
SENATE BILL 5689

State of Washington

63rd Legislature

2013 Regular Session

By Senator Darneille

Read first time 02/08/13. Referred to Committee on Human Services & Corrections.

1 AN ACT Relating to access to juvenile records; amending RCW
2 13.50.050 and 10.97.050; creating new sections; and providing an
3 effective date.

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

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

6 (1) The primary goal of the Washington state juvenile justice
7 system is the rehabilitation and reintegration of former juvenile
8 offenders. The public has a compelling interest in the rehabilitation
9 of former juvenile offenders and their successful reintegration into
10 society as active, law-abiding, and contributing members of their
11 communities. When juvenile court records are publicly available,
12 former juvenile offenders face a substantial barrier to reintegration,
13 as they are denied housing, employment, and education opportunities on
14 the basis of these records.

15 (2) The Washington state Constitution establishes that the public
16 has the right to an open court system. However, the public's right of
17 access to court records is not absolute and may be limited to protect
18 other interests. The legislature intends that juvenile court

1 proceedings be openly administered but that the records of these
2 proceedings be presumptively closed and not disseminated.

3 (3) Given the rehabilitative goals of the juvenile justice system,
4 the scientifically documented differences between the brain development
5 of juveniles and adults, and the differences between the structure and
6 goals of the juvenile justice system and the adult criminal justice
7 system, the legislature declares that it is the policy of the state of
8 Washington that the interest in juvenile rehabilitation and
9 reintegration constitutes compelling circumstances that outweigh the
10 public interest in continued availability of juvenile court records.

11 **Sec. 2.** RCW 13.50.050 and 2012 c 177 s 2 are each amended to read
12 as follows:

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

15 (2) The official juvenile court file of any alleged or proven
16 juvenile offender shall be ~~((open to public inspection, unless sealed
17 pursuant to subsection (12) of this section))~~ confidential, unless the
18 juvenile has been adjudicated of a serious violent offense, as defined
19 in RCW 9.94A.030, in which case, the official juvenile court file shall
20 be open to the public in its entirety.

21 (3) Access to the confidential official juvenile court file of any
22 alleged or proven juvenile offender shall be limited to the court,
23 prosecuting attorney, the parties and their attorneys, and only as
24 provided in subsection (4) of this section, juvenile justice or care
25 agencies.

26 (4) A juvenile justice or care agency shall have access to the
27 confidential official juvenile court file only when an investigation or
28 case involving the juvenile in question is being pursued by the
29 juvenile justice or care agency or when the juvenile justice or care
30 agency is responsible for supervising the juvenile.

31 (5) Upon application of any interested party, after a hearing with
32 notice to all parties, and for good cause shown, the release of
33 individual records and reports, or certain information contained
34 therein, to the petitioner, is limited to the specific purpose
35 expressly authorized by the court, and upon the court's written finding
36 that:

1 (a) Anyone present when the motion was heard had an opportunity to
2 address the motion to open the juvenile court file to public
3 inspection;

4 (b) The court has weighed the competing privacy interests of the
5 juvenile with the interests identified by petitioners as they apply to
6 the specific court record, with the presumption in favor of
7 confidentiality;

8 (c) The court has determined that a compelling reason exists for
9 such inspection and that the release or disclosure is necessary for the
10 protection of a compelling public or private interest; and

11 (d) The order of the court is no broader in its application than
12 necessary to serve its purpose.

13 ~~((+3))~~ (6) All records (~~(other than)~~) retained or produced, which
14 are not part of the official juvenile court file, are confidential and
15 may be released only as provided in this section, RCW 13.50.010,
16 13.40.215, and 4.24.550.

17 ~~((+4))~~ (7) Except as otherwise provided in this section and RCW
18 13.50.010, records retained or produced by any juvenile justice or care
19 agency may be released to other participants in the juvenile justice or
20 care system only when an investigation or case involving the juvenile
21 in question is being pursued by the other participant or when that
22 other participant is assigned the responsibility for supervising the
23 juvenile.

24 ~~((+5))~~ (8) Except as provided in RCW 4.24.550, information not in
25 an official juvenile court file concerning a juvenile or a juvenile's
26 family may be released to the public only when that information could
27 not reasonably be expected to identify the juvenile or the juvenile's
28 family.

29 ~~((+6))~~ (9) Notwithstanding any other provision of this chapter,
30 the release, to the juvenile or his or her attorney, of law enforcement
31 and prosecuting attorneys' records pertaining to investigation,
32 diversion, and prosecution of juvenile offenses shall be governed by
33 the rules of discovery and other rules of law applicable in adult
34 criminal investigations and prosecutions.

