
HOUSE BILL 2800

State of Washington 54th Legislature 1996 Regular Session

By Representatives Sheahan and Thompson

Read first time 01/19/96. Referred to Committee on Law & Justice.

1 AN ACT Relating to offender records; amending RCW 13.50.010,
2 13.50.050, and 9.94A.230; and adding a new section to chapter 13.50
3 RCW.

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

5 **Sec. 1.** RCW 13.50.010 and 1994 sp.s. c 7 s 541 are each amended to
6 read as follows:

7 (1) For purposes of this chapter:

8 (a) "Juvenile justice or care agency" means any of the following:
9 Police, diversion units, court, prosecuting attorney, defense attorney,
10 detention center, attorney general, the department of social and health
11 services and its contracting agencies, schools; and, in addition,
12 persons or public or private agencies having children committed to
13 their custody;

14 (b) "Official juvenile court file" means the legal file of the
15 juvenile court containing the petition or information, motions,
16 memorandums, briefs, findings of the court, and court orders;

17 (c) "Social file" means the juvenile court file containing the
18 records and reports of the probation counselor;

1 (d) "Records" means the official juvenile court file, the social
2 file, and records of any other juvenile justice or care agency in the
3 case.

4 (2) Each petition or information filed with the court may include
5 only one juvenile and each petition or information shall be filed under
6 a separate docket number. The social file shall be filed separately
7 from the official juvenile court file.

8 (3) It is the duty of any juvenile justice or care agency to
9 maintain accurate records. To this end:

10 (a) The agency may never knowingly record inaccurate information.
11 Any information in records maintained by the department of social and
12 health services relating to a petition filed pursuant to chapter 13.34
13 RCW that is found by the court, upon proof presented, to be false or
14 inaccurate shall be corrected or expunged from such records by the
15 agency;

16 (b) An agency shall take reasonable steps to assure the security of
17 its records and prevent tampering with them; and

18 (c) An agency shall make reasonable efforts to insure the
19 completeness of its records, including action taken by other agencies
20 with respect to matters in its files.

21 (4) Each juvenile justice or care agency shall implement procedures
22 consistent with the provisions of this chapter to facilitate inquiries
23 concerning records.

24 (5) Any person who has reasonable cause to believe information
25 concerning that person is included in the records of a juvenile justice
26 or care agency and who has been denied access to those records by the
27 agency may make a motion to the court for an order authorizing that
28 person to inspect the juvenile justice or care agency record concerning
29 that person. The court shall grant the motion to examine records
30 unless it finds that in the interests of justice or in the best
31 interests of the juvenile the records or parts of them should remain
32 confidential.

33 (6) A juvenile, or his or her parents, or any person who has
34 reasonable cause to believe information concerning that person is
35 included in the records of a juvenile justice or care agency may make
36 a motion to the court challenging the accuracy of any information
37 concerning the moving party in the record or challenging the continued
38 possession of the record by the agency. If the court grants the

1 motion, it shall order the record or information to be corrected or
2 destroyed.

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

7 (8) The court may permit inspection of records by, or release of
8 information to, any clinic, hospital, or agency which has the subject
9 person under care or treatment. The court may also permit inspection
10 by or release to individuals or agencies, including juvenile justice
11 advisory committees of county law and justice councils, engaged in
12 legitimate research for educational, scientific, or public purposes.
13 The court may also permit inspection of, or release of information
14 from, records which have been sealed (~~(pursuant to RCW 13.50.050(11))~~).
15 Access to records or information for research purposes shall be
16 permitted only if the anonymity of all persons mentioned in the records
17 or information will be preserved. Each person granted permission to
18 inspect juvenile justice or care agency records for research purposes
19 shall present a notarized statement to the court stating that the names
20 of juveniles and parents will remain confidential.

