

CERTIFICATION OF ENROLLMENT

SUBSTITUTE SENATE BILL 5204

Chapter 338, Laws of 2011

62nd Legislature
2011 Regular Session

SEX OFFENSES--JUVENILES--REGISTRATION--RECORDS--SCHOOLS

EFFECTIVE DATE: 07/22/11

Passed by the Senate April 21, 2011
YEAS 25 NAYS 20

BRAD OWEN

President of the Senate

Passed by the House April 9, 2011
YEAS 97 NAYS 0

FRANK CHOPP

Speaker of the House of Representatives

Approved May 12, 2011, 2:22 p.m.

CHRISTINE GREGOIRE

Governor of the State of Washington

CERTIFICATE

I, Thomas Hoemann, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SUBSTITUTE SENATE BILL 5204** as passed by the Senate and the House of Representatives on the dates hereon set forth.

THOMAS HOEMANN

Secretary

FILED

May 13, 2011

**Secretary of State
State of Washington**

SUBSTITUTE SENATE BILL 5204

AS AMENDED BY THE HOUSE

Passed Legislature - 2011 Regular Session

State of Washington 62nd Legislature 2011 Regular Session

By Senate Human Services & Corrections (originally sponsored by
Senators Regala, Hargrove, and Stevens)

READ FIRST TIME 02/21/11.

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; and adding a new section to
4 chapter 28A.300 RCW.

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

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

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

12 (2) For class A sex offenses or kidnapping offenses committed when
13 the petitioner was fifteen years of age or older, the court may relieve
14 the petitioner of the duty to register if:

15 (a) At least sixty months have passed since the petitioner's
16 adjudication and completion of any term of confinement for the offense
17 giving rise to the duty to register and the petitioner has not been
18 adjudicated or convicted of any additional sex offenses or kidnapping
19 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 sixty
3 months prior to filing the petition; and

4 (c) The petitioner shows by a preponderance of the evidence that
5 the petitioner is sufficiently rehabilitated to warrant removal from
6 the central registry of sex offenders and kidnapping offenders.

7 (3) For all other sex offenses or kidnapping offenses committed by
8 a juvenile not included in subsection (2) of this section, the court
9 may relieve the petitioner of the duty to register if:

10 (a) At least twenty-four months have passed since the petitioner's
11 adjudication and completion of any term of confinement for the offense
12 giving rise to the duty to register and the petitioner has not been
13 adjudicated or convicted of any additional sex offenses or kidnapping
14 offenses;

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

18 ~~(c)((i) The petitioner was fifteen years of age or older at the~~
19 ~~time the sex offense or kidnapping offense was committed and the~~
20 ~~petitioner shows by clear and convincing evidence that the petitioner~~
21 ~~is sufficiently rehabilitated to warrant removal from the central~~
22 ~~registry of sex offenders and kidnapping offenders; or~~

23 ~~(ii))~~ The petitioner ~~((was under the age of fifteen at the time~~
24 ~~the sex offense or kidnapping offense was committed and the~~
25 ~~petitioner))~~ shows by a preponderance of the evidence that the
26 petitioner is sufficiently rehabilitated to warrant removal from the
27 central registry of sex offenders and kidnapping offenders.

28 ~~((3))~~ (4) A petition for relief from registration under this
29 section shall be made to the court in which the petitioner was
30 convicted of the offense that subjects him or her to the duty to
31 register or, in the case of convictions in other states, a foreign
32 country, or a federal or military court, to the court in Thurston
33 county. The prosecuting attorney of the county shall be named and
34 served as the respondent in any such petition.

35 ~~((4))~~ (5) In determining whether the petitioner is sufficiently
36 rehabilitated to warrant removal from the central registry of sex
37 offenders and kidnapping offenders, the following factors are provided

1 as guidance to assist the court in making its determination, to the
2 extent the factors are applicable considering the age and circumstances
3 of the petitioner:

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

6 (b) Any subsequent criminal history;

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

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

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

11 (f) Participation in sex offender treatment;

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

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

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

15 (j) Any risk assessments or evaluations prepared by a qualified
16 professional;

17 (k) Any updated polygraph examination;

18 (l) Any input of the victim;

19 (m) Any other factors the court may consider relevant.

20 ~~((+5))~~ (6) A juvenile prosecuted and convicted of a sex offense or
21 kidnapping offense as an adult may not petition to the superior court
22 under this section.

