

CERTIFICATION OF ENROLLMENT

SUBSTITUTE HOUSE BILL 1793

Chapter 333, Laws of 2011

62nd Legislature
2011 Regular Session

JUVENILE RECORDS--ACCESS

EFFECTIVE DATE: 07/22/11

Passed by the House April 22, 2011
Yeas 65 Nays 31

FRANK CHOPP

Speaker of the House of Representatives

Passed by the Senate April 22, 2011
Yeas 26 Nays 20

BRAD OWEN

President of the Senate

Approved May 12, 2011, 2:14 p.m.

CHRISTINE GREGOIRE

Governor of the State of Washington

CERTIFICATE

I, Barbara Baker, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **SUBSTITUTE HOUSE BILL 1793** as passed by the House of Representatives and the Senate on the dates hereon set forth.

BARBARA BAKER

Chief Clerk

FILED

May 13, 2011

**Secretary of State
State of Washington**

SUBSTITUTE HOUSE BILL 1793

AS RECOMMENDED BY THE CONFERENCE COMMITTEE

Passed Legislature - 2011 Regular Session

State of Washington 62nd Legislature 2011 Regular Session

By House Early Learning & Human Services (originally sponsored by Representatives Darneille, Roberts, and Kagi)

READ FIRST TIME 02/17/11.

1 AN ACT Relating to restricting access to juvenile records; amending
2 RCW 19.182.040 and 13.50.050; creating new sections; and providing an
3 expiration date.

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

5 NEW SECTION. **Sec. 1.** The legislature finds that:

6 (1) One of the goals of the juvenile justice system is to
7 rehabilitate juvenile offenders and promote their successful
8 reintegration into society. Without opportunities to reintegrate,
9 juveniles suffer increased recidivism and decreased economic function.

10 (2) The public has an interest in accessing information relating to
11 juvenile records for public safety and research purposes.

12 (3) The public's legitimate interest in accessing personal
13 information must be balanced with the rehabilitative goals of the
14 juvenile justice system. All benefit when former juvenile offenders,
15 after paying their debt to society, reintegrate and contribute to their
16 local communities as productive citizens.

17 (4) It is the intent of the legislature to balance the
18 rehabilitative and reintegration needs of an effective juvenile justice

1 system with the public's need to access personal information for public
2 safety and research purposes.

3 **Sec. 2.** RCW 19.182.040 and 1993 c 476 s 6 are each amended to read
4 as follows:

5 (1) Except as authorized under subsection (2) of this section, no
6 consumer reporting agency may make a consumer report containing any of
7 the following items of information:

8 (a) Bankruptcies that, from date of adjudication of the most recent
9 bankruptcy, antedate the report by more than ten years;

10 (b) Suits and judgments that, from date of entry, antedate the
11 report by more than seven years or until the governing statute of
12 limitations has expired, whichever is the longer period;

13 (c) Paid tax liens that, from date of payment, antedate the report
14 by more than seven years;

15 (d) Accounts placed for collection or charged to profit and loss
16 that antedate the report by more than seven years;

17 (e) Records of arrest, indictment, or conviction of an adult for a
18 crime that, from date of disposition, release, or parole, antedate the
19 report by more than seven years;

20 (f) Juvenile records, as defined in RCW 13.50.010(1)(c), when the
21 subject of the records is twenty-one years of age or older at the time
22 of the report; and

23 (g) Any other adverse item of information that antedates the report
24 by more than seven years.

25 (2) Subsection (1)(a) through (e) and (g) of this section is not
26 applicable in the case of a consumer report to be used in connection
27 with:

28 (a) A credit transaction involving, or that may reasonably be
29 expected to involve, a principal amount of fifty thousand dollars or
30 more;

31 (b) The underwriting of life insurance involving, or that may
32 reasonably be expected to involve, a face amount of fifty thousand
33 dollars or more; or

34 (c) The employment of an individual at an annual salary that
35 equals, or that may reasonably be expected to equal, twenty thousand
36 dollars or more.

1 NEW SECTION. **Sec. 3.** (1)(a) A joint legislative task force on
2 juvenile record sealing is established, with members as provided in
3 this subsection.

4 (i) The president of the senate shall appoint two members from each
5 of the two largest caucuses of the senate;

6 (ii) The speaker of the house of representatives shall appoint two
7 members from each of the two largest caucuses of the house of
8 representatives;

9 (iii) A representative of the administrative office of the courts;

10 (iv) A representative of the judicial information systems data
11 dissemination committee;

12 (v) A representative of the association of counties, specifically
13 county clerks;

14 (vi) A representative of the Washington association of prosecuting
15 attorneys;

16 (vii) A representative of the Washington state patrol;

17 (viii) A representative from the juvenile law section of the
18 Washington state bar association;

19 (ix) A representative of the Washington defenders' association;

20 (x) A representative of the juvenile rehabilitation administration
21 within the department of social and health services; and

22 (xi) A representative of the juvenile court administrator's
23 association.

24 (b) The task force shall choose one of the legislative members from
25 the senate and one of the legislative members from the house of
26 representatives to cochair the task force. The legislative members
27 shall convene the first meeting of the task force.

28 (2) The task force shall determine how to cost-effectively restrict
29 public access to juvenile records when an individual has met the
30 statutory requirements of RCW 13.50.050(12) and without requiring
31 individuals who are the subject of the records to file a motion to seal
32 the records in juvenile court; whether and how to restrict access to
33 diversion records; and other juvenile criminal record access issues
34 that may arise during the work of the task force.

