

# HOUSE BILL REPORT

## SHB 1793

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### As Amended by the Senate

**Title:** An act relating to restricting access to juvenile records.

**Brief Description:** Restricting access to juvenile records.

**Sponsors:** House Committee on Early Learning & Human Services (originally sponsored by Representatives Darneille, Roberts and Kagi).

#### **Brief History:**

##### **Committee Activity:**

Early Learning & Human Services: 2/11/11, 2/17/11 [DPS];

General Government Appropriations & Oversight: 2/18/11 [DPS(ELHS)].

##### **Floor Activity:**

Passed House: 3/5/11, 56-41.

Senate Amended.

Passed Senate: 4/8/11, 41-7.

#### **Brief Summary of Substitute Bill**

- Prohibits a consumer reporting agency from disseminating to a third party information contained in any juvenile record that it has obtained but allows the dissemination of de-identified records for the purposes of social science research, trend data, and generalized aggregation.
- Provides that a violation of the prohibition against the dissemination of personal information contained in a juvenile record is a violation of the Washington Consumer Protection Act.
- Requires the Administrative Office of the Courts to convene a work group to develop recommendations that would restrict access to juvenile records and allow records to be sealed without an order from the court; a report is due by December 1, 2011.

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#### **HOUSE COMMITTEE ON EARLY LEARNING & HUMAN SERVICES**

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 8 members: Representatives Kagi, Chair; Roberts, Vice Chair; Walsh, Ranking

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*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.*

Minority Member; Hope, Assistant Ranking Minority Member; Dickerson, Goodman, Johnson and Orwall.

**Minority Report:** Do not pass. Signed by 1 member: Representative Overstreet.

**Staff:** Linda Merelle (786-7092).

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## HOUSE COMMITTEE ON GENERAL GOVERNMENT APPROPRIATIONS & OVERSIGHT

**Majority Report:** The substitute bill by Committee on Early Learning & Human Services be substituted therefor and the substitute bill do pass. Signed by 8 members: Representatives Hudgins, Chair; Miloscia, Vice Chair; Blake, Fitzgibbon, Ladenburg, Moscoso, Pedersen and Van De Wege.

**Minority Report:** Do not pass. Signed by 3 members: Representatives McCune, Ranking Minority Member; Taylor, Assistant Ranking Minority Member; Wilcox.

**Staff:** Wendy Polzin (786-7137).

### **Background:**

#### Motions to Seal Records.

The "official juvenile court file" is the legal file of the juvenile court containing petitions, information, motions, memorandums, briefs, findings of the court, and court orders. The social file is the juvenile court file which contains the records and reports of a probation counselor. Juvenile records are a combination of the official juvenile court file, the social file, and the records of any other juvenile justice or care agency regarding a particular case.

In order to request that his or her juvenile records be sealed, a person must file a motion with the superior court. Courts do not have the authority to issue an order sealing the record of an adjudication for a sex offense. The court does have discretion to order sealed the following records:

- class A offenses where the person has spent five consecutive years since the last date of release from confinement, full-time residential treatment, or entry of disposition in the community without being convicted of any offense or crime; and
- class B, class C, gross misdemeanor, and misdemeanor offenses and diversions where the person has spent two consecutive years since the last date of release from confinement, full-time residential treatment, or entry of disposition in the community without being convicted of any offense or crime.

In addition, the court cannot order juvenile records sealed if there is: a proceeding pending against the moving party seeking his or her conviction for a juvenile or criminal offense; a proceeding pending seeking the formation of a diversion agreement with that person; and full restitution has not been paid.

If the court grants the motion to seal, the order to seal covers the juvenile court file, the social file, and other records relating to the case as are named in the order. The order to seal means the proceedings in the case can be treated as though they never occurred and the subject of the records may reply accordingly to any inquiry about the events contained in the record.

#### Consumer Protection Act.

The Washington Consumer Protection Act (Act) declares that unfair and deceptive practices in trade or commerce that harm the public interest are illegal. The Act gives the Office of the Attorney General the authority to bring lawsuits against businesses, and to ask the court for injunctions and restitution for consumers. It also allows individuals to bring consumer protection lawsuits.

#### **Summary of Substitute Bill:**

##### Consumer Reporting Agencies.

Persons or entities that regularly engage in assembling, aggregating, or evaluation of personally identifiable information regarding consumers for the purpose of furnishing consumer reports to third parties, may not disseminate the information contained in any juvenile record obtained, including the existence or nonexistence of such record. Such a person or entity may disseminate de-identified records for purposes of social science research, trend data, and generalized aggregation.