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

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

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

32 (b) When the court sentences an offender to a standard range as
33 provided in RCW 13.40.0357 option A that includes a term of confinement
34 exceeding thirty days, commitment shall be to the department for the
35 standard range of confinement, except as provided in subsection (2),
36 (3), (4), (5), or (6) of this section.

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

7 A disposition outside the standard range shall be determinate and
8 shall be comprised of confinement or community supervision, or a
9 combination thereof. When a judge finds a manifest injustice and
10 imposes a sentence of confinement exceeding thirty days, the court
11 shall sentence the juvenile to a maximum term, and the provisions of
12 RCW 13.40.030(2) shall be used to determine the range. A disposition
13 outside the standard range is appealable under RCW 13.40.230 by the
14 state or the respondent. A disposition within the standard range is
15 not appealable under RCW 13.40.230.

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

22 ~~The report of the examination shall include at a minimum the
23 following: The respondent's version of the facts and the official
24 version of the facts, the respondent's offense history, an assessment
25 of problems in addition to alleged deviant behaviors, the respondent's
26 social, educational, and employment situation, and other evaluation
27 measures used. The report shall set forth the sources of the
28 evaluator's information.~~

29 ~~The examiner shall assess and report regarding the respondent's
30 amenability to treatment and relative risk to the community. A
31 proposed treatment plan shall be provided and shall include, at a
32 minimum:~~

33 ~~(a)(i) Frequency and type of contact between the offender and
34 therapist;~~

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

37 ~~(iii) Monitoring plans, including any requirements regarding living~~

1 ~~conditions, lifestyle requirements, and monitoring by family members,~~
2 ~~legal guardians, or others;~~

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

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

5 ~~The court on its own motion may order, or on a motion by the state~~
6 ~~shall order, a second examination regarding the offender's amenability~~
7 ~~to treatment. The evaluator shall be selected by the party making the~~
8 ~~motion. The defendant shall pay the cost of any second examination~~
9 ~~ordered unless the court finds the defendant to be indigent in which~~
10 ~~case the state shall pay the cost.~~

11 ~~After receipt of reports of the examination, the court shall then~~
12 ~~consider whether the offender and the community will benefit from use~~
13 ~~of this special sex offender disposition alternative and consider the~~
14 ~~victim's opinion whether the offender should receive a treatment~~
15 ~~disposition under this section. If the court determines that this~~
16 ~~special sex offender disposition alternative is appropriate, then the~~
17 ~~court shall impose a determinate disposition within the standard range~~
18 ~~for the offense, or if the court concludes, and enters reasons for its~~
19 ~~conclusions, that such disposition would cause a manifest injustice,~~
20 ~~the court shall impose a disposition under option D, and the court may~~
21 ~~suspend the execution of the disposition and place the offender on~~
22 ~~community supervision for at least two years. As a condition of the~~
23 ~~suspended disposition, the court may impose the conditions of community~~
24 ~~supervision and other conditions, including up to thirty days of~~
25 ~~confinement and requirements that the offender do any one or more of~~
26 ~~the following:~~

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

29 ~~(ii) Undergo available outpatient sex offender treatment for up to~~
30 ~~two years, or inpatient sex offender treatment not to exceed the~~
31 ~~standard range of confinement for that offense. A community mental~~
32 ~~health center may not be used for such treatment unless it has an~~
33 ~~appropriate program designed for sex offender treatment. The~~
34 ~~respondent shall not change sex offender treatment providers or~~
35 ~~treatment conditions without first notifying the prosecutor, the~~
36 ~~probation counselor, and the court, and shall not change providers~~
37 ~~without court approval after a hearing if the prosecutor or probation~~
38 ~~counselor object to the change;~~

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

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

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

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

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

12 ~~(viii) Comply with the conditions of any court ordered probation~~
13 ~~bond; or~~

14 ~~—— (ix) The court shall order that the offender shall not attend the~~
15 ~~public or approved private elementary, middle, or high school attended~~
16 ~~by the victim or the victim's siblings. The parents or legal guardians~~
17 ~~of the offender are responsible for transportation or other costs~~
18 ~~associated with the offender's change of school that would otherwise be~~
19 ~~paid by the school district. The court shall send notice of the~~
20 ~~disposition and restriction on attending the same school as the victim~~
21 ~~or victim's siblings to the public or approved private school the~~
22 ~~juvenile will attend, if known, or if unknown, to the approved private~~
23 ~~schools and the public school district board of directors of the~~
24 ~~district in which the juvenile resides or intends to reside. This~~
25 ~~notice must be sent at the earliest possible date but not later than~~
26 ~~ten calendar days after entry of the disposition.~~

