
SENATE BILL 5204

State of Washington

62nd Legislature

2011 Regular Session

By Senators Regala, Hargrove, and Stevens

Read first time 01/18/11. Referred to Committee on Human Services & Corrections.

1 AN ACT Relating to juveniles who have been adjudicated of a sex
2 offense; amending RCW 9A.44.143, 13.40.160, 13.50.050, and 72.09.345;
3 adding a new section to chapter 13.40 RCW; adding a new section to
4 chapter 28A.300 RCW; adding new sections to chapter 28A.320 RCW; and
5 providing an effective date.

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

7 **Sec. 1.** RCW 9A.44.143 and 2010 c 267 s 7 are each amended to read
8 as follows:

9 (1) An offender having a duty to register under RCW 9A.44.130 for
10 a sex offense or kidnapping offense committed when the offender was a
11 juvenile may petition the superior court to be relieved of that duty as
12 provided in this section.

13 (2) The court may relieve the petitioner of the duty to register
14 if:

15 (a) At least twenty-four months have passed since the adjudication
16 for the offense giving rise to the duty to register and the petitioner
17 has not been adjudicated of any additional sex offenses or kidnapping
18 offenses;

1 (b) The petitioner has not been adjudicated or convicted of a
2 violation of RCW 9A.44.132 (failure to register) during the twenty-four
3 months prior to filing the petition; and

4 ~~(c)((i) The petitioner was fifteen years of age or older at the
5 time the sex offense or kidnapping offense was committed and the
6 petitioner shows by clear and convincing evidence that the petitioner
7 is sufficiently rehabilitated to warrant removal from the central
8 registry of sex offenders and kidnapping offenders; or~~

9 ~~(ii))~~ The petitioner ~~((was under the age of fifteen at the time
10 the sex offense or kidnapping offense was committed and the
11 petitioner))~~ shows by a preponderance of the evidence that the
12 petitioner is sufficiently rehabilitated to warrant removal from the
13 central registry of sex offenders and kidnapping offenders.

14 (3) A petition for relief from registration under this section
15 shall be made to the court in which the petitioner was convicted of the
16 offense that subjects him or her to the duty to register or, in the
17 case of convictions in other states, a foreign country, or a federal or
18 military court, to the court in Thurston county. The prosecuting
19 attorney of the county shall be named and served as the respondent in
20 any such petition.

21 (4) In determining whether the petitioner is sufficiently
22 rehabilitated to warrant removal from the central registry of sex
23 offenders and kidnapping offenders, the following factors are provided
24 as guidance to assist the court in making its determination, to the
25 extent the factors are applicable considering the age and circumstances
26 of the petitioner:

27 (a) The nature of the registrable offense committed including the
28 number of victims and the length of the offense history;

29 (b) Any subsequent criminal history;

30 (c) The petitioner's compliance with supervision requirements;

31 (d) The length of time since the charged incident(s) occurred;

32 (e) Any input from community corrections officers, juvenile parole
33 or probation officers, law enforcement, or treatment providers;

34 (f) Participation in sex offender treatment;

35 (g) Participation in other treatment and rehabilitative programs;

36 (h) The offender's stability in employment and housing;

37 (i) The offender's community and personal support system;

- 1 (j) Any risk assessments or evaluations prepared by a qualified
2 professional;
- 3 (k) Any updated polygraph examination;
- 4 (l) Any input of the victim;
- 5 (m) Any other factors the court may consider relevant.
- 6 (5) A juvenile prosecuted and convicted of a sex offense or
7 kidnapping offense as an adult may not petition to the superior court
8 under this section.

9 **Sec. 2.** RCW 13.40.160 and 2007 c 199 s 14 are each amended to read
10 as follows:

11 (1) The standard range disposition for a juvenile adjudicated of an
12 offense is determined according to RCW 13.40.0357.

13 (a) When the court sentences an offender to a local sanction as
14 provided in RCW 13.40.0357 option A, the court shall impose a
15 determinate disposition within the standard ranges, except as provided
16 in subsection (2), (3), (4), (5), or (6) of this section. The
17 disposition may be comprised of one or more local sanctions.

18 (b) When the court sentences an offender to a standard range as
19 provided in RCW 13.40.0357 option A that includes a term of confinement
20 exceeding thirty days, commitment shall be to the department for the
21 standard range of confinement, except as provided in subsection (2),
22 (3), (4), (5), or (6) of this section.