21 (9) Juvenile detention facilities shall release records to the
22 (~~(juvenile disposition standards)~~) sentencing guidelines commission
23 under RCW 13.40.025 upon request. The commission shall not disclose
24 the names of any juveniles or parents mentioned in the records without
25 the named individual's written permission.

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

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

30 (2) The official juvenile court file of any alleged or proven
31 juvenile offender shall be open to public inspection, unless sealed
32 pursuant to (~~(subsection (11) of this)~~) section 3 of this act.

33 (3) All records other than the official juvenile court file are
34 confidential and may be released only as provided in this section, RCW
35 13.50.010, 13.40.215, and 4.24.550.

36 (4) Except as otherwise provided in this section and RCW 13.50.010,
37 records retained or produced by any juvenile justice or care agency may
38 be released to other participants in the juvenile justice or care

1 system only when an investigation or case involving the juvenile in
2 question is being pursued by the other participant or when that other
3 participant is assigned the responsibility for supervising the
4 juvenile.

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

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

16 (7) The juvenile court and the prosecutor may set up and maintain
17 a central record-keeping system which may receive information on all
18 alleged juvenile offenders against whom a complaint has been filed
19 pursuant to RCW 13.40.070 whether or not their cases are currently
20 pending before the court. The central record-keeping system may be
21 computerized. If a complaint has been referred to a diversion unit,
22 the diversion unit shall promptly report to the juvenile court or the
23 prosecuting attorney when the juvenile has agreed to diversion. An
24 offense shall not be reported as criminal history in any central
25 record-keeping system without notification by the diversion unit of the
26 date on which the offender agreed to diversion.

27 (8) Upon request of the victim of a crime or the victim's immediate
28 family, the identity of an alleged or proven juvenile offender alleged
29 or found to have committed a crime against the victim and the identity
30 of the alleged or proven juvenile offender's parent, guardian, or
31 custodian and the circumstance of the alleged or proven crime shall be
32 released to the victim of the crime or the victim's immediate family.

33 (9) Subject to the rules of discovery applicable in adult criminal
34 prosecutions, the juvenile offense records of an adult criminal
35 defendant or witness in an adult criminal proceeding shall be released
36 upon request to prosecution and defense counsel after a charge has
37 actually been filed. The juvenile offense records of any adult
38 convicted of a crime and placed under the supervision of the adult

1 corrections system shall be released upon request to the adult
2 corrections system.

3 ~~((In any case in which an information has been filed pursuant~~
4 ~~to RCW 13.40.100 or a complaint has been filed with the prosecutor and~~
5 ~~referred for diversion pursuant to RCW 13.40.070, the person the~~
6 ~~subject of the information or complaint may file a motion with the~~
7 ~~court to have the court vacate its order and findings, if any, and,~~
8 ~~subject to subsection (24) of this section, order the sealing of the~~
9 ~~official juvenile court file, the social file, and records of the court~~
10 ~~and of any other agency in the case.~~

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

13 ~~(a) Two years have elapsed from the later of: (i) Final discharge~~
14 ~~of the person from the supervision of any agency charged with~~
15 ~~supervising juvenile offenders; or (ii) from the entry of a court order~~
16 ~~relating to the commission of a juvenile offense or a criminal offense;~~

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

19 ~~(c) No proceeding is pending seeking the formation of a diversion~~
20 ~~agreement with that person.~~

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

24 ~~(13) If the court grants the motion to seal made pursuant to~~
25 ~~subsection (10) of this section, it shall, subject to subsection (24)~~
26 ~~of this section, order sealed the official juvenile court file, the~~
27 ~~social file, and other records relating to the case as are named in the~~
28 ~~order. Thereafter, the proceedings in the case shall be treated as if~~
29 ~~they never occurred, and the subject of the records may reply~~
30 ~~accordingly to any inquiry about the events, records of which are~~
31 ~~sealed. Any agency shall reply to any inquiry concerning confidential~~
32 ~~or sealed records that records are confidential, and no information can~~
33 ~~be given about the existence or nonexistence of records concerning an~~
34 ~~individual.~~

35 ~~(14))~~ Inspection of the files and records included in ~~((the))~~ an
36 order to seal may ~~((thereafter))~~ be permitted only by order of the
37 court upon motion made by the person who is the subject of the
38 information or complaint, except as otherwise provided in RCW
39 13.50.010(8) and subsection ~~((24))~~ (15) of this section.