27 ~~The sex offender treatment provider shall submit quarterly reports~~
28 ~~on the respondent's progress in treatment to the court and the parties.~~
29 ~~The reports shall reference the treatment plan and include at a minimum~~
30 ~~the following: Dates of attendance, respondent's compliance with~~
31 ~~requirements, treatment activities, the respondent's relative progress~~
32 ~~in treatment, and any other material specified by the court at the time~~
33 ~~of the disposition.~~

34 ~~At the time of the disposition, the court may set treatment review~~
35 ~~hearings as the court considers appropriate.~~

36 ~~Except as provided in this subsection (3), after July 1, 1991,~~
37 ~~examinations and treatment ordered pursuant to this subsection shall~~
38 ~~only be conducted by certified sex offender treatment providers or~~

1 ~~certified-affiliate-sex-offender-treatment-providers-under-chapter~~
2 ~~18.155 RCW. A sex-offender-therapist-who-examines-or-treats-a-juvenile~~
3 ~~sex-offender-pursuant-to-this-subsection-does-not-have-to-be-certified~~
4 ~~by-the-department-of-health-pursuant-to-chapter-18.155-RCW-if-the-court~~
5 ~~finds-that:-(A)-The-offender-has-already-moved-to-another-state-or~~
6 ~~plans-to-move-to-another-state-for-reasons-other-than-circumventing-the~~
7 ~~certification-requirements;-(B)-no-certified-sex-offender-treatment~~
8 ~~providers-or-certified-affiliate-sex-offender-treatment-providers-are~~
9 ~~available-for-treatment-within-a-reasonable-geographical-distance-of~~
10 ~~the-offender's-home;and-(C)-the-evaluation-and-treatment-plan-comply~~
11 ~~with-this-subsection-(3)-and-the-rules-adopted-by-the-department-of~~
12 ~~health.~~

13 ~~-----If-the-offender-violates-any-condition-of-the-disposition-or-the~~
14 ~~court-finds-that-the-respondent-is-failing-to-make-satisfactory~~
15 ~~progress-in-treatment,the-court-may-revoke-the-suspension-and-order~~
16 ~~execution-of-the-disposition-or-the-court-may-impose-a-penalty-of-up-to~~
17 ~~thirty-days'-confinement-for-violating-conditions-of-the-disposition.~~
18 ~~The-court-may-order-both-execution-of-the-disposition-and-up-to-thirty~~
19 ~~days'-confinement-for-the-violation-of-the-conditions-of-the~~
20 ~~disposition.The-court-shall-give-credit-for-any-confinement-time~~
21 ~~previously-served-if-that-confinement-was-for-the-offense-for-which-the~~
22 ~~suspension-is-being-revoked.~~

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

28 ~~A-disposition-entered-under-this-subsection-(3)-is-not-appealable~~
29 ~~under-RCW-13.40.230)) may impose the special sex offender disposition~~
30 ~~alternative under section 3 of this act.~~

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

35 ~~(5) If a juvenile is subject to a commitment of 15 to 65 weeks of~~
36 ~~confinement, the court may impose the disposition alternative under RCW~~
37 ~~13.40.167.~~

1 (6) When the offender is subject to a standard range commitment of
2 15 to 36 weeks and is ineligible for a suspended disposition
3 alternative, a manifest injustice disposition below the standard range,
4 special sex offender disposition alternative, chemical dependency
5 disposition alternative, or mental health disposition alternative, the
6 court in a county with a pilot program under RCW 13.40.169 may impose
7 the disposition alternative under RCW 13.40.169.

8 (7) RCW 13.40.193 shall govern the disposition of any juvenile
9 adjudicated of possessing a firearm in violation of RCW
10 9.41.040(2)(a)(iii) or any crime in which a special finding is entered
11 that the juvenile was armed with a firearm.

12 (8) RCW 13.40.308 shall govern the disposition of any juvenile
13 adjudicated of theft of a motor vehicle as defined under RCW 9A.56.065,
14 possession of a stolen motor vehicle as defined under RCW 9A.56.068,
15 taking a motor vehicle without permission in the first degree under RCW
16 9A.56.070, and taking a motor vehicle without permission in the second
17 degree under RCW 9A.56.075.

