

HOUSE BILL REPORT

HB 2800

As Reported By House Committee On:

Law & Justice

Title: An act relating to offender records.

Brief Description: Revising provisions relating to offender records.

Sponsors: Representatives Sheahan and Thompson.

Brief History:

Committee Activity:

Law & Justice: 1/31/96, 2/1/96 [DP].

HOUSE COMMITTEE ON LAW & JUSTICE

Majority Report: Do pass. Signed by 11 members: Representatives Sheahan, Chairman; Delvin, Vice Chairman; Hickel, Vice Chairman; Campbell; Carrell; Chappell; Lambert; McMahan; Robertson; Smith and Sterk.

Minority Report: Do not pass. Signed by 6 members: Representatives Dellwo, Ranking Minority Member; Costa, Assistant Ranking Minority Member; Cody; Morris; Murray and Veloria.

Staff: Pat Shelledy (786-7149).

Background:

Sealing and Destroying Records of Juvenile Offenses:

When a juvenile is charged with an offense, the "legal file" is open to the public. The legal file contains the charge, motions, briefs, court findings, and court orders.

A person who was charged and adjudicated of an offense or went through diversion may petition the court to vacate its order of adjudication and order the record sealed or destroyed.

The court must grant the motion to seal records if the court finds that two years have elapsed from the later of the final discharge of the person from supervision of any agency charged with supervising the juvenile offender or from the entry of a court

order relating to the commission of a juvenile offense, if no criminal proceeding is pending against the person. If the court grants the motion, then the proceedings are treated as if they never occurred, and the person may reply accordingly to an inquiry about his or her juvenile background.

Any adjudication of a juvenile offense or a conviction of a crime committed subsequent to sealing has the effect of nullifying the sealing order. Any conviction of any felony subsequent to the sealing has the effect of nullifying the sealing order for purposes of sentencing as an adult for a class A or sex offense.

A person may ask the court to destroy the records, and the court may grant the motion if the court finds that the person is at least 23 years old, has not subsequently been convicted of a felony, no criminal proceeding is pending against the person, and the person has never been found guilty of a serious offense.

A person 18 years of age or older whose entire criminal history consists of only one referral for diversion may request that the court order the records destroyed. The court must grant the request if the court finds that two years have elapsed since completion of the diversion agreement.

Juvenile justice care agencies may adopt procedures to destroy records routinely of juvenile offenses and diversions other than the official juvenile court file. Records may be routinely destroyed only when the person is 23 years old, or is 18 or older and his or her criminal history consists entirely of one diversion agreement, and two years have passed since completion of the agreement.

No identifying information possessed by the Washington State Patrol may be destroyed.

Vacating Adult Criminal Records:

An adult defendant may be discharged from a sentence upon completing the requirements of the sentence. The discharge has the effect of restoring certain civil rights lost due to the conviction. A discharge does not prevent use of a prior conviction for purposes of determining the offender's sentence for later convictions, for impeachment purposes, or to establish an element of the offense.

An adult offender who has been discharged may ask the sentencing court for a vacation of the offender's record of conviction. An offender may not have a record cleared if there are any criminal charges pending against the offender, the offense was a violent offense, the offense was a "crime against persons," the offender has been convicted of a new crime, the offense was a class B felony and less than 10 years have passed since discharge, or the offense was a class C felony and less than five years have passed since discharge.

Once the court vacates the record of conviction, the conviction may not be used in the offender's offender score for subsequent convictions. For other purposes, including responding to questions on employment applications, the offender may state that he or she has never been convicted of a crime. The prior conviction may be used in a subsequent prosecution.

Summary of Bill:

Juvenile Offense Records:

An official juvenile court file of a juvenile offense may never be destroyed.

Any adjudication of a juvenile offense or a conviction of a crime for an adult offense committed on or after the effective date of this act, but subsequent to a sealing order already in place, has the effect of nullifying the sealing order.

The same standards that apply to discharging adult offenders will apply to juvenile offenders. When a juvenile has completed the requirements of a disposition, the court must discharge the offender upon notice of the discharge.

An offender who has received a discharge may apply to the court for an order sealing the record. Standards for sealing adult records under current law and as amended by the bill will apply to requests to seal juvenile records.

Sealing the record does not prohibit the use of the offender's prior record to determine the offender's dispositions or sentences for later offenses, or to establish juvenile or adult criminal court jurisdiction over the offender for later offenses. The prior offense may also be used for impeachment purposes and background checks.

Adult Court Records:

Adult offenders may not have their records vacated but may request to have them sealed.

Offenders who are convicted of sex offenses, in addition to any other crime that under current law prohibits vacating the order, may not have their records sealed.

The prior offense, even if sealed, may be used to calculate the offender's criminal history for a subsequent offense, for impeachment purposes, to establish an element of the offense, or to conduct criminal history background checks.

Appropriation: None.

Fiscal Note: Requested on January 25, 1996.

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

Testimony For: None.

Testimony Against: None.

Testified: None.