

HOUSE BILL REPORT

2SHB 1651

As Passed Legislature

Title: An act relating to access to juvenile records.

Brief Description: Concerning access to juvenile records.

Sponsors: House Committee on Appropriations Subcommittee on General Government & Information Technology (originally sponsored by Representatives Kagi, Walsh, Freeman, Roberts, Farrell, Zeiger, Goodman, Pollet, Sawyer, Appleton, Bergquist, S. Hunt, Moscoso, Jinkins, Ryu and Morrell).

Brief History:

Committee Activity:

Early Learning & Human Services: 2/12/13, 2/22/13 [DPS].

Appropriations Subcommittee on General Government & Information Technology:
2/25/13 [DPS(ELHS)], 1/29/14 [DP2S].

Floor Activity:

Passed House: 3/6/13, 97-0.

Passed House: 2/14/14, 96-0.

Senate Amended.

Passed Senate: 3/7/14, 48-0.

House Concurred.

Passed House: 3/11/14, 97-1.

Passed Legislature.

Brief Summary of Second Substitute Bill

- Requires courts to hold regular hearings to seal certain juvenile court records, which will occur administratively unless the court receives an objection to sealing or the court notes a compelling reason not to seal, in which case the court will hold a contested sealing hearing.
- Requires courts to seal certain juvenile court records administratively after an individual turns 18 and completes probation, confinement, or parole.
- Excludes most serious offenses, sex offenses, and certain felony drug charges from this regular sealing process.
- Requires an individual to have completed the terms of disposition, including financial obligation to be eligible for this regular sealing process.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

HOUSE COMMITTEE ON APPROPRIATIONS SUBCOMMITTEE ON GENERAL GOVERNMENT & INFORMATION TECHNOLOGY

Majority Report: The second substitute bill be substituted therefor and the second substitute bill do pass. Signed by 7 members: Representatives Hudgins, Chair; Parker, Ranking Minority Member; Buys, Dunshee, S. Hunt, Jinkins and Springer.

Minority Report: Do not pass. Signed by 2 members: Representatives Christian and Taylor.

Staff: Alex MacBain (786-7288).

Background:

Juvenile Offender Records.

Since 1977 juvenile offender records have been public unless sealed in accordance with statutory requirements. Nonoffender juvenile records, such as records in a dependency matter or adoption, are not open to public inspection.

The requirements for sealing juvenile records have changed since the records became public. The most stringent requirements were imposed in 1997 when class A felonies and sex offenses could not be sealed, and a person seeking to seal a juvenile class B felony was required to remain in the community without any further offenses for 10 years, along with the payment of any restitution ordered. A person seeking to seal a juvenile class C felony was required to wait five years, in addition to any restitution. In 2011 and 2010 the Legislature amended the sealing statutes to allow the records for class A felonies and sex offenses to be sealed. Before any juvenile offender record may be sealed, the person who is the subject of the record must not have any pending diversions or criminal charges. He or she must have been relieved of the duty to register as a sex offender and must have paid in full any restitution ordered by the court. Depending upon the offense, the person seeking to seal his or her records must have spent a minimum period of time in the community after being released from confinement without any new offenses, as follows:

<i>Offense Type</i>	<i>Years in Community without a New Offense</i>
Class A Felony	Five years, unless the offense was Rape in the first degree, Rape in the second degree, or Indecent Liberties with Forcible Compulsion.
Sex Offense May only be sealed if a court has relieved the juvenile of the duty to register as a sex offender. (Juvenile convictions for Rape in the first degree, Rape in the second degree, or Indecent Liberties with Forcible Compulsion may not be sealed.)	For class A juvenile sex offenses, committed when the juvenile was 15 years or older, the individual must be in the community five years without conviction of additional sex or kidnapping offenses before he or she may petition to be relieved of the duty to register. For all other offenses, the person must be in the community two years without conviction of additional sex or kidnapping offenses before

	petitioning the court to be relieved of the duty to register.
Class B Felony	Two years.
Class C Felony	Two years.
Gross Misdemeanors	Two years.
Misdemeanors	Two years.
Diversions	Two years.

Most Serious Offenses Defined in RCW 9.94A.030.

"Most serious offenses" as defined in RCW 9.94A.030 includes the following felonies or a felony attempt to commit the following felonies:

- any class A felony or criminal solicitation of or criminal conspiracy to commit a class A felony;
- Assault in the second degree;
- Assault of a child in the second degree;
- Child Molestation in the second degree;
- Controlled Substance Homicide;
- Extortion in the first degree;
- Incest when committed against a child under age 14;
- Indecent Liberties;
- Kidnapping in the second degree;
- Leading Organized Crime;
- Manslaughter in the first degree;
- Promoting Prostitution in the first degree;
- Rape in the third degree;
- Robbery in the second degree;
- Sexual Exploitation;
- Vehicular Assault, when caused by the operation or driving of a vehicle by a person while under the influence of liquor or any drug or by the operation of a vehicle in a reckless manner;
- Vehicular Homicide, when proximately caused by the driving of a vehicle by a person while under the influence of liquor or any drug, or by operation of any vehicle in a reckless manner;
- any class B felony offense with a finding of sexual motivation;
- any other felony with a deadly weapon finding;
- any felony offense in effect before December 2, 1983, that is comparable to a most serious offense defined here or any federal or out-of-state conviction for an offense under the laws of this state would be a felony classified as a most serious offense here;
- certain prior convictions for Indecent Liberties; or
- any out-of-state conviction for a felony offense with a finding of sexual motivation if the minimum sentence was 10 years or more.

Drug Offense as Defined by RCW 9.94A.030.

