
SUBSTITUTE HOUSE BILL 1401

State of Washington

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By House Committee on Education (originally sponsored by Representatives Brumsickle, Cole, Carlson, G. Fisher, Mastin, Poulsen, Elliot, Quall, Clements, Smith, Chandler, Patterson, Costa, Mielke, Campbell, Mulliken, Honeyford, Talcott, Cooke, Thompson, L. Thomas, Mitchell, Kremen, Scott, Wolfe, Boldt, Conway and McMorris)

Read first time 02/17/95.

1 AN ACT Relating to sharing of juvenile records among schools and
2 other agencies; amending RCW 13.50.050, 13.50.100, and 28A.225.330;
3 reenacting and amending RCW 13.40.215; adding a new section to chapter
4 13.50 RCW; adding a new section to chapter 28A.320 RCW; and adding a
5 new section to chapter 28A.300 RCW.

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

7 **Sec. 1.** RCW 13.40.215 and 1994 c 129 s 6 and 1994 c 78 s 1 are
8 each reenacted and amended to read as follows:

9 (1)(a) Except as provided in subsection (2) of this section, at the
10 earliest possible date, and in no event later than thirty days before
11 discharge, parole, or any other authorized leave or release, or before
12 transfer to a community residential facility, the secretary shall send
13 written notice of the discharge, parole, authorized leave or release,
14 or transfer of a juvenile found to have committed a violent offense, a
15 sex offense, or stalking, to the following:

16 (i) The chief of police of the city, if any, in which the juvenile
17 will reside; (~~and~~)

18 (ii) The sheriff of the county in which the juvenile will reside;
19 and

1 (iii) The common school district board of directors of the district
2 in which the juvenile intends to reside or the district in which the
3 juvenile last attended school, whichever is appropriate, except when it
4 has been determined by the department that the juvenile is twenty-one
5 years old; is not required to return to school under chapter 28A.225
6 RCW; or will be in the community for less than seven consecutive days
7 on approved leave and will not be attending school during that time.

8 (b) The same notice as required by (a) of this subsection shall be
9 sent to the following, if such notice has been requested in writing
10 about a specific juvenile:

11 (i) The victim of the offense for which the juvenile was found to
12 have committed or the victim's next of kin if the crime was a homicide;

13 (ii) Any witnesses who testified against the juvenile in any court
14 proceedings involving the offense; and

15 (iii) Any person specified in writing by the prosecuting attorney.
16 Information regarding victims, next of kin, or witnesses requesting the
17 notice, information regarding any other person specified in writing by
18 the prosecuting attorney to receive the notice, and the notice are
19 confidential and shall not be available to the juvenile. The notice to
20 the chief of police or the sheriff shall include the identity of the
21 juvenile, the residence where the juvenile will reside, the identity of
22 the person, if any, responsible for supervising the juvenile, and the
23 time period of any authorized leave.

24 (c) The thirty-day notice requirements contained in this subsection
25 shall not apply to emergency medical furloughs.

26 (d) The existence of the notice requirements in this subsection
27 will not require any extension of the release date in the event the
28 release plan changes after notification.

29 (2)(a) If a juvenile found to have committed a violent offense, a
30 sex offense, or stalking escapes from a facility of the department, the
31 secretary shall immediately notify, by the most reasonable and
32 expedient means available, the chief of police of the city and the
33 sheriff of the county in which the juvenile resided immediately before
34 the juvenile's arrest. If previously requested, the secretary shall
35 also notify the witnesses and the victim of the offense which the
36 juvenile was found to have committed or the victim's next of kin if the
37 crime was a homicide. If the juvenile is recaptured, the secretary
38 shall send notice to the persons designated in this subsection as soon

1 as possible but in no event later than two working days after the
2 department learns of such recapture.

3 (b) The secretary may authorize a leave, for a juvenile found to
4 have committed a violent offense, a sex offense, or stalking, which
5 shall not exceed forty-eight hours plus travel time, to meet an
6 emergency situation such as a death or critical illness of a member of
7 the juvenile's family. The secretary may authorize a leave, which
8 shall not exceed the time medically necessary, to obtain medical care
9 not available in a juvenile facility maintained by the department.
10 Prior to the commencement of an emergency or medical leave, the
11 secretary shall give notice of the leave to the appropriate law
12 enforcement agency in the jurisdiction in which the juvenile will be
13 during the leave period. The notice shall include the identity of the
14 juvenile, the time period of the leave, the residence of the juvenile
15 during the leave, and the identity of the person responsible for
16 supervising the juvenile during the leave. If previously requested,
17 the department shall also notify the witnesses and victim of the
18 offense which the juvenile was found to have committed or the victim's
19 next of kin if the offense was a homicide.

