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HOUSE BILL 2730

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State of Washington                      56th Legislature                      2000 Regular Session

By Representatives Dickerson, Ballasiotes and O'Brien

Read first time 01/19/2000. Referred to Committee on Judiciary.

1            AN ACT Relating to sealing and storage of juvenile records; and  
2 amending RCW 13.50.050, 40.14.020, and 40.14.070.

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

4            **Sec. 1.** RCW 13.50.050 and 1999 c 198 s 4 are each amended to read  
5 as follows:

6            (1) This section governs records relating to the commission of  
7 juvenile offenses, including records relating to diversions.

8            (2) The official juvenile court file of any alleged or proven  
9 juvenile offender shall be open to public inspection, unless sealed  
10 pursuant to subsection (12) of this section.

11            (3) All records other than the official juvenile court file are  
12 confidential and may be released only as provided in this section, RCW  
13 13.50.010, 13.40.215, and 4.24.550.

14            (4) Except as otherwise provided in this section and RCW 13.50.010,  
15 records retained or produced by any juvenile justice or care agency may  
16 be released to other participants in the juvenile justice or care  
17 system only when an investigation or case involving the juvenile in  
18 question is being pursued by the other participant or when that other

1 participant is assigned the responsibility for supervising the  
2 juvenile.

3 (5) Except as provided in RCW 4.24.550, information not in an  
4 official juvenile court file concerning a juvenile or a juvenile's  
5 family may be released to the public only when that information could  
6 not reasonably be expected to identify the juvenile or the juvenile's  
7 family.

8 (6) Notwithstanding any other provision of this chapter, the  
9 release, to the juvenile or his or her attorney, of law enforcement and  
10 prosecuting attorneys' records pertaining to investigation, diversion,  
11 and prosecution of juvenile offenses shall be governed by the rules of  
12 discovery and other rules of law applicable in adult criminal  
13 investigations and prosecutions.

14 (7) Upon the decision to arrest or the arrest, law enforcement and  
15 prosecuting attorneys may cooperate with schools in releasing  
16 information to a school pertaining to the investigation, diversion, and  
17 prosecution of a juvenile attending the school. Upon the decision to  
18 arrest or the arrest, incident reports may be released unless releasing  
19 the records would jeopardize the investigation or prosecution or  
20 endanger witnesses. If release of incident reports would jeopardize  
21 the investigation or prosecution or endanger witnesses, law enforcement  
22 and prosecuting attorneys may release information to the maximum extent  
23 possible to assist schools in protecting other students, staff, and  
24 school property.

25 (8) The juvenile court and the prosecutor may set up and maintain  
26 a central record-keeping system which may receive information on all  
27 alleged juvenile offenders against whom a complaint has been filed  
28 pursuant to RCW 13.40.070 whether or not their cases are currently  
29 pending before the court. The central record-keeping system may be  
30 computerized. If a complaint has been referred to a diversion unit,  
31 the diversion unit shall promptly report to the juvenile court or the  
32 prosecuting attorney when the juvenile has agreed to diversion. An  
33 offense shall not be reported as criminal history in any central  
34 record-keeping system without notification by the diversion unit of the  
35 date on which the offender agreed to diversion.

36 (9) Upon request of the victim of a crime or the victim's immediate  
37 family, the identity of an alleged or proven juvenile offender alleged  
38 or found to have committed a crime against the victim and the identity  
39 of the alleged or proven juvenile offender's parent, guardian, or

1 custodian and the circumstance of the alleged or proven crime shall be  
2 released to the victim of the crime or the victim's immediate family.

3 (10) Subject to the rules of discovery applicable in adult criminal  
4 prosecutions, the juvenile offense records of an adult criminal  
5 defendant or witness in an adult criminal proceeding shall be released  
6 upon request to prosecution and defense counsel after a charge has  
7 actually been filed. The juvenile offense records of any adult  
8 convicted of a crime and placed under the supervision of the adult  
9 corrections system shall be released upon request to the adult  
10 corrections system.

11 (11) In any case in which an information has been filed pursuant to  
12 RCW 13.40.100 or a complaint has been filed with the prosecutor and  
13 referred for diversion pursuant to RCW 13.40.070, the person the  
14 subject of the information or complaint may file a motion with the  
15 court to have the court vacate its order and findings, if any, and,  
16 subject to subsection (~~((+23+))~~) (24) of this section, order the sealing  
17 of the official juvenile court file, the social file, and records of  
18 the court and of any other agency in the case.