A "drug offense" as defined by RCW 9.94A.030 includes:

- any felony controlled substance violation except possession of a controlled substance or forged prescription for a controlled substance;

- any offense defined as a felony under federal law that relates to the possession, manufacture, distribution, or transportation of a controlled substance; or
- any out-of-state conviction for an offense that would constitute a felony controlled substance violation in this state except possession of a controlled substance or forged prescription for a controlled substance.

Consumer Reporting Agencies.

In 2011 the Legislature enacted Substitute House Bill 1793 which prohibited consumer reporting agencies from including in their reports the juvenile record of a person, age 21 or older, at the time that the report is made.

Summary of Second Substitute Bill:

Courts must hold regular hearings to seal certain juvenile court records, which will be sealed administratively unless the court receives an objection or the court receives a compelling reason not to seal, in which case, there will be a contested sealing hearing. A respondent must be provided at least 18 days' notice of any contested sealing hearing, but the respondent is not required to appear at either an administrative or contested sealing hearing.

Courts must schedule an administrative sealing hearing during disposition of a juvenile offender matter to occur after a respondent turns 18 and completes probation, confinement, or parole.

Courts cannot seal a juvenile court record during a regularly scheduled sealing hearing if one of the offenses is:

- a most serious offense as defined in RCW 9.94A.030;
- a sex offense under Chapter 9A.44 RCW; or
- a drug offense as defined in RCW 9.94A.030.

A respondent must complete the terms of his or her disposition, including affirmative conditions and financial obligations to have a court seal his or her juvenile court record during a regularly scheduled sealing hearing.

If a contested sealing hearing is held, the court shall enter a written order sealing the juvenile court record unless the court determines that sealing is not appropriate.

The court must enter an order immediately sealing the juvenile court record after an acquittal or dismissal of charges.

Any adjudication of a juvenile offense or crime subsequent to sealing has the effect of nullifying a sealing order, however, the court may order the juvenile record resealed upon disposition of the subsequent matter if the case meets the sealing criteria.

If an individual's juvenile court record has been sealed, the record of an employee is not admissible in an action for liability against the employer based on conduct of the former juvenile offender to show that the employer knew or should have known about the juvenile record of the employee. However, the record may be admissible if a background check conducted by the employer contained information from the sealed record.

The Caseload Forecast Council may permit access to caseload forecast data for research purposes, but only if the anonymity of all persons mentioned in the records or information will be preserved.

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 bill unanimously passed the House of Representatives last year. The amendment will reduce the cost of the bill significantly by implementing the changes once the courts have upgraded their information technology system in 2018 or 2019. Washington is one of eight states that does not have juvenile records covered by confidentiality, and is one of three states that sell those juvenile records. The juvenile justice system is founded on the core principle of rehabilitation. When youth make serious mistakes, we hold them accountable and give them an opportunity to earn a fresh start after they restore the harm that has been done by their actions. Availability of juvenile offender records has an impact on the ability of youth to later get education, jobs, and housing. It reduces opportunity for the youth to succeed in life as well as to support their communities and the general economy. Public accessibility of juvenile offense records increases unemployment, trapping youth in a cycle of homelessness and poverty, and thus creating a drain on state and local resources. Accessibility also dramatically increases the chances of youth to re-enter the juvenile justice system or the adult criminal justice system. The impacts disproportionately fall on minorities. It takes time, money, and an attorney to get a record sealed. Only 6 percent of people eligible to have their records sealed do so because they either don't know that they can seal their records, or can't afford an attorney.

(Neutral) It would cost over \$500,000 to implement the engrossed substitute version of the bill, due to the cost of modifications that would be needed for the current outdated technology systems. The AOC is supportive of the amendment discussed by the committee that would substantially reduce the costs by making the bill effective when the courts fully implement a court data system that allows juvenile records to be categorized as confidential.

(With concerns) Newspapers report on these actions all the time. No names of juveniles are published unless the juvenile is declined to adult prosecution. For local jurisdictions there are potential high costs associated with moving cases between public status and confidential status if a case is charged as one of the listed crimes with a public status and adjudicated as a lesser charge. If the Legislature chooses to go forward with this bill, it should consider alternatives such as making all class A felonies public in order to make it cheaper and clearer for court clerks. Additionally, the Legislature should consider some sort of mechanism that allows the dockets for juvenile offender cases to be followed.

(Opposed) There is a broad public interest in seeing that justice is administered fairly and equally. It is important that journalists have access to juvenile records. Access to court records is a constitutional right in Washington. Access insures that courts are held accountable to the people for their decisions and don't discriminate based on race, gender, national origin, economic status, or political connections. Sealing juvenile court records is not the right approach. A better approach would be to make discriminating against former juvenile offenders a violation of the discrimination laws which would allow complaints of such a violation to be enforced by the Human Rights Commission. Secrecy in the court system is not solution to the problem of discrimination against former juvenile offenders. Landlords are responsible for the health, welfare, and safety of tenants on their properties. Best practices in the industry are to get all the available public information to determine a housing situation. There is a process in place now for sealing juvenile records.

Persons Testifying: (In support) Representative Kagi, prime sponsor; Sam Merrill, Friends Committee on Washington Public Policy; Jill Malat, Columbia Legal Service; Terri Stewart, Youth Chaplaincy Coalition; Chris Kaasa, American Civil Liberties Union of Washington; Terry Pottmeyer; Sue Steinman; Bailey Stober; and Seth Dawson, YouthCare.

(Neutral) Ramsey Radwan, Administrative Office of the Courts.

(With concerns) Rowland Thompson, Allied Daily Newspapers.

(Opposed) Toby Nixon, Washington Coalition for Open Government; Bill Will, Washington Newspaper Publishers Association; Chester Baldwin, Washington Apartment Association; and John Woodring, Rental Housing Association.

Persons Signed In To Testify But Not Testifying: None.