20 In case of an emergency or medical leave the secretary may waive
21 all or any portion of the requirements for leaves pursuant to RCW
22 13.40.205 (2)(a), (3), (4), and (5).

23 (3) If the victim, the victim's next of kin, or any witness is
24 under the age of sixteen, the notice required by this section shall be
25 sent to the parents or legal guardian of the child.

26 (4) The secretary shall send the notices required by this chapter
27 to the last address provided to the department by the requesting party.
28 The requesting party shall furnish the department with a current
29 address.

30 (5) Upon discharge, parole, or other authorized leave or release,
31 a convicted juvenile sex offender shall not attend a public elementary,
32 middle, or high school that is attended by a victim of the sex
33 offender. The parents or legal guardians of the convicted juvenile sex
34 offender shall be responsible for transportation or other costs
35 associated with or required by the sex offender's change in school that
36 otherwise would be paid by a school district. Upon discharge, parole,
37 or other authorized leave or release of a convicted juvenile sex
38 offender, the secretary shall send written notice of the discharge,
39 parole, or other authorized leave or release and the requirements of

1 this subsection to the common school district board of directors of the
2 district in which the sex offender intends to reside or the district in
3 which the sex offender last attended school, whichever is appropriate.

4 (6) For purposes of this section the following terms have the
5 following meanings:

6 (a) "Violent offense" means a violent offense under RCW 9.94A.030;

7 (b) "Sex offense" means a sex offense under RCW 9.94A.030;

8 (c) "Stalking" means the crime of stalking as defined in RCW
9 9A.46.110;

10 (d) "Next of kin" means a person's spouse, parents, siblings, and
11 children.

12 **Sec. 2.** RCW 13.50.050 and 1992 c 188 s 7 are each amended to read
13 as follows:

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

16 (2) The official juvenile court file of any alleged or proven
17 juvenile offender shall be open to public inspection, unless sealed
18 pursuant to subsection (11) of this section.

19 (3) All records other than the official juvenile court file are
20 confidential and may be released only as provided in this section, RCW
21 13.50.010, 13.40.215, and 4.24.550.

22 (4) Except as otherwise provided in this section and RCW 13.50.010,
23 records retained or produced by any juvenile justice or care agency may
24 be released to other participants in the juvenile justice or care
25 system ((only)) when an investigation or case involving the juvenile in
26 question is being pursued by the other participant or when that other
27 participant is assigned the responsibility for supervising the
28 juvenile.

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

34 (6) Notwithstanding any other provision of this chapter, the
35 release, to the juvenile or his or her attorney, of law enforcement and
36 prosecuting attorneys' records pertaining to investigation, diversion,
37 and prosecution of juvenile offenses shall be governed by the rules of

1 discovery and other rules of law applicable in adult criminal
2 investigations and prosecutions.

3 (7) The juvenile court and the prosecutor may set up and maintain
4 a central record-keeping system which may receive information on all
5 alleged juvenile offenders against whom a complaint has been filed
6 pursuant to RCW 13.40.070 whether or not their cases are currently
7 pending before the court. The central record-keeping system may be
8 computerized. If a complaint has been referred to a diversion unit,
9 the diversion unit shall promptly report to the juvenile court or the
10 prosecuting attorney when the juvenile has agreed to diversion. An
11 offense shall not be reported as criminal history in any central
12 record-keeping system without notification by the diversion unit of the
13 date on which the offender agreed to diversion.

14 (8) Upon request of the victim of a crime or the victim's immediate
15 family, the identity of an alleged or proven juvenile offender alleged
16 or found to have committed a crime against the victim and the identity
17 of the alleged or proven juvenile offender's parent, guardian, or
18 custodian and the circumstance of the alleged or proven crime shall be
19 released to the victim of the crime or the victim's immediate family.

20 (9) Subject to the rules of discovery applicable in adult criminal
21 prosecutions, the juvenile offense records of an adult criminal
22 defendant or witness in an adult criminal proceeding shall be released
23 upon request to prosecution and defense counsel after a charge has
24 actually been filed. The juvenile offense records of any adult
25 convicted of a crime and placed under the supervision of the adult
26 corrections system shall be released upon request to the adult
27 corrections system.