23 (2) If the court concludes, and enters reasons for its conclusion,
24 that disposition within the standard range would effectuate a manifest
25 injustice the court shall impose a disposition outside the standard
26 range, as indicated in option D of RCW 13.40.0357. The court's finding
27 of manifest injustice shall be supported by clear and convincing
28 evidence.

29 A disposition outside the standard range shall be determinate and
30 shall be comprised of confinement or community supervision, or a
31 combination thereof. When a judge finds a manifest injustice and
32 imposes a sentence of confinement exceeding thirty days, the court
33 shall sentence the juvenile to a maximum term, and the provisions of
34 RCW 13.40.030(2) shall be used to determine the range. A disposition
35 outside the standard range is appealable under RCW 13.40.230 by the
36 state or the respondent. A disposition within the standard range is
37 not appealable under RCW 13.40.230.

1 (3) ~~((When))~~ If a juvenile offender is found to have committed a
2 sex offense, other than a sex offense that is also a serious violent
3 offense as defined by RCW 9.94A.030, and has no history of a prior sex
4 offense, the court ~~((, on its own motion or the motion of the state or~~
5 ~~the respondent, may order an examination to determine whether the~~
6 ~~respondent is amenable to treatment.~~

7 ~~The report of the examination shall include at a minimum the~~
8 ~~following: The respondent's version of the facts and the official~~
9 ~~version of the facts, the respondent's offense history, an assessment~~
10 ~~of problems in addition to alleged deviant behaviors, the respondent's~~
11 ~~social, educational, and employment situation, and other evaluation~~
12 ~~measures used. The report shall set forth the sources of the~~
13 ~~evaluator's information.~~

14 ~~The examiner shall assess and report regarding the respondent's~~
15 ~~amenability to treatment and relative risk to the community. A~~
16 ~~proposed treatment plan shall be provided and shall include, at a~~
17 ~~minimum:~~

18 ~~(a)(i) Frequency and type of contact between the offender and~~
19 ~~therapist;~~

20 ~~(ii) Specific issues to be addressed in the treatment and~~
21 ~~description of planned treatment modalities;~~

22 ~~(iii) Monitoring plans, including any requirements regarding living~~
23 ~~conditions, lifestyle requirements, and monitoring by family members,~~
24 ~~legal guardians, or others;~~

25 ~~(iv) Anticipated length of treatment; and~~

26 ~~(v) Recommended crime-related prohibitions.~~

27 ~~The court on its own motion may order, or on a motion by the state~~
28 ~~shall order, a second examination regarding the offender's amenability~~
29 ~~to treatment. The evaluator shall be selected by the party making the~~
30 ~~motion. The defendant shall pay the cost of any second examination~~
31 ~~ordered unless the court finds the defendant to be indigent in which~~
32 ~~case the state shall pay the cost.~~

33 ~~After receipt of reports of the examination, the court shall then~~
34 ~~consider whether the offender and the community will benefit from use~~
35 ~~of this special sex offender disposition alternative and consider the~~
36 ~~victim's opinion whether the offender should receive a treatment~~
37 ~~disposition under this section. If the court determines that this~~
38 ~~special sex offender disposition alternative is appropriate, then the~~

1 ~~court shall impose a determinate disposition within the standard range~~
2 ~~for the offense, or if the court concludes, and enters reasons for its~~
3 ~~conclusions, that such disposition would cause a manifest injustice,~~
4 ~~the court shall impose a disposition under option D, and the court may~~
5 ~~suspend the execution of the disposition and place the offender on~~
6 ~~community supervision for at least two years. As a condition of the~~
7 ~~suspended disposition, the court may impose the conditions of community~~
8 ~~supervision and other conditions, including up to thirty days of~~
9 ~~confinement and requirements that the offender do any one or more of~~
10 ~~the following:~~

11 ~~(b)(i) Devote time to a specific education, employment, or~~
12 ~~occupation;~~

13 ~~(ii) Undergo available outpatient sex offender treatment for up to~~
14 ~~two years, or inpatient sex offender treatment not to exceed the~~
15 ~~standard range of confinement for that offense. A community mental~~
16 ~~health center may not be used for such treatment unless it has an~~
17 ~~appropriate program designed for sex offender treatment. The~~
18 ~~respondent shall not change sex offender treatment providers or~~
19 ~~treatment conditions without first notifying the prosecutor, the~~
20 ~~probation counselor, and the court, and shall not change providers~~
21 ~~without court approval after a hearing if the prosecutor or probation~~
22 ~~counselor object to the change;~~

23 ~~(iii) Remain within prescribed geographical boundaries and notify~~
24 ~~the court or the probation counselor prior to any change in the~~
25 ~~offender's address, educational program, or employment;~~

