

SENATE BILL REPORT

SHB 2034

As of February 16, 2022

Title: An act relating to juvenile records.

Brief Description: Concerning juvenile records.

Sponsors: House Committee on Children, Youth & Families (originally sponsored by Representatives Frame, Harris-Talley, Berry, Fitzgibbon, Simmons, Ramel, Chase and Macri).

Brief History: Passed House: 2/9/22, 70-26.

Committee Activity: Human Services, Reentry & Rehabilitation: 2/16/22.

Brief Summary of Bill

- Creates a cause of action where various legal and government entities that disseminate sealed or destroyed juvenile records may be sued for damages by the subject of those records.
- Requires that courts provide written notice to individuals whose records are sealed that includes information about the meaning of having a sealed juvenile record.
- Prohibits state government agencies that conduct state-based background checks for licensing or hiring determinations from considering or using any information related to the commission of a juvenile offense unless the agency confirms that the official juvenile court record related to that offense remains open for public inspection.

SENATE COMMITTEE ON HUMAN SERVICES, REENTRY & REHABILITATION

Staff: Julie Tran (786-7283)

Background: Juvenile adjudication records are public unless sealed. Court records for

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juvenile cases that do not involve an adjudication, such as dependency or adoption records, are not open to public inspection.

Sealing of Juvenile Records. There are two methods by which individuals may seal their juvenile records, including filing a motion to seal the official juvenile court record, the social file, and records of the court and any other agency in the case; or through a regularly held administrative sealing hearing.

Once a juvenile record is sealed, the proceedings in the case must be treated as if they never occurred. Any subsequent criminal adjudication or filing of an adult felony charge unseals the case.

Administrative Sealing Hearing. At the disposition hearing of a juvenile offender, courts must schedule an administrative sealing hearing after offender turns 18 years old and is anticipated to have completed any probation and confinement. Courts must seal the individual's juvenile court record if the offense is not a most serious offense, a sex offense, or a felony drug offense. Respondents must also have completed the terms and conditions of disposition, including financial obligations, to seal a record during a regular sealing hearing.

Motion to Seal Juvenile Records. An individual may file a motion requesting that the court seal their juvenile record. An individual is eligible to have their record sealed after remaining in the community without further conviction for a period of time and paying any restitution associated with the case.

For class A felonies, an individual must remain in the community without conviction for five years. For class B felonies, class C felonies, and all misdemeanors, an individual must remain in the community without conviction for two years.

Individuals convicted of rape in the first degree, rape in the second degree, and indecent liberties with forcible compulsion are not eligible for record sealing. Other sex offenses are eligible for sealing, but an individual must be relieved of the obligation to register as a sex offender.

Access to Sealed Records. Criminal justice agencies may not disclose confidential information or sealed records accessed through the Washington State Identification System or other means, and no information may be given to third parties other than Washington criminal justice agencies about the existence or nonexistence of confidential or sealed records. The Washington State Patrol must limit access to sealed juvenile record information to criminal justice agencies in Washington State.

Destruction of Juvenile Records. All records maintained by any court or law enforcement agency must be automatically destroyed within 90 days of becoming eligible for destruction. Records are eligible for such destruction when the person is at least 18 years of

age; the records consist of successfully completed diversion agreements and counsel and release agreements, or both, which were completed on or after June 7, 2018; and there is no restitution owing in the case.

Summary of Bill: Cause of Action. Any corporation, business trust, estate, partnership, association, joint venture, any other legal or commercial entity, government, government subdivision, agency, municipality, or other legal entity who disseminates sealed or destroyed records may be sued for damages by the subject of those records.

If the plaintiff prevails in such an action, the court may award a per day penalty of \$100 for each day since the record is shared without corrective action or actual damages, whichever is greater; and any other relief the court deems appropriate. The court must also award reasonable attorneys' fees and costs to any prevailing plaintiff. Actual damages includes mental pain and suffering endured by the subject of the records that were disseminated.

Employees of governments, governmental subdivisions, agencies, and municipalities are not liable for civil damages for actions taken as part of their work as such an employee.

Any corporation, business trust, estate, trust, partnership, association, joint venture, any other legal or commercial entity, government, governmental subdivision, agency, municipality, and other legal entities are not liable for illegally sharing a sealed or destroyed juvenile record if the entity did not have notice that a record is sealed or destroyed.

Juvenile Record Sealing. The court must provide the juvenile and victims of the offense notice of the juvenile's eligibility for juvenile records sealing during a dispositional hearing.

The adjudication and proceedings in the case must be treated as if they never occurred if the court enters a written order sealing the juvenile court record and the order sealed the official juvenile court file, the social file, and other records relating to the case as are named in the order.

The subject of a sealed juvenile record may reply to an inquiry about the subject's commission of a juvenile offense, including an inquiry about whether the subject has a disqualifying arrest or adjudication, that the subject does not have a juvenile arrest or adjudication.

Courts must provide written notice to individuals whose records are sealed that includes information about the meaning of having a sealed juvenile record.

All Washington State government agencies that conduct state-based background checks for licensing or hiring determinations may not consider or use any information provided by an applicant related to the commission of a juvenile offense or information produced by a state source related to the commission of a juvenile offense unless the agency confirms that the official juvenile court record related to that offense remains open for public inspection.

The Department of Children, Youth, and Families must adopt rules regarding the use of sealed juvenile records related to the commission of a juvenile offense, and create an automatic sealing process for the use of records the agency holds arising from, relating to, or revealing the existence of a juvenile adjudication. The rules must specify the circumstances under which such records may be referred to, used, disclosed, or disseminated.

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: Juvenile records continue to follow young people long after they have completed the terms of their agreement and are now trying to move on with their lives. The improper sharing of the sealed juvenile records causes harm that impacts individuals employment and housing opportunities. This bill holds the state and other entities accountable for sharing protected information when they know that the information is protected and that sharing the sealed juvenile records is impermissible. There are current barriers to the current juvenile record sealing process such as a lack of understanding of how to seal a record and what information is available when a juvenile record is sealed. The bill helps to clarify the process and gives clarity to what it means for an individual if they are a subject of a sealed juvenile record.

CON: The current bill before you isn't functional, as actions being brought against private entities may not be unenforceable. This may also be problematic for other entities who know that a record had happened and have kept records of the occurrence. There is an amendment request for the notice to be outward facing and serve as the cover sheet for the juvenile record. This bill may also subject individual court clerks to civil liability and elected county clerks would have no protection in the current bill version. There is a request to have the current liability protection language be restored.

Persons Testifying: PRO: Representative Noel Frame, Prime Sponsor; Xaxira Velasco Ponce de León, Columbia Legal Services; KC Chui, The Mockingbird Society; Miracle Negron, The Mockingbird Society; Autumn-Rose Maurer, The Mockingbird Society; Liz Trautman, The Mockingbird Society.

CON: Rowland Thompson, Allied Daily Newspapers and WSABroadcasters; Josie Delvin, Washington State Association of County Clerks.

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