28 (10) In any case in which an information has been filed pursuant to
29 RCW 13.40.100 or a complaint has been filed with the prosecutor and
30 referred for diversion pursuant to RCW 13.40.070, the person the
31 subject of the information or complaint may file a motion with the
32 court to have the court vacate its order and findings, if any, and,
33 subject to subsection (24) of this section, order the sealing of the
34 official juvenile court file, the social file, and records of the court
35 and of any other agency in the case.

36 (11) The court shall grant the motion to seal records made pursuant
37 to subsection (10) of this section if it finds that:

38 (a) Two years have elapsed from the later of: (i) Final discharge
39 of the person from the supervision of any agency charged with

1 supervising juvenile offenders; or (ii) from the entry of a court order
2 relating to the commission of a juvenile offense or a criminal offense;

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

5 (c) No proceeding is pending seeking the formation of a diversion
6 agreement with that person.

7 (12) The person making a motion pursuant to subsection (10) of this
8 section shall give reasonable notice of the motion to the prosecution
9 and to any person or agency whose files are sought to be sealed.

10 (13) If the court grants the motion to seal made pursuant to
11 subsection (10) of this section, it shall, subject to subsection (24)
12 of this section, order sealed the official juvenile court file, the
13 social file, and other records relating to the case as are named in the
14 order. Thereafter, the proceedings in the case shall be treated as if
15 they never occurred, and the subject of the records may reply
16 accordingly to any inquiry about the events, records of which are
17 sealed. Any agency shall reply to any inquiry concerning confidential
18 or sealed records that records are confidential, and no information can
19 be given about the existence or nonexistence of records concerning an
20 individual.

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

26 (15) Any adjudication of a juvenile offense or a crime subsequent
27 to sealing has the effect of nullifying the sealing order. Any
28 conviction for any adult felony subsequent to the sealing has the
29 effect of nullifying the sealing order for the purposes of chapter
30 9.94A RCW for any juvenile adjudication of guilt for a class A offense
31 or a sex offense as defined in RCW 9.94A.030.

32 (16) In any case in which an information has been filed pursuant to
33 RCW 13.40.100 or a complaint has been filed with the prosecutor and
34 referred for diversion pursuant to RCW 13.40.070, the person who is the
35 subject of the information or complaint may file a motion with the
36 court to have the court vacate its order and findings, if any, and,
37 subject to subsection (24) of this section, order the destruction of
38 the official juvenile court file, the social file, and records of the
39 court and of any other agency in the case.

1 (17) The court may grant the motion to destroy records made
2 pursuant to subsection (16) of this section if it finds:

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

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

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

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

9 (18) A person eighteen years of age or older whose criminal history
10 consists of only one referral for diversion may request that the court
11 order the records in that case destroyed. The request shall be
12 granted, subject to subsection (24) of this section, if the court finds
13 that two years have elapsed since completion of the diversion
14 agreement.

15 (19) If the court grants the motion to destroy records made
16 pursuant to subsection (16) or (18) of this section, it shall, subject
17 to subsection (24) of this section, order the official juvenile court
18 file, the social file, and any other records named in the order to be
19 destroyed.

20 (20) The person making the motion pursuant to subsection (16) or
21 (18) of this section shall give reasonable notice of the motion to the
22 prosecuting attorney and to any agency whose records are sought to be
23 destroyed.

24 (21) Any juvenile to whom the provisions of this section may apply
25 shall be given written notice of his or her rights under this section
26 at the time of his or her disposition hearing or during the diversion
27 process.

28 (22) Nothing in this section may be construed to prevent a crime
29 victim or a member of the victim's family from divulging the identity
30 of the alleged or proven juvenile offender or his or her family when
31 necessary in a civil proceeding.

32 (23) Any juvenile justice or care agency may, subject to the
33 limitations in subsection (24) of this section and subparagraphs (a)
34 and (b) of this subsection, develop procedures for the routine
35 destruction of records relating to juvenile offenses and diversions.

36 (a) Records may be routinely destroyed only when the person the
37 subject of the information or complaint has attained twenty-three years
38 of age or older, or is eighteen years of age or older and his or her

1 criminal history consists entirely of one diversion agreement and two
2 years have passed since completion of the agreement.