1 ~~((15))~~ (11) Any adjudication of a juvenile offense or a
2 conviction of a crime committed on or after the effective date of this
3 act but subsequent to sealing has the effect of nullifying the sealing
4 order. ~~((Any conviction for any adult felony subsequent to the sealing~~
5 ~~has the effect of nullifying the sealing order for the purposes of~~
6 ~~chapter 9.94A RCW for any juvenile adjudication of guilt for a class A~~
7 ~~offense or a sex offense as defined in RCW 9.94A.030.~~

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

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

18 (a) The person making the motion is at least twenty three years of
19 age;

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

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

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

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

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

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

1 ~~(21))~~ (12) Any juvenile to whom the provisions of this section may
2 apply shall be given written notice of his or her rights under this
3 section at the time of his or her disposition hearing or during the
4 diversion process.

5 ~~((22))~~ (13) Nothing in this section may be construed to prevent
6 a crime victim or a member of the victim's family from divulging the
7 identity of the alleged or proven juvenile offender or his or her
8 family when necessary in a civil proceeding.

9 ~~((23))~~ (14) Any juvenile justice or care agency may, subject to
10 the limitations in subsection ~~((24))~~ (15) of this section and
11 ~~((subparagraphs))~~ (a) and (b) of this subsection, develop procedures
12 for the routine destruction of records, other than records in the
13 official juvenile court file, relating to juvenile offenses and
14 diversions.

15 (a) Records, other than records in the official juvenile court
16 file, may be routinely destroyed only when the person the subject of
17 the information or complaint has attained twenty-three years of age or
18 older, or is eighteen years of age or older and his or her criminal
19 history consists entirely of one diversion agreement and two years have
20 passed since completion of the agreement.

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

23 ~~((24))~~ (15) No identifying information held by the Washington
24 state patrol in accordance with chapter 43.43 RCW is subject to
25 destruction or sealing under this section. For the purposes of this
26 subsection, identifying information includes photographs, fingerprints,
27 palmprints, soleprints, toeprints and any other data that identifies a
28 person by physical characteristics, name, birthdate or address, but
29 does not include information regarding criminal activity, arrest,
30 charging, diversion, conviction or other information about a person's
31 treatment by the criminal justice system or about the person's
32 behavior.

33 ~~((25))~~ (16) Information identifying child victims under age
34 eighteen who are victims of sexual assaults by juvenile offenders is
35 confidential and not subject to release to the press or public without
36 the permission of the child victim or the child's legal guardian.
37 Identifying information includes the child victim's name, addresses,
38 location, photographs, and in cases in which the child victim is a
39 relative of the alleged perpetrator, identification of the relationship

1 between the child and the alleged perpetrator. Information identifying
2 a child victim of sexual assault may be released to law enforcement,
3 prosecutors, judges, defense attorneys, or private or governmental
4 agencies that provide services to the child victim of sexual assault.

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

7 (1) When a juvenile offender has completed the requirements of a
8 disposition entered pursuant to chapter 13.40 RCW, the secretary of the
9 department of social and health services or the secretary's designee,
10 the offender's probation officer in charge of monitoring the offender's
11 compliance with a community supervision disposition, or the diversion
12 unit, as appropriate, must notify the disposition court, which must
13 discharge the offender and provide the offender with a certificate of
14 discharge. A certificate of discharge is not based on a finding of
15 rehabilitation.