26 ~~(iv) Report to the prosecutor and the probation counselor prior to~~
27 ~~any change in a sex offender treatment provider. This change shall~~
28 ~~have prior approval by the court;~~

29 ~~(v) Report as directed to the court and a probation counselor;~~

30 ~~(vi) Pay all court-ordered legal financial obligations, perform~~
31 ~~community restitution, or any combination thereof;~~

32 ~~(vii) Make restitution to the victim for the cost of any counseling~~
33 ~~reasonably related to the offense;~~

34 ~~(viii) Comply with the conditions of any court-ordered probation~~
35 ~~bond; or~~

36 ~~— (ix) The court shall order that the offender shall not attend the~~
37 ~~public or approved private elementary, middle, or high school attended~~
38 ~~by the victim or the victim's siblings. The parents or legal guardians~~

1 of the offender are responsible for transportation or other costs
2 associated with the offender's change of school that would otherwise be
3 paid by the school district. The court shall send notice of the
4 disposition and restriction on attending the same school as the victim
5 or victim's siblings to the public or approved private school the
6 juvenile will attend, if known, or if unknown, to the approved private
7 schools and the public school district board of directors of the
8 district in which the juvenile resides or intends to reside. This
9 notice must be sent at the earliest possible date but not later than
10 ten calendar days after entry of the disposition.

11 The sex offender treatment provider shall submit quarterly reports
12 on the respondent's progress in treatment to the court and the parties.
13 The reports shall reference the treatment plan and include at a minimum
14 the following: Dates of attendance, respondent's compliance with
15 requirements, treatment activities, the respondent's relative progress
16 in treatment, and any other material specified by the court at the time
17 of the disposition.

18 At the time of the disposition, the court may set treatment review
19 hearings as the court considers appropriate.

20 Except as provided in this subsection (3), after July 1, 1991,
21 examinations and treatment ordered pursuant to this subsection shall
22 only be conducted by certified sex offender treatment providers or
23 certified affiliate sex offender treatment providers under chapter
24 18.155 RCW. A sex offender therapist who examines or treats a juvenile
25 sex offender pursuant to this subsection does not have to be certified
26 by the department of health pursuant to chapter 18.155 RCW if the court
27 finds that: (A) The offender has already moved to another state or
28 plans to move to another state for reasons other than circumventing the
29 certification requirements; (B) no certified sex offender treatment
30 providers or certified affiliate sex offender treatment providers are
31 available for treatment within a reasonable geographical distance of
32 the offender's home; and (C) the evaluation and treatment plan comply
33 with this subsection (3) and the rules adopted by the department of
34 health.

35 If the offender violates any condition of the disposition or the
36 court finds that the respondent is failing to make satisfactory
37 progress in treatment, the court may revoke the suspension and order
38 execution of the disposition or the court may impose a penalty of up to

1 ~~thirty days' confinement for violating conditions of the disposition.~~
2 ~~The court may order both execution of the disposition and up to thirty~~
3 ~~days' confinement for the violation of the conditions of the~~
4 ~~disposition. The court shall give credit for any confinement time~~
5 ~~previously served if that confinement was for the offense for which the~~
6 ~~suspension is being revoked.~~

7 ~~For purposes of this section, "victim" means any person who has~~
8 ~~sustained emotional, psychological, physical, or financial injury to~~
9 ~~person or property as a direct result of the crime charged. "Victim"~~
10 ~~may also include a known parent or guardian of a victim who is a minor~~
11 ~~child unless the parent or guardian is the perpetrator of the offense.~~

12 ~~A disposition entered under this subsection (3) is not appealable~~
13 ~~under RCW 13.40.230)) may impose the special sex offender disposition~~
14 ~~alternative under section 3 of this act.~~

15 (4) If the juvenile offender is subject to a standard range
16 disposition of local sanctions or 15 to 36 weeks of confinement and has
17 not committed an A- or B+ offense, the court may impose the disposition
18 alternative under RCW 13.40.165.

19 (5) If a juvenile is subject to a commitment of 15 to 65 weeks of
20 confinement, the court may impose the disposition alternative under RCW
21 13.40.167.

22 (6) When the offender is subject to a standard range commitment of
23 15 to 36 weeks and is ineligible for a suspended disposition
24 alternative, a manifest injustice disposition below the standard range,
25 special sex offender disposition alternative, chemical dependency
26 disposition alternative, or mental health disposition alternative, the
27 court in a county with a pilot program under RCW 13.40.169 may impose
28 the disposition alternative under RCW 13.40.169.