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

5 (24) No identifying information held by the Washington state patrol
6 in accordance with chapter 43.43 RCW is subject to destruction or
7 sealing under this section. For the purposes of this subsection,
8 identifying information includes photographs, fingerprints, palmprints,
9 soleprints, toeprints and any other data that identifies a person by
10 physical characteristics, name, birthdate or address, but does not
11 include information regarding criminal activity, arrest, charging,
12 diversion, conviction or other information about a person's treatment
13 by the criminal justice system or about the person's behavior.

14 (25) Information identifying child victims under age eighteen who
15 are victims of sexual assaults by juvenile offenders is confidential
16 and not subject to release to the press or public without the
17 permission of the child victim or the child's legal guardian.
18 Identifying information includes the child victim's name, addresses,
19 location, photographs, and in cases in which the child victim is a
20 relative of the alleged perpetrator, identification of the relationship
21 between the child and the alleged perpetrator. Information identifying
22 a child victim of sexual assault may be released to law enforcement,
23 prosecutors, judges, defense attorneys, or private or governmental
24 agencies that provide services to the child victim of sexual assault.

25 **Sec. 3.** RCW 13.50.100 and 1990 c 246 s 9 are each amended to read
26 as follows:

27 (1) This section governs records not covered by RCW 13.50.050.

28 (2) Records covered by this section shall be confidential and shall
29 be released only pursuant to this section and RCW 13.50.010.

30 (3) Records retained or produced by any juvenile justice or care
31 agency may be released to other participants in the juvenile justice or
32 care system ((only)) when an investigation or case involving the
33 juvenile in question is being pursued by the other participant or when
34 that other participant is assigned the responsibility of supervising
35 the juvenile. Records covered under this section and maintained by the
36 juvenile courts which relate to the official actions of the agency may
37 be entered in the state-wide juvenile court information system.

1 (4) A juvenile, his or her parents, the juvenile's attorney and the
2 juvenile's parent's attorney, shall, upon request, be given access to
3 all records and information collected or retained by a juvenile justice
4 or care agency which pertain to the juvenile except:

5 (a) If it is determined by the agency that release of this
6 information is likely to cause severe psychological or physical harm to
7 the juvenile or his or her parents the agency may withhold the
8 information subject to other order of the court: PROVIDED, That if the
9 court determines that limited release of the information is
10 appropriate, the court may specify terms and conditions for the release
11 of the information; or

12 (b) If the information or record has been obtained by a juvenile
13 justice or care agency in connection with the provision of counseling,
14 psychological, psychiatric, or medical services to the juvenile, and
15 the juvenile has a legal right to receive those services without the
16 consent of any person or agency, then the information or record may not
17 be disclosed to the juvenile's parents without the informed consent of
18 the juvenile; or

19 (c) That the department of social and health services may delete
20 the name and identifying information regarding persons or organizations
21 who have reported suspected child abuse or neglect.

22 (5) A juvenile or his or her parent denied access to any records
23 following an agency determination under subsection (4) of this section
24 may file a motion in juvenile court requesting access to the records.
25 The court shall grant the motion unless it finds access may not be
26 permitted according to the standards found in subsections (4) (a) and
27 (b) of this section.

28 (6) The person making a motion under subsection (5) of this section
29 shall give reasonable notice of the motion to all parties to the
30 original action and to any agency whose records will be affected by the
31 motion.

32 (7) Subject to the rules of discovery in civil cases, any party to
33 a proceeding seeking a declaration of dependency or a termination of
34 the parent-child relationship and any party's counsel and the guardian
35 ad litem of any party, shall have access to the records of any natural
36 or adoptive child of the parent, subject to the limitations in
37 subsection (4) of this section.

38 (8) Information concerning a juvenile or a juvenile's family
39 contained in records covered by this section may be released to the

1 public only when that information could not reasonably be expected to
2 identify the juvenile or the juvenile's family.

3 NEW SECTION. **Sec. 4.** A new section is added to chapter 13.50 RCW
4 to read as follows:

5 (1) Each juvenile justice or care agency shall use the handbook
6 developed under section 7 of this act to develop a policy regarding the
7 disclosure of juvenile information as allowed by federal and state law.
8 The agency shall implement the policy developed. The policy shall
9 include, but not be limited to the following:

10 (a) What information may be shared;

11 (b) The conditions for sharing the information;

12 (c) The method for providing the information;

13 (d) Which individuals, by position, at the juvenile justice or care
14 agency are permitted to receive the information;

15 (e) Which individuals, by position, at the juvenile justice or care
16 agency are responsible for providing reasonable safeguards to protect
17 the confidentiality of the information, including limiting the use and
18 disclosure of the information to persons necessary to provide
19 appropriate services for the juvenile who is the subject of the
20 information, and to provide a safe environment for the juvenile and
21 others;

22 (f) Requiring the parent or legal guardian of the juvenile to be
23 notified when a juvenile justice or care agency discloses the record
24 information of a juvenile.

