

HOUSE BILL REPORT

ESHB 1954

As Passed House:

March 11, 2009

Title: An act relating to sealing juvenile records.

Brief Description: Sealing juvenile records under certain conditions.

Sponsors: House Committee on Human Services (originally sponsored by Representative Dickerson).

Brief History:

Committee Activity:

Human Services: 2/12/09, 2/19/09 [DPS];

General Government Appropriations: 2/26/09 [DPS(HS)].

Floor Activity

Passed House: 3/11/09, 96-0.

Brief Summary of Engrossed Substitute Bill

- Requires the court, within 30 days after a juvenile's 18th birthday, to seal the juvenile's records of deferred disposition if the juvenile has successfully completed the deferred disposition, the deferred disposition has been vacated, the case dismissed with prejudice, and no charges are pending.
- Permits a juvenile to request that the court issue an order sealing the records of a deferred disposition if the juvenile has turned 18 before this act takes effect, and the court must grant the request.
- Provides that a deferred adjudication sealed under this act has the same legal status as records sealed under other Juvenile Justice Act provisions.

HOUSE COMMITTEE ON HUMAN SERVICES

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 8 members: Representatives Dickerson, Chair; Orwall, Vice Chair; Dammeier, Ranking Minority Member; Green, Klippert, Morrell, O'Brien and Walsh.

Staff: Linda Merelle (786-7092)

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 GENERAL GOVERNMENT APPROPRIATIONS

Majority Report: The substitute bill by Committee on Human Services be substituted therefor and the substitute bill do pass. Signed by 14 members: Representatives Darneille, Chair; Takko, Vice Chair; McCune, Ranking Minority Member; Hinkle, Assistant Ranking Minority Member; Armstrong, Blake, Dunshee, Hudgins, Kenney, Pedersen, Sells, Short, Van De Wege and Williams.

Staff: Alex MacBain (786-7288)

Background:

Deferred Disposition.

A deferred disposition in juvenile court is akin to a deferred prosecution in adult court. A deferred disposition allows a juvenile to complete certain conditions set out by the court and probation, including any restitution payment, in exchange for having the charges dismissed.

A juvenile is eligible for a deferred disposition unless he or she:

- is charged with a sex or violent offense;
- has a criminal history which includes any felony; or
- has two or more prior adjudications.

If a court grants a deferred disposition the juvenile is required to:

- stipulate to the admissibility of the facts contained in the written police report;
- acknowledge that the report will be entered and used to support a finding of guilt and to impose a disposition (i.e., sentencing) if the juvenile fails to comply with terms of supervision (the juvenile offender is found guilty at the time that the court agrees to allow a deferred disposition); and
- waive the right to a speedy disposition and to call and confront witnesses.

After the court enters a finding or plea of guilty, the court defers entry of an order of disposition. The juvenile offender is placed on community supervision, and the court may impose any conditions that it deems appropriate. Payment of restitution must be a condition of supervision. The juvenile normally has one year to complete the conditions but may have up to two years. If the juvenile fails to complete the conditions, as determined by a hearing before the court, the court must enter an order of disposition.

If the court finds that the juvenile offender has successfully complied with the conditions of his or her supervision, including payment of restitution, the conviction shall be vacated and the court shall dismiss the case with prejudice. If the juvenile has a conviction for animal cruelty in the first degree, his or her conviction shall not be vacated.

Sealing Records (Under RCW 13.50.050).

The official juvenile court file of any alleged or proven juvenile offender shall be open to public inspection unless they are sealed by the court. Before 1977, juvenile records were not public. Between 1977 and 1997, a juvenile could seal his or her records for any offense two

years after being released from confinement or sentenced if the juvenile had no further offenses. As of 1998, the Legislature has placed various time requirements on the ability to seal certain records and has precluded the sealing of records for certain offenses, such as sex offenses and violent offenses altogether. The table below illustrates the offenses for which a juvenile may request an order from the court sealing his or her records:

<i>Type of Offense</i>	<i>Length of Time Since Confinement or Entry of Disposition and Having Committed No Offenses</i>
Sex Offenses	Records may never be sealed.
Class A Felony	Records may never be sealed.
Class B Felony	5 Years
Class C Felony	2 Years
Gross Misdemeanor	2 Years
Misdemeanor	2 Years

A subsequent finding of guilt nullifies a court order sealing a juvenile's record. A subsequent charge of a felony as an adult nullifies the court's sealing order.