29 (7) RCW 13.40.193 shall govern the disposition of any juvenile
30 adjudicated of possessing a firearm in violation of RCW
31 9.41.040(2)(a)(iii) or any crime in which a special finding is entered
32 that the juvenile was armed with a firearm.

33 (8) RCW 13.40.308 shall govern the disposition of any juvenile
34 adjudicated of theft of a motor vehicle as defined under RCW 9A.56.065,
35 possession of a stolen motor vehicle as defined under RCW 9A.56.068,
36 taking a motor vehicle without permission in the first degree under RCW
37 9A.56.070, and taking a motor vehicle without permission in the second
38 degree under RCW 9A.56.075.

1 (9) Whenever a juvenile offender is entitled to credit for time
2 spent in detention prior to a dispositional order, the dispositional
3 order shall specifically state the number of days of credit for time
4 served.

5 (10) Except as provided under subsection (3), (4), (5), or (6) of
6 this section, or option B of RCW 13.40.0357, or RCW 13.40.127, the
7 court shall not suspend or defer the imposition or the execution of the
8 disposition.

9 (11) In no case shall the term of confinement imposed by the court
10 at disposition exceed that to which an adult could be subjected for the
11 same offense.

12 NEW SECTION. **Sec. 3.** A new section is added to chapter 13.40 RCW
13 to read as follows:

14 (1) A juvenile offender is eligible for the special sex offender
15 disposition alternative when:

16 (a) The offender is found to have committed a sex offense, other
17 than a sex offense that is also a serious violent offense as defined by
18 RCW 9.94A.030; and

19 (b) The offender has no history of a prior sex offense.

20 (2) If the court finds the offender is eligible for this
21 alternative, the court, on its own motion or the motion of the state or
22 the respondent, may order an examination to determine whether the
23 respondent is amenable to treatment.

24 (a) The report of the examination shall include at a minimum the
25 following:

26 (i) The respondent's version of the facts and the official version
27 of the facts;

28 (ii) The respondent's offense history;

29 (iii) An assessment of problems in addition to alleged deviant
30 behaviors;

31 (iv) The respondent's social, educational, and employment
32 situation;

33 (v) Other evaluation measures used.

34 The report shall set forth the sources of the evaluator's
35 information.

36 (b) The examiner shall assess and report regarding the respondent's

1 amenability to treatment and relative risk to the community. A
2 proposed treatment plan shall be provided and shall include, at a
3 minimum:

4 (i) The frequency and type of contact between the offender and
5 therapist;

6 (ii) Specific issues to be addressed in the treatment and
7 description of planned treatment modalities;

8 (iii) Monitoring plans, including any requirements regarding living
9 conditions, lifestyle requirements, and monitoring by family members,
10 legal guardians, or others;

11 (iv) Anticipated length of treatment; and

12 (v) Recommended crime-related prohibitions.

13 (c) The court on its own motion may order, or on a motion by the
14 state shall order, a second examination regarding the offender's
15 amenability to treatment. The evaluator shall be selected by the party
16 making the motion. The defendant shall pay the cost of any second
17 examination ordered unless the court finds the defendant to be indigent
18 in which case the state shall pay the cost.

19 (3) After receipt of reports of the examination, the court shall
20 then consider whether the offender and the community will benefit from
21 use of this special sex offender disposition alternative and consider
22 the victim's opinion whether the offender should receive a treatment
23 disposition under this section. If the court determines that this
24 special sex offender disposition alternative is appropriate, then the
25 court shall impose a determinate disposition within the standard range
26 for the offense, or if the court concludes, and enters reasons for its
27 conclusions, that such disposition would cause a manifest injustice,
28 the court shall impose a disposition under option D, and the court may
29 suspend the execution of the disposition and place the offender on
30 community supervision for at least two years.

31 (4) As a condition of the suspended disposition, the court may
32 impose the conditions of community supervision and other conditions,
33 including up to thirty days of confinement and requirements that the
34 offender do any one or more of the following:

35 (a) Devote time to a specific education, employment, or occupation;

36 (b) Undergo available outpatient sex offender treatment for up to
37 two years, or inpatient sex offender treatment not to exceed the
38 standard range of confinement for that offense. A community mental

1 health center may not be used for such treatment unless it has an
2 appropriate program designed for sex offender treatment. The
3 respondent shall not change sex offender treatment providers or
4 treatment conditions without first notifying the prosecutor, the
5 probation counselor, and the court, and shall not change providers
6 without court approval after a hearing if the prosecutor or probation
7 counselor object to the change;

8 (c) Remain within prescribed geographical boundaries and notify the
9 court or the probation counselor prior to any change in the offender's
10 address, educational program, or employment;

11 (d) Report to the prosecutor and the probation counselor prior to
12 any change in a sex offender treatment provider. This change shall
13 have prior approval by the court;

14 (e) Report as directed to the court and a probation counselor;

15 (f) Pay all court-ordered legal financial obligations, perform
16 community restitution, or any combination thereof;

17 (g) Make restitution to the victim for the cost of any counseling
18 reasonably related to the offense; or

19 (h) Comply with the conditions of any court-ordered probation bond.