##### Washington Consumer Protection Act.

A violation of the prohibition against dissemination of personal information contained in a juvenile record is a violation of the Washington Consumer Protection Act.

##### Work Group.

The Administrative Office of the Courts must convene a work group of stakeholders to develop recommendations that would allow juvenile records to cost-effectively be sealed without requiring the person who is the subject of the records to make a motion to the court. The members of the work group must include representatives from the Administrative Office of the Courts, the Judicial Information Systems Data Dissemination Committee, the Association of Clerks, the Washington Defender Association, the Washington Association of Prosecuting Attorneys, the Washington State Patrol, and a member of the Washington State Bar Association Juvenile Law Section. The work group must report to the Legislature by December 1, 2011.

#### **EFFECT OF SENATE AMENDMENT(S):**

The Senate amendment: amends the title; removes from the intent section the goal of the automatic restriction of juvenile records from public access; removes the provision which prohibits a consumer reporting agency from disseminating information contained within juvenile records; removes the provision that makes the dissemination of juvenile records by a consumer reporting agency a violation of the Consumer Protection Act; adds the Association

of Juvenile Court Administrators and the Juvenile Rehabilitation Administration as required members of the work group created to develop recommendations to cost-effectively restrict public access to juvenile records; adds provisions that require the destruction of juvenile records of a person who has received a full and unconditional pardon; and allows for liability for civil damages for state and local governments that fail to destroy the juvenile records of a person who has received a full and unconditional pardon.

**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 (Early Learning & Human Services):**

(In support) One of the impediments to a juvenile's success as an adult is the fact that their juvenile records are sold. Those records are a deterrent for potential creditors and even with training programs. Seventy-seven percent of the people in the adult system were actually engaged in the juvenile system as well. The Legislature should look at any good public policy that might help reduce that recidivism. If information about a juvenile's offender history shows up on a credit record, the person cannot lease an apartment and interest rates are much higher on purchases. The underlying law has some strict sidebars around when records can be sealed. Often, when students are looking at college, even though their crimes were committed many years ago, these records follow them and interfere with their ability to get scholarships. Under this bill, a juvenile will have an opportunity for a fresh start and to successfully reintegrate into life. A juvenile offender record is a common barrier to success and getting training opportunities. Having information contained in juvenile records passed around makes it difficult to get scholarships and loans. Every youth should get a second chance. When adults give up, youths give up and give up on their future. Childhood is all about mistakes. Arrest information can be received if the arrest is less than one year old. The issue that this bill addresses is accuracy and accountability. If a court record is created, the arrest will be released. No conviction is required. Inaccurate records are ruining kids' lives.

(With concerns) The court clerks do not have a position on selling records. The problem is with the word "automatically." Right now when there is a court order to seal records, there are specific directions. Sealing the records is very labor intensive.

(Opposed) The consumer reporting agencies defined in the bill are regulated by the state and federal Fair Reporting Act. The companies buy information from the Administrative Office of the Courts because juvenile conviction records are public records. There are already remedies available. Saying that the consumer reporting agencies cannot disseminate records does not mean that those records will not be available to the public. Instead of going to consumer reporting agencies, landlords and perspective employers may rely on less reliable information. There are general rules that the courts put forth to control the access to records. Even if a case is sealed, the header will reflect the name of the juvenile.

**Staff Summary of Public Testimony (General Government Appropriations & Oversight):**

(In support) This legislation will help young people to access jobs, education, and housing by preventing the dissemination of their juvenile records. The substitute bill has been modified to remove automatic sealing of all juvenile records, and should significantly reduce the cost of the fiscal note. It should be noted that the Attorney General has discretion under the Consumer Protection Act to prosecute cases. If the Administrative Office of the Courts were to increase fees by a few pennies for Judicial Information System-Link records, it would cover the cost of this bill.

(Opposed) None.

**Persons Testifying (Early Learning & Human Services):** (In support) Representative Darneille, prime sponsor; Korbett Mosesly; Amanda Bevington; Ramona Whittington and Kirsten Naito, University of Washington Legislative Advocacy Clinic; Charles Shelan, Community Youth Services; and Kimberly Ambrose, Washington State Bar Association Juvenile Law Section.

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

(Opposed) Cliff Webster, Consumer Data Industry Association; and Rowland Thompson, Allied Daily Newspapers.

**Persons Testifying (General Government Appropriations & Oversight):** Emily Brice, University of Washington Child and Youth Legislative Advocacy Clinic.

**Persons Signed In To Testify But Not Testifying (Early Learning & Human Services):** None.

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