35 ~~((+7))~~ (10) Upon the decision to arrest or the arrest, law
36 enforcement and prosecuting attorneys may cooperate with schools in
37 releasing information to a school pertaining to the investigation,
38 diversion, and prosecution of a juvenile attending the school. Upon

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

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

19 ((+9+)) (12) Upon request of the victim of a crime or the victim's
20 immediate family, the identity of an alleged or proven juvenile
21 offender alleged or found to have committed a crime against the victim
22 and the identity of the alleged or proven juvenile offender's parent,
23 guardian, or custodian and the circumstance of the alleged or proven
24 crime shall be released to the victim of the crime or the victim's
25 immediate family.

26 ((+10+)) (13) Subject to the rules of discovery applicable in adult
27 criminal prosecutions, the juvenile offense records of an adult
28 criminal defendant or witness in an adult criminal proceeding shall be
29 released upon request to prosecution and defense counsel after a charge
30 has actually been filed. The juvenile offense records of any adult
31 convicted of a crime and placed under the supervision of the adult
32 corrections system shall be released upon request to the adult
33 corrections system.

34 ((+11+)) (14) In any case in which an information has been filed
35 pursuant to RCW 13.40.100 or a complaint has been filed with the
36 prosecutor and referred for diversion pursuant to RCW 13.40.070, the
37 person the subject of the information or complaint may file a motion
38 with the court to have the court vacate its order and findings, if any,

1 and, subject to subsection (~~((+23+))~~) (26) of this section, order the
2 sealing of the official juvenile court file, the social file, and
3 records of the court and of any other agency in the case.

4 (~~((+12+))~~) (15)(a) The court shall not grant any motion to seal
5 records for class A offenses made pursuant to subsection (~~((+11+))~~) (14)
6 of this section that is filed on or after July 1, 1997, unless:

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

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

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

16 (iv) The person is no longer required to register as a sex offender
17 under RCW 9A.44.130 or has been relieved of the duty to register under
18 RCW 9A.44.143 if the person was convicted of a sex offense;

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

22 (vi) Full restitution has been paid.

23 (b) The court shall not grant any motion to seal records for class
24 B, C, gross misdemeanor and misdemeanor offenses and diversions made
25 under subsection (~~((+11+))~~) (14) of this section unless:

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

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

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

35 (iv) The person is no longer required to register as a sex offender
36 under RCW 9A.44.130 or has been relieved of the duty to register under
37 RCW 9A.44.143 if the person was convicted of a sex offense; and

38 (v) Full restitution has been paid.

1 (c) Notwithstanding the requirements in (a) or (b) of this
2 subsection, the court shall grant any motion to seal records of any
3 deferred disposition vacated under RCW 13.40.127(9) prior to June 7,
4 2012, if restitution has been paid and the person is eighteen years of
5 age or older at the time of the motion.

6 ~~((+13+))~~ (16) The person making a motion pursuant to subsection
7 ~~((+11+))~~ (14) of this section shall give reasonable notice of the
8 motion to the prosecution and to any person or agency whose files are
9 sought to be sealed.

10 ~~((+14+))~~ (17)(a) If the court grants the motion to seal made
11 pursuant to subsection ~~((+11+))~~ (14) of this section, it shall, subject
12 to subsection ~~((+23+))~~ (26) of this section, order sealed the official
13 juvenile court file, the social file, and other records relating to the
14 case as are named in the order. Thereafter, the proceedings in the
15 case shall be treated as if they never occurred, and the subject of the
16 records may reply accordingly to any inquiry about the events, records
17 of which are sealed. Any agency shall reply to any inquiry concerning
18 confidential or sealed records that records are confidential, and no
19 information can be given about the existence or nonexistence of records
20 concerning an individual.

21 (b) In the event the subject of the juvenile records receives a
22 full and unconditional pardon, the proceedings in the matter upon which
23 the pardon has been granted shall be treated as if they never occurred,
24 and the subject of the records may reply accordingly to any inquiry
25 about the events upon which the pardon was received. Any agency shall
26 reply to any inquiry concerning the records pertaining to the events
27 for which the subject received a pardon that records are confidential,
28 and no information can be given about the existence or nonexistence of
29 records concerning an individual.

30 ~~((+15+))~~ (18) Inspection of the files and records included in the
31 order to seal may thereafter be permitted only by order of the court
32 upon motion made by the person who is the subject of the information or
33 complaint, except as otherwise provided in RCW 13.50.010(8) and
34 subsection ~~((+23+))~~ (26) of this section.