20 (5) If the court orders twenty-four hour, continuous monitoring of
21 the offender while on probation, the court shall include the basis for
22 this condition in its findings.

23 (6)(a) The court must order the offender not to attend the public
24 or approved private elementary, middle, or high school attended by the
25 victim or the victim's siblings.

26 (b) The parents or legal guardians of the offender are responsible
27 for transportation or other costs associated with the offender's change
28 of school that would otherwise be paid by the school district.

29 (c) The court shall send notice of the disposition and restriction
30 on attending the same school as the victim or victim's siblings to the
31 public or approved private school the juvenile will attend, if known,
32 or if unknown, to the approved private schools and the public school
33 district board of directors of the district in which the juvenile
34 resides or intends to reside. This notice must be sent at the earliest
35 possible date but not later than ten calendar days after entry of the
36 disposition.

37 (7)(a) The sex offender treatment provider shall submit quarterly
38 reports on the respondent's progress in treatment to the court and the

1 parties. The reports shall reference the treatment plan and include at
2 a minimum the following: Dates of attendance, respondent's compliance
3 with requirements, treatment activities, the respondent's relative
4 progress in treatment, and any other material specified by the court at
5 the time of the disposition.

6 (b) At the time of the disposition, the court may set treatment
7 review hearings as the court considers appropriate.

8 (c) Except as provided in this subsection, examinations and
9 treatment ordered pursuant to this subsection shall only be conducted
10 by certified sex offender treatment providers or certified affiliate
11 sex offender treatment providers under chapter 18.155 RCW.

12 (d) A sex offender therapist who examines or treats a juvenile sex
13 offender pursuant to this subsection does not have to be certified by
14 the department of health pursuant to chapter 18.155 RCW if the court
15 finds that: (i) The offender has already moved to another state or
16 plans to move to another state for reasons other than circumventing the
17 certification requirements; (ii) no certified sex offender treatment
18 providers or certified affiliate sex offender treatment providers are
19 available for treatment within a reasonable geographical distance of
20 the offender's home; and (iii) the evaluation and treatment plan comply
21 with this subsection and the rules adopted by the department of health.

22 (8)(a) If the offender violates any condition of the disposition or
23 the court finds that the respondent is failing to make satisfactory
24 progress in treatment, the court may revoke the suspension and order
25 execution of the disposition or the court may impose a penalty of up to
26 thirty days confinement for violating conditions of the disposition.

27 (b) The court may order both execution of the disposition and up to
28 thirty days confinement for the violation of the conditions of the
29 disposition.

30 (c) The court shall give credit for any confinement time previously
31 served if that confinement was for the offense for which the suspension
32 is being revoked.

33 (9) For purposes of this section, "victim" means any person who has
34 sustained emotional, psychological, physical, or financial injury to
35 person or property as a direct result of the crime charged. "Victim"
36 may also include a known parent or guardian of a victim who is a minor
37 child unless the parent or guardian is the perpetrator of the offense.

1 (10) A disposition entered under this section is not appealable
2 under RCW 13.40.230.

3 **Sec. 4.** RCW 13.50.050 and 2010 c 150 s 2 are each amended to read
4 as follows:

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

7 (2) The official juvenile court file of any alleged or proven
8 juvenile offender shall be open to public inspection, unless sealed
9 pursuant to subsection (12) of this section.

10 (3) All records other than the official juvenile court file are
11 confidential and may be released only as provided in this section, RCW
12 13.50.010, 13.40.215, and 4.24.550.

13 (4) Except as otherwise provided in this section and RCW 13.50.010,
14 records retained or produced by any juvenile justice or care agency may
15 be released to other participants in the juvenile justice or care
16 system only when an investigation or case involving the juvenile in
17 question is being pursued by the other participant or when that other
18 participant is assigned the responsibility for supervising the
19 juvenile.