19 (12) The court shall grant the motion to seal records made pursuant  
20 to subsection (11) of this section if it finds that:

21 (a) For class B offenses other than sex offenses, since the last  
22 date of release from confinement, including full-time residential  
23 treatment, if any, or entry of disposition, the person has spent ten  
24 consecutive years in the community without committing any offense or  
25 crime that subsequently results in conviction. For class C offenses  
26 other than sex offenses, since the last date of release from  
27 confinement, including full-time residential treatment, if any, or  
28 entry of disposition, the person has spent five consecutive years in  
29 the community without committing any offense or crime that subsequently  
30 results in conviction;

31 (b) No proceeding is pending against the moving party seeking the  
32 conviction of a juvenile offense or a criminal offense;

33 (c) No proceeding is pending seeking the formation of a diversion  
34 agreement with that person;

35 (d) The person has not been convicted of a class A or sex offense;  
36 and

37 (e) Full restitution has been paid.

1 (13) The person making a motion pursuant to subsection (11) of this  
2 section shall give reasonable notice of the motion to the prosecution  
3 and to any person or agency whose files are sought to be sealed.

4 (14) If the court grants the motion to seal made pursuant to  
5 subsection (11) of this section, it shall, subject to subsection (23)  
6 of this section, order sealed the official juvenile court file, the  
7 social file, and other records relating to the case as are named in the  
8 order. Thereafter, the proceedings in the case shall be treated as if  
9 they never occurred, and the subject of the records may reply  
10 accordingly to any inquiry about the events, records of which are  
11 sealed. Any agency shall reply to any inquiry concerning confidential  
12 or sealed records that records are confidential, and no information can  
13 be given about the existence or nonexistence of records concerning an  
14 individual.

15 (15) Inspection of the files and records included in the order to  
16 seal may thereafter be permitted only by order of the court upon motion  
17 made by the person who is the subject of the information or complaint,  
18 except as otherwise provided in RCW 13.50.010(8) and subsection  
19 ~~((+23))~~ (24) of this section.

20 (16) Any adjudication of a juvenile offense or a crime subsequent  
21 to sealing has the effect of nullifying the sealing order. Any  
22 charging of an adult felony subsequent to the sealing has the effect of  
23 nullifying the sealing order for the purposes of chapter 9.94A RCW.

24 (17) In any case in which a complaint has been filed with the  
25 prosecutor and referred for diversion pursuant to RCW 13.40.070, the  
26 person who is the subject of the complaint may file a motion with the  
27 court to have the court vacate its order and findings, if any, and  
28 subject to subsection (24) of this section, order the destruction of  
29 the official juvenile court file, the social file, and records of the  
30 court and of any other agency in the case. The court may grant the  
31 motion to destroy records made pursuant to this subsection if it finds:

32 (a) The person making the motion is at least twenty-three years of  
33 age;

34 (b) The person has not subsequently been convicted of a felony;

35 (c) No proceeding is pending against that person seeking the  
36 conviction of a criminal offense; and

37 (d) The person has never been found guilty of a serious offense.

38 (18) A person eighteen years of age or older whose criminal history  
39 consists of only one referral for diversion may request that the court

1 order the records in that case destroyed. The request shall be  
2 granted, subject to subsection ~~((+23+))~~ (24) of this section, if the  
3 court finds that two years have elapsed since completion of the  
4 diversion agreement.

5 ~~((+18+))~~ (19) If the court grants the motion to destroy records  
6 made pursuant to subsection ~~((+17+))~~ (18) of this section, it shall,  
7 subject to subsection ~~((+23+))~~ (24) of this section, order the official  
8 juvenile court file, the social file, and any other records named in  
9 the order to be destroyed.

10 ~~((+19+))~~ (20) The person making the motion pursuant to subsection  
11 (17) or (18) of this section shall give reasonable notice of the motion  
12 to the prosecuting attorney and to any agency whose records are sought  
13 to be destroyed.

14 ~~((+20+))~~ (21) Any juvenile to whom the provisions of this section  
15 may apply shall be given written notice of his or her rights under this  
16 section at the time of his or her disposition hearing or during the  
17 diversion process.