35 ~~((+16+))~~ (19) Any adjudication of a juvenile offense or a crime
36 subsequent to sealing has the effect of nullifying the sealing order.
37 Any charging of an adult felony subsequent to the sealing has the
38 effect of nullifying the sealing order for the purposes of chapter

1 9.94A RCW. The administrative office of the courts shall ensure that
2 the superior court judicial information system provides prosecutors
3 access to information on the existence of sealed juvenile records.

4 ~~((+17))~~ (20)(a)(i) Subject to subsection ~~((+23))~~ (26) of this
5 section, all records maintained by any court or law enforcement agency,
6 including the juvenile court, local law enforcement, the Washington
7 state patrol, and the prosecutor's office, shall be automatically
8 destroyed within ninety days of becoming eligible for destruction.
9 Juvenile records are eligible for destruction when:

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

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

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

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

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

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

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

30 (b) All records maintained by any court or law enforcement agency,
31 including the juvenile court, local law enforcement, the Washington
32 state patrol, and the prosecutor's office, shall be automatically
33 destroyed within thirty days of being notified by the governor's office
34 that the subject of those records received a full and unconditional
35 pardon by the governor.

36 (c) A person eighteen years of age or older whose criminal history
37 consists entirely of one diversion agreement or counsel and release
38 entered prior to June 12, 2008, may request that the court order the

1 records in his or her case destroyed. The request shall be granted,
2 subject to subsection ~~((+23+))~~ (26) of this section, if the court finds
3 that two years have elapsed since completion of the agreement or
4 counsel and release.

5 (d) A person twenty-three years of age or older whose criminal
6 history consists of only referrals for diversion may request that the
7 court order the records in those cases destroyed. The request shall be
8 granted, subject to subsection ~~((+23+))~~ (26) of this section, if the
9 court finds that all diversion agreements have been successfully
10 completed and no proceeding is pending against the person seeking the
11 conviction of a criminal offense.

12 ~~((+18+))~~ (21) If the court grants the motion to destroy records
13 made pursuant to subsection ~~((+17+))~~ (20)(c) or (d) of this section, it
14 shall, subject to subsection ~~((+23+))~~ (26) of this section, order the
15 official juvenile court file, the social file, and any other records
16 named in the order to be destroyed.

17 ~~((+19+))~~ (22) The person making the motion pursuant to subsection
18 ~~((+17+))~~ (20)(c) or (d) of this section shall give reasonable notice of
19 the motion to the prosecuting attorney and to any agency whose records
20 are sought to be destroyed.

21 ~~((+20+))~~ (23) Any juvenile to whom the provisions of this section
22 may apply shall be given written notice of his or her rights under this
23 section at the time of his or her disposition hearing or during the
24 diversion process.

25 ~~((+21+))~~ (24) Nothing in this section may be construed to prevent
26 a crime victim or a member of the victim's family from divulging the
27 identity of the alleged or proven juvenile offender or his or her
28 family when necessary in a civil proceeding.

29 ~~((+22+))~~ (25) Any juvenile justice or care agency may, subject to
30 the limitations in subsection ~~((+23+))~~ (26) of this section and (a) and
31 (b) of this subsection, develop procedures for the routine destruction
32 of records relating to juvenile offenses and diversions.

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

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

1 (~~(23)~~) (26) Except for subsection (~~(17)~~) (20)(b) of this
2 section, no identifying information held by the Washington state patrol
3 in accordance with chapter 43.43 RCW is subject to destruction or
4 sealing under this section. For the purposes of this subsection,
5 identifying information includes photographs, fingerprints, palmprints,
6 soleprints, toeprints and any other data that identifies a person by
7 physical characteristics, name, birthdate or address, but does not
8 include information regarding criminal activity, arrest, charging,
9 diversion, conviction or other information about a person's treatment
10 by the criminal justice system or about the person's behavior.

11 (~~(24)~~) (27) Information identifying child victims under age
12 eighteen who are victims of sexual assaults by juvenile offenders is
13 confidential and not subject to release to the press or public without
14 the permission of the child victim or the child's legal guardian.
15 Identifying information includes the child victim's name, addresses,
16 location, photographs, and in cases in which the child victim is a
17 relative of the alleged perpetrator, identification of the relationship
18 between the child and the alleged perpetrator. Information identifying
19 a child victim of sexual assault may be released to law enforcement,
20 prosecutors, judges, defense attorneys, or private or governmental
21 agencies that provide services to the child victim of sexual assault.