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

25 (6) Notwithstanding any other provision of this chapter, the
26 release, to the juvenile or his or her attorney, of law enforcement and
27 prosecuting attorneys' records pertaining to investigation, diversion,
28 and prosecution of juvenile offenses shall be governed by the rules of
29 discovery and other rules of law applicable in adult criminal
30 investigations and prosecutions.

31 (7) Upon the decision to arrest or the arrest, law enforcement and
32 prosecuting attorneys may cooperate with schools in releasing
33 information to a school pertaining to the investigation, diversion, and
34 prosecution of a juvenile attending the school. Upon the decision to
35 arrest or the arrest, incident reports may be released unless releasing
36 the records would jeopardize the investigation or prosecution or
37 endanger witnesses. If release of incident reports would jeopardize

1 the investigation or prosecution or endanger witnesses, law enforcement
2 and prosecuting attorneys may release information to the maximum extent
3 possible to assist schools in protecting other students, staff, and
4 school property.

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

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

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

30 (11) In any case in which an information has been filed pursuant to
31 RCW 13.40.100 or a complaint has been filed with the prosecutor and
32 referred for diversion pursuant to RCW 13.40.070, the person the
33 subject of the information or complaint may file a motion with the
34 court to have the court vacate its order and findings, if any, and,
35 subject to subsection (23) of this section, order the sealing of the
36 official juvenile court file, the social file, and records of the court
37 and of any other agency in the case.

1 (12)(a) The court shall not grant any motion to seal records for
2 class A offenses made pursuant to subsection (11) of this section that
3 is filed on or after July 1, 1997, unless:

4 (i) Since the last date of release from confinement, including
5 full-time residential treatment, if any, or entry of disposition, the
6 person has spent five consecutive years in the community without
7 committing any offense or crime that subsequently results in an
8 adjudication or conviction;

9 (ii) No proceeding is pending against the moving party seeking the
10 conviction of a juvenile offense or a criminal offense;

11 (iii) No proceeding is pending seeking the formation of a diversion
12 agreement with that person;

13 (iv) The person is no longer required to register as a sex offender
14 under RCW 9A.44.130 or has ((not)) been relieved of the duty to
15 register under RCW 9A.44.143 if the person was convicted of a sex
16 offense; and

17 (v) Full restitution has been paid.

18 (b) The court shall not grant any motion to seal records for class
19 B, C, gross misdemeanor and misdemeanor offenses and diversions made
20 under subsection (11) of this section unless:

21 (i) Since the date of last release from confinement, including
22 full-time residential treatment, if any, entry of disposition, or
23 completion of the diversion agreement, the person has spent two
24 consecutive years in the community without being convicted of any
25 offense or crime;

26 (ii) No proceeding is pending against the moving party seeking the
27 conviction of a juvenile offense or a criminal offense;

28 (iii) No proceeding is pending seeking the formation of a diversion
29 agreement with that person;

30 (iv) The person is no longer required to register as a sex offender
31 under RCW 9A.44.130 or has ((not)) been relieved of the duty to
32 register under RCW 9A.44.143 if the person was convicted of a sex
33 offense; and

34 (v) Full restitution has been paid.

35 (13) The person making a motion pursuant to subsection (11) of this
36 section shall give reasonable notice of the motion to the prosecution
37 and to any person or agency whose files are sought to be sealed.

1 (14) If the court grants the motion to seal made pursuant to
2 subsection (11) of this section, it shall, subject to subsection (23)
3 of this section, order sealed the official juvenile court file, the
4 social file, and other records relating to the case as are named in the
5 order. Thereafter, the proceedings in the case shall be treated as if
6 they never occurred, and the subject of the records may reply
7 accordingly to any inquiry about the events, records of which are
8 sealed. Any agency shall reply to any inquiry concerning confidential
9 or sealed records that records are confidential, and no information can
10 be given about the existence or nonexistence of records concerning an
11 individual.

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

17 (16) Any adjudication of a juvenile offense or a crime subsequent
18 to sealing has the effect of nullifying the sealing order. Any
19 charging of an adult felony subsequent to the sealing has the effect of
20 nullifying the sealing order for the purposes of chapter 9.94A RCW.
21 The administrative office of the courts shall ensure that the superior
22 court judicial information system provides prosecutors access to
23 information on the existence of sealed juvenile records.

24 (17)(a)(i) Subject to subsection (23) of this section, all records
25 maintained by any court or law enforcement agency, including the
26 juvenile court, local law enforcement, the Washington state patrol, and
27 the prosecutor's office, shall be automatically destroyed within ninety
28 days of becoming eligible for destruction. Juvenile records are
29 eligible for destruction when:

30 (A) The person who is the subject of the information or complaint
31 is at least eighteen years of age;

32 (B) His or her criminal history consists entirely of one diversion
33 agreement or counsel and release entered on or after June 12, 2008;

34 (C) Two years have elapsed since completion of the agreement or
35 counsel and release;

36 (D) No proceeding is pending against the person seeking the
37 conviction of a criminal offense; and

38 (E) There is no restitution owing in the case.