18 (9) Whenever a juvenile offender is entitled to credit for time
19 spent in detention prior to a dispositional order, the dispositional
20 order shall specifically state the number of days of credit for time
21 served.

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

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

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

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

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

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

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

5 (a) The report of the examination shall include at a minimum the
6 following:

7 (i) The respondent's version of the facts and the official version
8 of the facts;

9 (ii) The respondent's offense history;

10 (iii) An assessment of problems in addition to alleged deviant
11 behaviors;

12 (iv) The respondent's social, educational, and employment
13 situation;

14 (v) Other evaluation measures used.

15 The report shall set forth the sources of the evaluator's
16 information.

17 (b) The examiner shall assess and report regarding the respondent's
18 amenability to treatment and relative risk to the community. A
19 proposed treatment plan shall be provided and shall include, at a
20 minimum:

21 (i) The frequency and type of contact between the offender and
22 therapist;

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

25 (iii) Monitoring plans, including any requirements regarding living
26 conditions, lifestyle requirements, and monitoring by family members,
27 legal guardians, or others;

28 (iv) Anticipated length of treatment; and

29 (v) Recommended crime-related prohibitions.

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

36 (3) After receipt of reports of the examination, the court shall
37 then consider whether the offender and the community will benefit from
38 use of this special sex offender disposition alternative and consider

1 the victim's opinion whether the offender should receive a treatment
2 disposition under this section. If the court determines that this
3 special sex offender disposition alternative is appropriate, then the
4 court shall impose a determinate disposition within the standard range
5 for the offense, or if the court concludes, and enters reasons for its
6 conclusions, that such disposition would cause a manifest injustice,
7 the court shall impose a disposition under option D, and the court may
8 suspend the execution of the disposition and place the offender on
9 community supervision for at least two years.

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

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

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

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

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

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

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

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

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

37 (5) If the court orders twenty-four hour, continuous monitoring of

1 the offender while on probation, the court shall include the basis for
2 this condition in its findings.

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

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

9 (c) The court shall send notice of the disposition and restriction
10 on attending the same school as the victim or victim's siblings to the
11 public or approved private school the juvenile will attend, if known,
12 or if unknown, to the approved private schools and the public school
13 district board of directors of the district in which the juvenile
14 resides or intends to reside. This notice must be sent at the earliest
15 possible date but not later than ten calendar days after entry of the
16 disposition.

17 (7)(a) The sex offender treatment provider shall submit quarterly
18 reports on the respondent's progress in treatment to the court and the
19 parties. The reports shall reference the treatment plan and include at
20 a minimum the following: Dates of attendance, respondent's compliance
21 with requirements, treatment activities, the respondent's relative
22 progress in treatment, and any other material specified by the court at
23 the time of the disposition.

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

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

30 (d) A sex offender therapist who examines or treats a juvenile sex
31 offender pursuant to this subsection does not have to be certified by
32 the department of health pursuant to chapter 18.155 RCW if the court
33 finds that: (i) The offender has already moved to another state or
34 plans to move to another state for reasons other than circumventing the
35 certification requirements; (ii) no certified sex offender treatment
36 providers or certified affiliate sex offender treatment providers are
37 available for treatment within a reasonable geographical distance of

1 the offender's home; and (iii) the evaluation and treatment plan comply
2 with this subsection and the rules adopted by the department of health.

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

8 (b) The court may order both execution of the disposition and up to
9 thirty days confinement for the violation of the conditions of the
10 disposition.

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

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

19 (10) A disposition entered under this section is not appealable
20 under RCW 13.40.230.

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

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

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

28 (3) All records other than the official juvenile court file are
29 confidential and may be released only as provided in this section, RCW
30 13.50.010, 13.40.215, and 4.24.550.

31 (4) Except as otherwise provided in this section and RCW 13.50.010,
32 records retained or produced by any juvenile justice or care agency may
33 be released to other participants in the juvenile justice or care
34 system only when an investigation or case involving the juvenile in
35 question is being pursued by the other participant or when that other
36 participant is assigned the responsibility for supervising the
37 juvenile.

