justice: 2/16/23, 3/09/23 [DP, DNP, w/oRec].

Floor Activity: Passed Senate: 3/22/23, 29-20.

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 investigation required by law.

SENATE COMMITTEE ON LAW & JUSTICE

Majority Report: Do pass.

Signed by Senators Dhingra, Chair; Trudeau, Vice Chair; Kuderer, Pedersen, Salomon and Valdez.

Minority Report: Do not pass.

Signed by Senators Padden, Ranking Member; Torres, Wagoner and Wilson, L..

Minority Report: That it be referred without recommendation.

Signed by Senator McCune.

Staff: Joe McKittrick (786-7287)

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. When 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 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. Certain investigative, law enforcement, and crime victim information is exempt from disclosure under the PRA. The Washington 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 the following 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 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.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: The Legislature created the authority for the State Auditor to do deadly force investigations in 2021. As deadly force audits are performed, reviews of investigative reports are put out by independent investigative teams, and the Auditor's office compares those records to the RCW and WAC for process compliance. Sometimes those files contain criminal justice information, like a summary of an individual's contact with law enforcement agencies. Other information in those files include driver's licenses and social security numbers. Sometimes these files are over-redacted. Transparency is what this bill is about. It will allow the Auditor's office to access the data from those reports, they will not have access to the system itself. They will not have law enforcement powers or be able to release this data in a public records request. Only a few designated employees will be able to review this information. This information is seen in other audits and remains confidential.

OTHER: This is confusing. Never once in any of the Auditor's reports or meetings have they discussed the lack of ability to obtain this information being a problem. There is no information about what non conviction data is necessary to conduct these audits to ensure compliance with the rules. The language in this bill does not grant them access to the full investigative report they seek. They should have access to the information that is necessary to do the audits, but only that information.

Persons Testifying: PRO: Scott Nelson, Office of the Washington State Auditor; Sadie Armijo, Office of the Washington State Auditor.

OTHER: James McMahan, WA Assoc Sheriffs & Police Chiefs.

Persons Signed In To Testify But Not Testifying: No one.