1 (ii) No less than quarterly, the administrative office of the
2 courts shall provide a report to the juvenile courts of those
3 individuals whose records may be eligible for destruction. The
4 juvenile court shall verify eligibility and notify the Washington state
5 patrol and the appropriate local law enforcement agency and
6 prosecutor's office of the records to be destroyed. The requirement to
7 destroy records under this subsection is not dependent on a court
8 hearing or the issuance of a court order to destroy records.

9 (iii) The state and local governments and their officers and
10 employees are not liable for civil damages for the failure to destroy
11 records pursuant to this section.

12 (b) A person eighteen years of age or older whose criminal history
13 consists entirely of one diversion agreement or counsel and release
14 entered prior to June 12, 2008, may request that the court order the
15 records in his or her case destroyed. The request shall be granted,
16 subject to subsection (23) of this section, if the court finds that two
17 years have elapsed since completion of the agreement or counsel and
18 release.

19 (c) A person twenty-three years of age or older whose criminal
20 history consists of only referrals for diversion may request that the
21 court order the records in those cases destroyed. The request shall be
22 granted, subject to subsection (23) of this section, if the court finds
23 that all diversion agreements have been successfully completed and no
24 proceeding is pending against the person seeking the conviction of a
25 criminal offense.

26 (18) If the court grants the motion to destroy records made
27 pursuant to subsection (17)(b) or (c) of this section, it shall,
28 subject to subsection (23) of this section, order the official juvenile
29 court file, the social file, and any other records named in the order
30 to be destroyed.

31 (19) The person making the motion pursuant to subsection (17)(b) or
32 (c) of this section shall give reasonable notice of the motion to the
33 prosecuting attorney and to any agency whose records are sought to be
34 destroyed.

35 (20) Any juvenile to whom the provisions of this section may apply
36 shall be given written notice of his or her rights under this section
37 at the time of his or her disposition hearing or during the diversion
38 process.

1 (21) Nothing in this section may be construed to prevent a crime
2 victim or a member of the victim's family from divulging the identity
3 of the alleged or proven juvenile offender or his or her family when
4 necessary in a civil proceeding.

5 (22) Any juvenile justice or care agency may, subject to the
6 limitations in subsection (23) of this section and (a) and (b) of this
7 subsection, develop procedures for the routine destruction of records
8 relating to juvenile offenses and diversions.

9 (a) Records may be routinely destroyed only when the person the
10 subject of the information or complaint has attained twenty-three years
11 of age or older or pursuant to subsection (17)(a) of this section.

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

14 (23) No identifying information held by the Washington state patrol
15 in accordance with chapter 43.43 RCW is subject to destruction or
16 sealing under this section. For the purposes of this subsection,
17 identifying information includes photographs, fingerprints, palmprints,
18 soleprints, toeprints and any other data that identifies a person by
19 physical characteristics, name, birthdate or address, but does not
20 include information regarding criminal activity, arrest, charging,
21 diversion, conviction or other information about a person's treatment
22 by the criminal justice system or about the person's behavior.

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

34 **Sec. 5.** RCW 72.09.345 and 2008 c 231 s 49 are each amended to read
35 as follows:

36 (1) In addition to any other information required to be released

1 under this chapter, the department is authorized, pursuant to RCW
2 4.24.550, to release relevant information that is necessary to protect
3 the public concerning offenders convicted of sex offenses.

4 (2) In order for public agencies to have the information necessary
5 to notify the public as authorized in RCW 4.24.550, the secretary shall
6 establish and administer an end-of-sentence review committee for the
7 purposes of assigning risk levels, reviewing available release plans,
8 and making appropriate referrals for sex offenders. (~~The committee
9 shall assess, on a case-by-case basis, the public risk posed by sex
10 offenders who are: (a) Preparing for their release from confinement
11 for sex offenses committed on or after July 1, 1984; and (b) accepted
12 from another state under a reciprocal agreement under the interstate
13 compact authorized in chapter 72.74 RCW.~~)

14 (3) The committee shall assess, on a case-by-case basis, the public
15 risk posed by offenders who will be required to register under RCW
16 9A.44.130 as follows:

17 (a) Offenders preparing for their release from confinement for sex
18 offenses committed on or after July 1, 1984;

19 (b) All juvenile offenders found to have committed a sex offense;
20 and

21 (c) Offenders accepted from another state under a reciprocal
22 agreement under the interstate compact authorized in chapter 72.74 RCW.