22 (28) Confidential juvenile offense records maintained by any court,
23 law enforcement agency, or state agency, including the juvenile court,
24 local law enforcement, the Washington state patrol, and the county
25 prosecutor's offices, may not be published, distributed, or sold.

26 (29) Nothing in this section shall affect or prevent the use of a
27 juvenile offender's prior adjudication in later juvenile offender or
28 adult criminal proceedings.

29 **Sec. 3.** RCW 10.97.050 and 2012 c 125 s 2 are each amended to read
30 as follows:

31 (1) Adult conviction records may be disseminated without
32 restriction.

33 (2) No confidential juvenile offense records may be published or
34 distributed.

35 (3) Any criminal history record information which pertains to an
36 incident that occurred within the last twelve months for which a person
37 is currently being processed by the criminal justice system, including

1 the entire period of correctional supervision extending through final
2 discharge from parole, when applicable, may be disseminated without
3 restriction.

4 ((+3)) (4) Criminal history record information which includes
5 nonconviction data may be disseminated by a criminal justice agency to
6 another criminal justice agency for any purpose associated with the
7 administration of criminal justice, or in connection with the
8 employment of the subject of the record by a criminal justice or
9 juvenile justice agency. A criminal justice agency may respond to any
10 inquiry from another criminal justice agency without any obligation to
11 ascertain the purpose for which the information is to be used by the
12 agency making the inquiry.

13 ((+4)) (5) Criminal history record information which includes
14 nonconviction data may be disseminated by a criminal justice agency to
15 implement a statute, ordinance, executive order, or a court rule,
16 decision, or order which expressly refers to records of arrest,
17 charges, or allegations of criminal conduct or other nonconviction data
18 and authorizes or directs that it be available or accessible for a
19 specific purpose.

20 ((+5)) (6) Criminal history record information which includes
21 nonconviction data may be disseminated to individuals and agencies
22 pursuant to a contract with a criminal justice agency to provide
23 services related to the administration of criminal justice. Such
24 contract must specifically authorize access to criminal history record
25 information, but need not specifically state that access to
26 nonconviction data is included. The agreement must limit the use of
27 the criminal history record information to stated purposes and insure
28 the confidentiality and security of the information consistent with
29 state law and any applicable federal statutes and regulations.

30 ((+6)) (7) Criminal history record information which includes
31 nonconviction data may be disseminated to individuals and agencies for
32 the express purpose of research, evaluative, or statistical activities
33 pursuant to an agreement with a criminal justice agency. Such
34 agreement must authorize the access to nonconviction data, limit the
35 use of that information which identifies specific individuals to
36 research, evaluative, or statistical purposes, and contain provisions
37 giving notice to the person or organization to which the records are
38 disseminated that the use of information obtained therefrom and further

1 dissemination of such information are subject to the provisions of this
2 chapter and applicable federal statutes and regulations, which shall be
3 cited with express reference to the penalties provided for a violation
4 thereof.

5 ~~((+7))~~ (8) Every criminal justice agency that maintains and
6 disseminates criminal history record information must maintain
7 information pertaining to every dissemination of criminal history
8 record information except a dissemination to the effect that the agency
9 has no record concerning an individual. Information pertaining to
10 disseminations shall include:

11 (a) An indication of to whom (agency or person) criminal history
12 record information was disseminated;

13 (b) The date on which the information was disseminated;

14 (c) The individual to whom the information relates; and

15 (d) A brief description of the information disseminated.

16 The information pertaining to dissemination required to be
17 maintained shall be retained for a period of not less than one year.

18 ~~((+8))~~ (9) In addition to the other provisions in this section
19 allowing dissemination of criminal history record information, RCW
20 4.24.550 governs dissemination of information concerning offenders who
21 commit sex offenses as defined by RCW 9.94A.030. Criminal justice
22 agencies, their employees, and officials shall be immune from civil
23 liability for dissemination on criminal history record information
24 concerning sex offenders as provided in RCW 4.24.550.

25 NEW SECTION. **Sec. 4.** (1) Section 2 of this act applies
26 prospectively and retroactively to all existing official juvenile court
27 files of any alleged or proven juvenile offender.

28 (2) Except for juvenile court files that have been sealed pursuant
29 to RCW 13.50.050, any existing official juvenile court file containing
30 an adjudication for a serious violent offense, as defined in RCW
31 9.94A.030, with the adjudication date prior to July 1, 2014, shall,
32 upon July 1, 2014, be public.

33 NEW SECTION. **Sec. 5.** Sections 2 and 3 of this act take effect
34 July 1, 2014.

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