Summary of Engrossed Substitute Bill:

A juvenile's records of a deferred disposition shall be sealed within 30 days after the juvenile's 18th birthday if:

1. the conditions of the deferred disposition have been completed;
2. the deferred disposition has been vacated and the case dismissed with prejudice; and
3. the juvenile does not have any pending charges.

If at the time this bill goes into effect, the juvenile is already 18, the juvenile may request that the court seal his or her records, and that request shall be granted. Records that are sealed under this provision have the same legal status as records sealed under RCW 13.50.050.

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 (Human Services):

(In support) When juvenile records are not sealed, there can be a real impairment in finding work, places to live, and getting scholarships. In recent years, access to juvenile records has been increasing. There is currently a process for sealing records, but some youth do not have the financial resources to access this. Getting records sealed is a tedious process because there must be a court order to do so. This bill will complete the promise made to the juvenile at the time that they entered into a deferred disposition, that once they successfully complete the deferred disposition, the matter will be vacated. With this bill, the matter is sealed.

Records, even of a deferred disposition, are available. Sealing the records automatically makes sense. There are a number of people with deferred dispositions who believe that they are gone from their record and do not realize that the record needs to be sealed. When a person looks at a record, all they see is a charge, not whether it was dismissed or vacated. Many employers and those who provide housing will not accept a person when they see there is a charge. Many persons do not have the economic means to file a motion.

(In support with concerns) The only comparable process to the sealing of records as proposed in this bill is when a case is dismissed where there has been no activity for one year. The court clerks believe that the costs will be high to implement the requirements of this bill, especially in cases where the juvenile has already turned 18. Rather than having those records sealed automatically, the easier way is to have the juvenile make a motion to seal the records, have the court sign an order, and the clerks will follow that order.

(Opposed) None.

Staff Summary of Public Testimony (General Government Appropriations):

(In support) There were two cost drivers identified in the fiscal note. The substitute bill addresses both of the cost drivers, first by making the bill prospective and not automatically retrospective, and second by sealing the entire case. These changes will reduce the costs identified in the original bill. Washington is one of the strictest states when it comes to sealing juvenile records. Most juveniles believe that the records will be sealed automatically if they meet the criteria of the bill. These juveniles later try to find employment, housing, or education scholarships and are blocked. The changes in the bill make the system more rehabilitative. If juveniles become productive members of society then there are cost savings in the criminal justice system. There is continued work with the interested parties to change the type of search done on court records which should further reduce the costs of the bill.

(With concerns) The substitute bill does address the fiscal drivers that were identified at the first hearing. However, there are two remaining concerns that have not previously come up. The first is the timing of the automatic sealing process and the second is indemnification. The automatic sealing process would have to occur every day of the week in order for it to occur exactly on a juvenile's 18th birth date. Allowing for a window so that the sealing could occur within a number of days of a birthday would allow courts to comply. Also indemnification would be helpful for cases that are discovered after the sealing, or if the sealing did not occur due to an oversight right on the 18th birth date.

Persons Testifying (Human Services): (In support) Representative Dickerson, prime sponsor; Nancy Garland, Derick Conaway, and LaRond Baker, Street Youth Legal Advocates of Washington; George Yeannakis, Washington State Bar Association, Juvenile Law Section; and Tom McBride, Washington Association of Prosecuting Attorneys.

(In support with concerns) Debbie Wilke, Washington State Association of County Clerks.

Persons Testifying (General Government Appropriations): (In support) Representative Dickerson, prime sponsor; and Sara Senser, Street Youth Legal Advocates of Washington.

(With concerns) Debbie Wilke, Washington State Association of County Clerks.

Persons Signed In To Testify But Not Testifying (Human Services): None.

Persons Signed In To Testify But Not Testifying (General Government Appropriations):
None.