23 (4) Notwithstanding any other provision of law, the committee shall
24 have access to all relevant records and information in the possession
25 of public agencies relating to the offenders under review, including
26 police reports; prosecutors' statements of probable cause; presentence
27 investigations and reports; complete judgments and sentences; current
28 classification referrals; criminal history summaries; violation and
29 disciplinary reports; all psychological evaluations and psychiatric
30 hospital reports; sex offender treatment program reports; and juvenile
31 records. Records and information obtained under this subsection shall
32 not be disclosed outside the committee unless otherwise authorized by
33 law.

34 ((+4)) (5) The committee shall review each sex offender under its
35 authority before the offender's release from confinement or start of
36 the offender's term of community custody in order to: (a) Classify the
37 offender into a risk level for the purposes of public notification

1 under RCW 4.24.550; (b) where available, review the offender's proposed
2 release plan in accordance with the requirements of RCW 72.09.340; and
3 (c) make appropriate referrals.

4 ~~((+5))~~ (6) The committee shall classify as risk level I those sex
5 offenders whose risk assessments indicate a low risk of reoffense
6 within the community at large. The committee shall classify as risk
7 level II those offenders whose risk assessments indicate a moderate
8 risk of reoffense within the community at large. The committee shall
9 classify as risk level III those offenders whose risk assessments
10 indicate a high risk of reoffense within the community at large.

11 ~~((+6))~~ (7) The committee shall issue to appropriate law
12 enforcement agencies, for their use in making public notifications
13 under RCW 4.24.550, narrative notices regarding the pending release of
14 sex offenders from the department's facilities. The narrative notices
15 shall, at a minimum, describe the identity and criminal history
16 behavior of the offender and shall include the department's risk level
17 classification for the offender. For sex offenders classified as
18 either risk level II or III, the narrative notices shall also include
19 the reasons underlying the classification.

20 NEW SECTION. **Sec. 6.** A new section is added to chapter 28A.300
21 RCW to read as follows:

22 The superintendent of public instruction shall publish on its web
23 site, with a link to the safety center web page:

- 24 (1) A revised and updated model policy for schools to follow
25 regarding students required to register as sex or kidnapping offenders
26 and the dissemination of information to appropriate school staff; and
27 (2) Educational materials developed pursuant to RCW 28A.300.145.

28 NEW SECTION. **Sec. 7.** A new section is added to chapter 28A.320
29 RCW to read as follows:

30 (1) Each school district shall develop or amend and adopt a written
31 policy, with protocol, to ensure the health and safety of all staff and
32 students in the school where students required to register as sex or
33 kidnapping offenders are enrolled. The adopted policy shall also
34 include procedures for the dissemination of information to appropriate
35 school staff.

- 36 (2) The adopted policy must address:

- 1 (a) Guidelines for developing student safety plans;
2 (b) Guidelines for disseminating appropriate information to school
3 staff;
4 (c) Communication protocols for when school staff observe any
5 suspect behavior or action on the part of a student required to
6 register as a sex or kidnapping offender that may compromise the
7 health, safety, or well-being of students or staff;
8 (d) Communication strategies with local law enforcement; and
9 (e) Responsibilities of the school's designated primary contact.
10 (3) It is the responsibility of each school district to share this
11 policy with parents or guardians, students, volunteers, and school
12 employees in accordance with rules adopted by the superintendent of
13 public instruction.

14 NEW SECTION. **Sec. 8.** A new section is added to chapter 28A.320
15 RCW to read as follows:

16 (1) Each school must designate one person in the school to serve as
17 the primary contact regarding students who are required to register as
18 sex or kidnapping offenders pursuant to RCW 9A.44.130. The primary
19 contact should be in a position to recognize high-risk situations or
20 factors that may indicate a student is encountering difficulty in
21 controlling his or her behavior.

22 (2)(a) Each school must develop an individual student safety plan
23 for any student enrolling or attending the school who is required to
24 register as a sex or kidnapping offender.

25 (b) An individual student safety plan shall be developed in
26 coordination with a multidisciplinary team of professionals, including,
27 but not limited to, the school's primary contact, the student's parent
28 or guardian, the student's probation officer, and the student's
29 counselor.

30 NEW SECTION. **Sec. 9.** Sections 7 and 8 of this act take effect
31 September 1, 2011.

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