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

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

12 (7) Upon the decision to arrest or the arrest, law enforcement and
13 prosecuting attorneys may cooperate with schools in releasing
14 information to a school pertaining to the investigation, diversion, and
15 prosecution of a juvenile attending the school. Upon the decision to
16 arrest or the arrest, incident reports may be released unless releasing
17 the records would jeopardize the investigation or prosecution or
18 endanger witnesses. If release of incident reports would jeopardize
19 the investigation or prosecution or endanger witnesses, law enforcement
20 and prosecuting attorneys may release information to the maximum extent
21 possible to assist schools in protecting other students, staff, and
22 school property.

23 (8) The juvenile court and the prosecutor may set up and maintain
24 a central recordkeeping system which may receive information on all
25 alleged juvenile offenders against whom a complaint has been filed
26 pursuant to RCW 13.40.070 whether or not their cases are currently
27 pending before the court. The central recordkeeping system may be
28 computerized. If a complaint has been referred to a diversion unit,
29 the diversion unit shall promptly report to the juvenile court or the
30 prosecuting attorney when the juvenile has agreed to diversion. An
31 offense shall not be reported as criminal history in any central
32 recordkeeping system without notification by the diversion unit of the
33 date on which the offender agreed to diversion.

34 (9) Upon request of the victim of a crime or the victim's immediate
35 family, the identity of an alleged or proven juvenile offender alleged
36 or found to have committed a crime against the victim and the identity
37 of the alleged or proven juvenile offender's parent, guardian, or

1 custodian and the circumstance of the alleged or proven crime shall be
2 released to the victim of the crime or the victim's immediate family.

3 (10) Subject to the rules of discovery applicable in adult criminal
4 prosecutions, the juvenile offense records of an adult criminal
5 defendant or witness in an adult criminal proceeding shall be released
6 upon request to prosecution and defense counsel after a charge has
7 actually been filed. The juvenile offense records of any adult
8 convicted of a crime and placed under the supervision of the adult
9 corrections system shall be released upon request to the adult
10 corrections system.

11 (11) In any case in which an information has been filed pursuant to
12 RCW 13.40.100 or a complaint has been filed with the prosecutor and
13 referred for diversion pursuant to RCW 13.40.070, the person the
14 subject of the information or complaint may file a motion with the
15 court to have the court vacate its order and findings, if any, and,
16 subject to subsection (23) of this section, order the sealing of the
17 official juvenile court file, the social file, and records of the court
18 and of any other agency in the case.

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

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

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

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

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

35 (v) The person has not been convicted of rape in the first degree,
36 rape in the second degree, or indecent liberties that was actually
37 committed with forcible compulsion; and

38 ~~((v))~~ (vi) Full restitution has been paid.

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

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

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

21 (14) If the court grants the motion to seal made pursuant to
22 subsection (11) of this section, it shall, subject to subsection (23)
23 of this section, order sealed the official juvenile court file, the
24 social file, and other records relating to the case as are named in the
25 order. Thereafter, the proceedings in the case shall be treated as if
26 they never occurred, and the subject of the records may reply
27 accordingly to any inquiry about the events, records of which are
28 sealed. Any agency shall reply to any inquiry concerning confidential
29 or sealed records that records are confidential, and no information can
30 be given about the existence or nonexistence of records concerning an
31 individual.

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

37 (16) Any adjudication of a juvenile offense or a crime subsequent
38 to sealing has the effect of nullifying the sealing order. Any

1 charging of an adult felony subsequent to the sealing has the effect of
2 nullifying the sealing order for the purposes of chapter 9.94A RCW.
3 The administrative office of the courts shall ensure that the superior
4 court judicial information system provides prosecutors access to
5 information on the existence of sealed juvenile records.

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

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

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

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

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

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

21 (ii) No less than quarterly, the administrative office of the
22 courts shall provide a report to the juvenile courts of those
23 individuals whose records may be eligible for destruction. The
24 juvenile court shall verify eligibility and notify the Washington state
25 patrol and the appropriate local law enforcement agency and
26 prosecutor's office of the records to be destroyed. The requirement to
27 destroy records under this subsection is not dependent on a court
28 hearing or the issuance of a court order to destroy records.

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

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

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

8 (18) If the court grants the motion to destroy records made
9 pursuant to subsection (17)(b) or (c) of this section, it shall,
10 subject to subsection (23) of this section, order the official juvenile
11 court file, the social file, and any other records named in the order
12 to be destroyed.