16 (2) Every offender who has received a certificate of discharge may
17 apply to the disposition court for an order sealing his or her records.
18 If the court finds the offender meets the tests prescribed in
19 subsection (3) of this section, the court may seal the records.

20 (3) An offender may not have his or her records sealed if: (a)
21 There are any criminal charges against the offender pending in any
22 court of this state or another state, or in any federal court; (b) the
23 offense was a violent or sex offense as defined in RCW 9.94A.030; (c)
24 the offense was a crime against persons as defined in RCW 43.43.830;
25 (d) the offender has been adjudicated of a new offense or convicted of
26 a new crime in this state, another state, or federal court since the
27 date of the offender's discharge; (e) the offense is a class B felony
28 and less than ten years have passed since the date the applicant was
29 discharged; or (f) the offense was a class C felony and less than five
30 years have passed since the date the applicant was discharged.

31 (4) Nothing in this section prohibits the use of an offender's
32 prior record for purposes of determining the offender's dispositions or
33 sentences for later offenses as provided in chapter 9.94A or 13.40 RCW
34 or to establish juvenile or adult criminal court jurisdiction over the
35 offender for later offenses as provided in chapter 13.04 or 13.40 RCW.
36 Nothing in this section affects or prevents use of the offender's prior
37 disposition or conviction in a later criminal prosecution either as an
38 element of an offense or for impeachment purposes. Nothing in this

1 section prohibits the release of an offender's prior record to an
2 individual, employer, or agency authorized or required to conduct
3 criminal history background checks of employees or prospective
4 employees.

5 **Sec. 4.** RCW 9.94A.230 and 1987 c 486 s 7 are each amended to read
6 as follows:

7 (1) Every offender who has been discharged under RCW 9.94A.220 may
8 apply to the sentencing court for ~~((a vacation of))~~ an order sealing
9 the offender's record of conviction. If the court finds the offender
10 meets the tests prescribed in subsection (2) of this section, the court
11 may ~~((clear))~~ seal the record of conviction ~~((by:—(a) Permitting the
12 offender to withdraw the offender's plea of guilty and to enter a plea
13 of not guilty; or (b) if the offender has been convicted after a plea
14 of not guilty, by the court setting aside the verdict of guilty; and
15 (c) by the court dismissing the information or indictment against the
16 offender))~~.

17 (2) An offender may not have the record of conviction ~~((cleared))~~
18 sealed if: (a) There are any criminal charges against the offender
19 pending in any court of this state or another state, or in any federal
20 court; (b) the offense was a violent or sex offense as defined in RCW
21 9.94A.030; (c) the offense was a crime against persons as defined in
22 RCW 43.43.830; (d) the offender has been convicted of a new crime in
23 this state, another state, or federal court since the date of the
24 offender's discharge under RCW 9.94A.220; (e) the offense is a class B
25 felony and less than ten years have passed since the date the applicant
26 was discharged under RCW 9.94A.220; ~~((and))~~ or (f) the offense was a
27 class C felony and less than five years have passed since the date the
28 applicant was discharged under RCW 9.94A.220.

29 (3) ~~((Once the court vacates a record of conviction under
30 subsection (1) of this section, the fact that the offender has been
31 convicted of the offense shall not be included in the offender's
32 criminal history for purposes of determining a sentence in any
33 subsequent conviction, and the offender shall be released from all
34 penalties and disabilities resulting from the offense. For all
35 purposes, including responding to questions on employment applications,
36 an offender whose conviction has been vacated may state that the
37 offender has never been convicted of that crime.))~~ Nothing in this
38 section affects or prevents the use of an offender's prior conviction

1 in a later criminal prosecution either as an element of an offense or
2 for impeachment purposes, or when calculating the offender's criminal
3 history for purposes of determining a sentence in any subsequent
4 conviction. Nothing in this section prohibits the release of an
5 offender's prior record to an individual, employer, or agency
6 authorized or required to conduct criminal history background checks of
7 employees or prospective employees.

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