25 (2) Any juvenile justice or care agency employee who discloses
26 information in compliance with this section is immune from civil
27 liability for damages, unless it is shown that the employee acted with
28 gross negligence or in bad faith.

29 **Sec. 5.** RCW 28A.225.330 and 1994 c 304 s 2 are each amended to
30 read as follows:

31 (1) When enrolling a student who has attended school in another
32 school district, the school enrolling the student may request the
33 parent and the student to briefly indicate in writing whether or not
34 the student has:

35 (a) Any history of placement in special educational programs;

36 (b) Any past, current, or pending disciplinary action;

37 (c) Any history of violent behavior;

- 1 (d) Any unpaid fines or fees imposed by other schools; and
2 (e) Any health conditions affecting the student's educational
3 needs.

4 (2) The school enrolling the student shall request the school the
5 student previously attended to send the student's permanent record
6 including records of disciplinary action. If the student has not paid
7 a fine or fee under RCW 28A.635.060, the school may withhold the
8 student's official transcript, but shall transmit information about the
9 student's academic performance, special placement, and records of
10 disciplinary action. If the official transcript is not sent due to
11 unpaid fees or fines, the enrolling school shall notify both the
12 student and parent or guardian that the official transcript will not be
13 sent until the obligation is met, and failure to have an official
14 transcript may result in exclusion from extracurricular activities or
15 failure to graduate.

16 (3) If information is requested under subsection (2) of this
17 section, the information shall be transmitted within two school days
18 after receiving the request and the records shall be sent as soon as
19 possible. Any school district employee who releases the information in
20 compliance with this section is immune from civil liability for damages
21 unless it is shown that the school district employee acted with gross
22 negligence or in bad faith.

23 NEW SECTION. Sec. 6. A new section is added to chapter 28A.320
24 RCW to read as follows:

25 (1) To be eligible to receive records under chapter 13.50 RCW, each
26 school district shall implement a policy that facilitates disclosure of
27 information to the extent allowed by federal and state law. The policy
28 shall include, but not be limited to the following:

- 29 (a) What information may be shared;
30 (b) The conditions for sharing the information;
31 (c) The method for providing the information;
32 (d) Which individuals, by position, within the school district may
33 receive the information;
34 (e) Which individuals, by position, within the school district are
35 responsible for providing reasonable safeguards to protect the
36 confidentiality of the information, including limiting the use and
37 disclosure of the information to persons necessary to provide
38 appropriate educational and support services for the juvenile who is

1 the subject of the information, and to provide a safe environment for
2 the juvenile, other students, and staff;

3 (f) Requiring the parent or legal guardian of the juvenile to be
4 notified when a juvenile justice or care agency discloses the record
5 information of a juvenile.

6 (2) Any school district or district employee who discloses
7 information in compliance with this section is immune from civil
8 liability for damages unless it is shown that the school district or
9 district employee acted with gross negligence or in bad faith.

10 NEW SECTION. **Sec. 7.** A new section is added to chapter 28A.300
11 RCW to read as follows:

12 By July 1, 1996, the superintendent of public instruction, the
13 department of social and health services, and the office of the
14 attorney general shall jointly develop and publish a handbook on the
15 current laws and policies governing the disclosure of information
16 related to juveniles among and within juvenile justice or care agencies
17 as defined by RCW 13.50.010. The handbook shall be completed by July
18 1, 1996. The handbook shall be reviewed annually and updated as
19 needed.

20 The handbook shall neither discourage nor promote disclosure of
21 information, but shall be designed to assist agency personnel in
22 complying with applicable state and federal law. The handbook shall
23 provide model policies that individual juvenile justice or care
24 agencies may use in drafting a policy for the entity. The handbook
25 shall also address each of the following:

- 26 (1) What constitutes juvenile records;
27 (2) Which laws govern disclosure of juvenile records;
28 (3) Who maintains juvenile records;
29 (4) Who can obtain juvenile records; and
30 (5) How juvenile records can be obtained.

31 NEW SECTION. **Sec. 8.** If any provision of this act or its
32 application to any person or circumstance is held invalid, the
33 remainder of the act or the application of the provision to other
34 persons or circumstances is not affected.

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