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

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

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

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

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

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

34 (23) No identifying information held by the Washington state patrol
35 in accordance with chapter 43.43 RCW is subject to destruction or
36 sealing under this section. For the purposes of this subsection,
37 identifying information includes photographs, fingerprints, palmprints,
38 soleprints, toeprints and any other data that identifies a person by

1 physical characteristics, name, birthdate or address, but does not
2 include information regarding criminal activity, arrest, charging,
3 diversion, conviction or other information about a person's treatment
4 by the criminal justice system or about the person's behavior.

5 (24) Information identifying child victims under age eighteen who
6 are victims of sexual assaults by juvenile offenders is confidential
7 and not subject to release to the press or public without the
8 permission of the child victim or the child's legal guardian.
9 Identifying information includes the child victim's name, addresses,
10 location, photographs, and in cases in which the child victim is a
11 relative of the alleged perpetrator, identification of the relationship
12 between the child and the alleged perpetrator. Information identifying
13 a child victim of sexual assault may be released to law enforcement,
14 prosecutors, judges, defense attorneys, or private or governmental
15 agencies that provide services to the child victim of sexual assault.

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

18 (1) In addition to any other information required to be released
19 under this chapter, the department is authorized, pursuant to RCW
20 4.24.550, to release relevant information that is necessary to protect
21 the public concerning offenders convicted of sex offenses.

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

32 (3) The committee shall assess, on a case-by-case basis, the public
33 risk posed by:

34 (a) Offenders preparing for release from confinement for a sex
35 offense or sexually violent offense committed on or after July 1, 1984;

36 (b) Sex offenders accepted from another state under a reciprocal

1 agreement under the interstate corrections compact authorized in
2 chapter 72.74 RCW;

3 (c) Juveniles preparing for release from confinement for a sex
4 offense and releasing from the department of social and health services
5 juvenile rehabilitation administration;

6 (d) Juveniles, following disposition, under the jurisdiction of a
7 county juvenile court for a registerable sex offense; and

8 (e) Juveniles found to have committed a sex offense and accepted
9 from another state under a reciprocal agreement under the interstate
10 compact for juveniles authorized in chapter 13.24 RCW.

11 (4) Notwithstanding any other provision of law, the committee shall
12 have access to all relevant records and information in the possession
13 of public agencies relating to the offenders under review, including
14 police reports; prosecutors' statements of probable cause; presentence
15 investigations and reports; complete judgments and sentences; current
16 classification referrals; criminal history summaries; violation and
17 disciplinary reports; all psychological evaluations and psychiatric
18 hospital reports; sex offender treatment program reports; and juvenile
19 records. Records and information obtained under this subsection shall
20 not be disclosed outside the committee unless otherwise authorized by
21 law.

22 ~~((4))~~ (5) The committee shall review each sex offender under its
23 authority before the offender's release from confinement or start of
24 the offender's term of community custody in order to: (a) Classify the
25 offender into a risk level for the purposes of public notification
26 under RCW 4.24.550; (b) where available, review the offender's proposed
27 release plan in accordance with the requirements of RCW 72.09.340; and
28 (c) make appropriate referrals.

29 ~~((5))~~ (6) The committee shall classify as risk level I those sex
30 offenders whose risk assessments indicate a low risk of reoffense
31 within the community at large. The committee shall classify as risk
32 level II those offenders whose risk assessments indicate a moderate
33 risk of reoffense within the community at large. The committee shall
34 classify as risk level III those offenders whose risk assessments
35 indicate a high risk of reoffense within the community at large.

36 ~~((6))~~ (7) The committee shall issue to appropriate law
37 enforcement agencies, for their use in making public notifications
38 under RCW 4.24.550, narrative notices regarding the pending release of

1 sex offenders from the department's facilities. The narrative notices
2 shall, at a minimum, describe the identity and criminal history
3 behavior of the offender and shall include the department's risk level
4 classification for the offender. For sex offenders classified as
5 either risk level II or III, the narrative notices shall also include
6 the reasons underlying the classification.

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

9 The superintendent of public instruction shall publish on its web
10 site, with a link to the safety center web page, a revised and updated
11 sample policy for schools to follow regarding students required to
12 register as sex or kidnapping offenders.

Passed by the Senate April 21, 2011.

Passed by the House April 9, 2011.

Approved by the Governor May 12, 2011.

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