18 ~~((+21+))~~ (22) Nothing in this section may be construed to prevent  
19 a crime victim or a member of the victim's family from divulging the  
20 identity of the alleged or proven juvenile offender or his or her  
21 family when necessary in a civil proceeding.

22 ~~((+22+))~~ (23) Any juvenile justice or care agency may, subject to  
23 the limitations in subsection ~~((+23+))~~ (24) of this section and (a) and  
24 (b) of this subsection, develop procedures for the routine destruction  
25 of records relating to juvenile offenses and diversions.

26 (a) Records may be routinely destroyed only when the person the  
27 subject of the information or complaint has attained twenty-three years  
28 of age or older, or is eighteen years of age or older and his or her  
29 criminal history consists entirely of one diversion agreement and two  
30 years have passed since completion of the agreement.

31 (b) The court may not routinely destroy the official juvenile court  
32 file or recordings or transcripts of any proceedings.

33 ~~((+23+))~~ (24) No identifying information held by the Washington  
34 state patrol in accordance with chapter 43.43 RCW is subject to  
35 destruction or sealing under this section. For the purposes of this  
36 subsection, identifying information includes photographs, fingerprints,  
37 palmprints, soleprints, toeprints and any other data that identifies a  
38 person by physical characteristics, name, birthdate or address, but  
39 does not include information regarding criminal activity, arrest,

1 charging, diversion, conviction or other information about a person's  
2 treatment by the criminal justice system or about the person's  
3 behavior.

4 (~~(24)~~) (25) Information identifying child victims under age  
5 eighteen who are victims of sexual assaults by juvenile offenders is  
6 confidential and not subject to release to the press or public without  
7 the permission of the child victim or the child's legal guardian.  
8 Identifying information includes the child victim's name, addresses,  
9 location, photographs, and in cases in which the child victim is a  
10 relative of the alleged perpetrator, identification of the relationship  
11 between the child and the alleged perpetrator. Information identifying  
12 a child victim of sexual assault may be released to law enforcement,  
13 prosecutors, judges, defense attorneys, or private or governmental  
14 agencies that provide services to the child victim of sexual assault.

15 **Sec. 2.** RCW 40.14.020 and 1995 c 326 s 1 are each amended to read  
16 as follows:

17 All public records shall be and remain the property of the state of  
18 Washington. They shall be delivered by outgoing officials and  
19 employees to their successors and shall be preserved, stored,  
20 transferred, destroyed, or disposed of, and otherwise managed, only in  
21 accordance with the provisions of this chapter. In order to insure the  
22 proper management and safeguarding of public records, the division of  
23 archives and records management is established in the office of the  
24 secretary of state. The state archivist, who shall administer the  
25 division and have reasonable access to all public records, wherever  
26 kept, for purposes of information, surveying, or cataloguing, shall  
27 undertake the following functions, duties, and responsibilities:

- 28 (1) To manage the archives of the state of Washington;
- 29 (2) To centralize the archives of the state of Washington, to make  
30 them available for reference and scholarship, and to insure their  
31 proper preservation;
- 32 (3) To inspect, inventory, catalog, and arrange retention and  
33 transfer schedules on all record files of all state departments and  
34 other agencies of state government;
- 35 (4) To insure the maintenance and security of all state public  
36 records and to establish safeguards against unauthorized removal or  
37 destruction;

1 (5) To establish and operate such state record centers as may from  
2 time to time be authorized by appropriation, for the purpose of  
3 preserving, servicing, screening, and protecting all state public  
4 records which must be preserved temporarily or permanently, but which  
5 need not be retained in office space and equipment;

6 (6) To adopt rules under chapter 34.05 RCW:

7 (a) Setting standards for the durability and permanence of public  
8 records maintained by state and local agencies;

9 (b) Governing procedures for the creation, maintenance,  
10 transmission, cataloging, indexing, storage, or reproduction of  
11 photographic, optical, electronic, or other images of public documents  
12 or records in a manner consistent with current standards, policies, and  
13 procedures of the department of information services for the  
14 acquisition of information technology;

15 (c) Governing the accuracy and durability of, and facilitating  
16 access to, photographic, optical, electronic, or other images used as  
17 public records; or

18 (d) To carry out any other provision of this chapter;

19 (7) To gather and disseminate to interested agencies information on  
20 all phases of records management and current practices, methods,  
21 procedures, techniques, and devices for efficient and economical  
22 management and preservation of records;