35 (3) Staff support for the task force must be provided by the senate
36 committee services and the house of representatives office of program
37 research.

1 (4) The task force shall report its findings and recommendations to
2 the governor and the appropriate committees of the legislature by
3 December 15, 2011.

4 (5) This section expires January 1, 2012.

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

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

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

12 (3) All records other than the official juvenile court file are
13 confidential and may be released only as provided in this section, RCW
14 13.50.010, 13.40.215, and 4.24.550.

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

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

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

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

1 the records would jeopardize the investigation or prosecution or
2 endanger witnesses. If release of incident reports would jeopardize
3 the investigation or prosecution or endanger witnesses, law enforcement
4 and prosecuting attorneys may release information to the maximum extent
5 possible to assist schools in protecting other students, staff, and
6 school property.

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

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

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

32 (11) 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 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 (23) of this section, order the sealing of the

1 official juvenile court file, the social file, and records of the court
2 and of any other agency in the case.

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

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

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

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

15 (iv) The person has not been convicted of a sex offense; and

16 (v) Full restitution has been paid.

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

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

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

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

29 (iv) The person has not been convicted of a sex offense; and

30 (v) Full restitution has been paid.

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

34 (14)(a) If the court grants the motion to seal made pursuant to
35 subsection (11) of this section, it shall, subject to subsection (23)
36 of this section, order sealed the official juvenile court file, the
37 social file, and other records relating to the case as are named in the
38 order. Thereafter, the proceedings in the case shall be treated as if

1 they never occurred, and the subject of the records may reply
2 accordingly to any inquiry about the events, records of which are
3 sealed. Any agency shall reply to any inquiry concerning confidential
4 or sealed records that records are confidential, and no information can
5 be given about the existence or nonexistence of records concerning an
6 individual.

7 (b) In the event the subject of the juvenile records receives a
8 full and unconditional pardon, the proceedings in the matter upon which
9 the pardon has been granted shall be treated as if they never occurred,
10 and the subject of the records may reply accordingly to any inquiry
11 about the events upon which the pardon was received. Any agency shall
12 reply to any inquiry concerning the records pertaining to the events
13 for which the subject received a pardon that records are confidential,
14 and no information can be given about the existence or nonexistence of
15 records concerning an individual.

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

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

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

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

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

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

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

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

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

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

17 (b) All records maintained by any court or law enforcement agency,
18 including the juvenile court, local law enforcement, the Washington
19 state patrol, and the prosecutor's office, shall be automatically
20 destroyed within thirty days of being notified by the governor's office
21 that the subject of those records received a full and unconditional
22 pardon by the governor.

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

30 ((+e+)) (d) A person twenty-three years of age or older whose
31 criminal history consists of only referrals for diversion may request
32 that the court order the records in those cases destroyed. The request
33 shall be granted, subject to subsection (23) of this section, if the
34 court finds that all diversion agreements have been successfully
35 completed and no proceeding is pending against the person seeking the
36 conviction of a criminal offense.

37 (18) If the court grants the motion to destroy records made
38 pursuant to subsection (17)((+b)+e)) (c) or (d) of this section, it

1 shall, subject to subsection (23) of this section, order the official
2 juvenile court file, the social file, and any other records named in
3 the order to be destroyed.

4 (19) The person making the motion pursuant to subsection (17)((~~(b)~~
5 ~~or~~) (c) or (d) of this section shall give reasonable notice of the
6 motion to the prosecuting attorney and to any agency whose records are
7 sought to be destroyed.

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

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

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

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

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

25 (23) Except for subsection (17)(b) of this section, no identifying
26 information held by the Washington state patrol in accordance with
27 chapter 43.43 RCW is subject to destruction or sealing under this
28 section. For the purposes of this subsection, identifying information
29 includes photographs, fingerprints, palmprints, soleprints, toeprints
30 and any other data that identifies a person by physical
31 characteristics, name, birthdate or address, but does not include
32 information regarding criminal activity, arrest, charging, diversion,
33 conviction or other information about a person's treatment by the
34 criminal justice system or about the person's behavior.

35 (24) Information identifying child victims under age eighteen who
36 are victims of sexual assaults by juvenile offenders is confidential
37 and not subject to release to the press or public without the
38 permission of the child victim or the child's legal guardian.

1 Identifying information includes the child victim's name, addresses,
2 location, photographs, and in cases in which the child victim is a
3 relative of the alleged perpetrator, identification of the relationship
4 between the child and the alleged perpetrator. Information identifying
5 a child victim of sexual assault may be released to law enforcement,
6 prosecutors, judges, defense attorneys, or private or governmental
7 agencies that provide services to the child victim of sexual assault.

8 NEW SECTION. **Sec. 5.** RCW 13.50.050 (14)(b) and (17)(b) apply to
9 all records of a full and unconditional pardon and should be applied
10 retroactively as well as prospectively.

11 NEW SECTION. **Sec. 6.** If any provision of this act or its
12 application to any person or circumstance is held invalid, the
13 remainder of the act or the application of the provision to other
14 persons or circumstances is not affected.

Passed by the House April 22, 2011.

Passed by the Senate April 22, 2011.

Approved by the Governor May 12, 2011.

Filed in Office of Secretary of State May 13, 2011.