23 (8) To operate a central microfilming bureau which will microfilm,  
24 at cost, records approved for filming by the head of the office of  
25 origin and the archivist; to approve microfilming projects undertaken  
26 by state departments and all other agencies of state government; and to  
27 maintain proper standards for this work. For the purpose of storage of  
28 records relating to juvenile offenses, the archivist's rules may  
29 provide for use of alternative methods of electronic imaging by the  
30 bureau and affected agencies;

31 (9) To maintain necessary facilities for the review of records  
32 approved for destruction and for their economical disposition by sale  
33 or burning; directly to supervise such destruction of public records as  
34 shall be authorized by the terms of this chapter; (~~and~~) and

35 (10) To assist and train state and local agencies in the proper  
36 methods of creating, maintaining, cataloging, indexing, transmitting,  
37 storing, and reproducing photographic, optical, electronic, or other  
38 images used as public records.

1       **Sec. 3.** RCW 40.14.070 and 1999 c 326 s 2 are each amended to read  
2 as follows:

3       (1)(a) County, municipal, and other local government agencies may  
4 request authority to destroy noncurrent public records having no  
5 further administrative or legal value by submitting to the division of  
6 archives and records management lists of such records on forms prepared  
7 by the division. The archivist, a representative appointed by the  
8 state auditor, and a representative appointed by the attorney general  
9 shall constitute a committee, known as the local records committee,  
10 which shall review such lists and which may veto the destruction of any  
11 or all items contained therein.

12       (b) A local government agency, as an alternative to submitting  
13 lists, may elect to establish a records control program based on  
14 recurring disposition schedules recommended by the agency to the local  
15 records committee. The schedules are to be submitted on forms provided  
16 by the division of archives and records management to the local records  
17 committee, which may either veto, approve, or amend the schedule.  
18 Approval of such schedule or amended schedule shall be by unanimous  
19 vote of the local records committee. Upon such approval, the schedule  
20 shall constitute authority for the local government agency to destroy  
21 the records listed thereon, after the required retention period, on a  
22 recurring basis until the schedule is either amended or revised by the  
23 committee.

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

27       (i) The records are six or more years old;

28       (ii) The department of origin of the records has made a  
29 satisfactory showing to the state records committee that the retention  
30 of the records for a minimum of six years is both unnecessary and  
31 uneconomical, particularly where lesser federal retention periods for  
32 records generated by the state under federal programs have been  
33 established; or

34       (iii) The originals of official public records less than six years  
35 old have been copied or reproduced by any photographic, photostatic,  
36 microfilm, miniature photographic, or other process approved by the  
37 state archivist which accurately reproduces or forms a durable medium  
38 for so reproducing the original. For the purpose of storage of records

1 relating to juvenile offenses, the archivist's rules may provide for  
2 use of alternative methods of electronic imaging.

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

8 The state archivist may furnish appropriate information,  
9 suggestions, and guidelines to local government agencies for their  
10 assistance in the preparation of lists and schedules or any other  
11 matter relating to the retention, preservation, or destruction of  
12 records under this chapter. The local records committee may adopt  
13 appropriate regulations establishing procedures to be followed in such  
14 matters.

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

18 (b) Records of investigative reports prepared by any state, county,  
19 municipal, or other law enforcement agency pertaining to sex offenders  
20 contained in chapter 9A.44 RCW or sexually violent offenses as defined  
21 in RCW 71.09.020 that are not required in the current operation of the  
22 law enforcement agency or for pending judicial proceedings shall,  
23 following the expiration of the applicable schedule of the law  
24 enforcement agency's retention of the records, be transferred to the  
25 Washington association of sheriffs and police chiefs for permanent  
26 electronic retention and retrieval. Upon electronic retention of any  
27 document, the association shall be permitted to destroy the paper copy  
28 of the document.

29 (c) Any record transferred to the Washington association of  
30 sheriffs and police chiefs pursuant to (b) of this subsection shall be  
31 deemed to no longer constitute a public record pursuant to RCW  
32 42.17.020 and shall be exempt from public disclosure. Such records  
33 shall be disseminated only to criminal justice agencies as defined in  
34 RCW 10.97.030 for the purpose of determining if a sex offender met the  
35 criteria of a sexually violent predator as defined in chapter 71.09  
36 RCW.

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