

CERTIFICATION OF ENROLLMENT

SUBSTITUTE HOUSE BILL 1141

Chapter 221, Laws of 2008

60th Legislature
2008 Regular Session

DIVERSION RECORDS--DESTRUCTION

EFFECTIVE DATE: 06/12/08

Passed by the House March 10, 2008
Yeas 94 Nays 0

FRANK CHOPP

Speaker of the House of Representatives

Passed by the Senate March 7, 2008
Yeas 48 Nays 0

BRAD OWEN

President of the Senate

Approved March 28, 2008, 10:29 a.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 1141** as passed by the House of Representatives and the Senate on the dates hereon set forth.

BARBARA BAKER

Chief Clerk

FILED

March 28, 2008

**Secretary of State
State of Washington**

SUBSTITUTE HOUSE BILL 1141

AS AMENDED BY THE SENATE

Passed Legislature - 2008 Regular Session

State of Washington 60th Legislature 2008 Regular Session

By House Committee on Human Services (originally sponsored by Representatives Roberts, Haler, O'Brien, Green, Goodman, Kagi, Appleton, Walsh, Williams, Dickerson, Darneille, Flannigan, McCoy, Hinkle, Pettigrew and Hasegawa)

READ FIRST TIME 01/31/07.

1 AN ACT Relating to destruction of diversion records; and amending
2 RCW 13.50.050.

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

4 **Sec. 1.** RCW 13.50.050 and 2004 c 42 s 1 are each amended to read
5 as follows:

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

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

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

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

1 participant is assigned the responsibility for supervising the
2 juvenile.

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

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

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

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

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

1 of the alleged or proven juvenile offender's parent, guardian, or
2 custodian and the circumstance of the alleged or proven crime shall be
3 released to the victim of the crime or the victim's immediate family.

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

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

20 (12) The court shall not grant any motion to seal records made
21 pursuant to subsection (11) of this section that is filed on or after
22 July 1, 1997, unless it finds that:

23 (a) For class B offenses other than sex offenses, since the last
24 date of release from confinement, including full-time residential
25 treatment, if any, or entry of disposition, the person has spent five
26 consecutive years in the community without committing any offense or
27 crime that subsequently results in conviction. For class C offenses
28 other than sex offenses, since the last date of release from
29 confinement, including full-time residential treatment, if any, or
30 entry of disposition, the person has spent two consecutive years in the
31 community without committing any offense or crime that subsequently
32 results in conviction. For gross misdemeanors and misdemeanors, since
33 the last date of release from confinement, including full-time
34 residential treatment, if any, or entry of disposition, the person has
35 spent two consecutive years in the community without committing any
36 offense or crime that subsequently results in conviction. For
37 diversions, since completion of the diversion agreement, the person has

1 spent two consecutive years in the community without committing any
2 offense or crime that subsequently results in conviction or diversion;

3 (b) No proceeding is pending against the moving party seeking the
4 conviction of a juvenile offense or a criminal offense;

5 (c) No proceeding is pending seeking the formation of a diversion
6 agreement with that person;

7 (d) The person has not been convicted of a class A or sex offense;
8 and

9 (e) Full restitution has been paid.

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

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

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

29 (16) Any adjudication of a juvenile offense or a crime subsequent
30 to sealing has the effect of nullifying the sealing order. Any
31 charging of an adult felony subsequent to the sealing has the effect of
32 nullifying the sealing order for the purposes of chapter 9.94A RCW.
33 The administrative office of the courts shall ensure that the superior
34 court judicial information system provides prosecutors access to
35 information on the existence of sealed juvenile records.

36 ~~(17)(a) ((A person eighteen years of age or older whose criminal
37 history consists of only one referral for diversion may request that
38 the court order the records in that case destroyed. The request shall~~

1 ~~be granted, subject to subsection (23) of this section, if the court~~
2 ~~finds that two years have elapsed since completion of the diversion~~
3 ~~agreement.)) (i) Subject to subsection (23) of this section, all~~
4 records maintained by any court or law enforcement agency, including
5 the juvenile court, local law enforcement, the Washington state patrol,
6 and the prosecutor's office, shall be automatically destroyed within
7 ninety days of becoming eligible for destruction. Juvenile records are
8 eligible for destruction when:

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

11 (B) His or her criminal history consists entirely of one diversion
12 agreement or counsel and release entered on or after the effective date
13 of this act;

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

37 (c) A person twenty-three years of age or older whose criminal
38 history consists of only referrals for diversion may request that the

1 court order the records in those cases destroyed. The request shall be
2 granted, subject to subsection (23) of this section, if the court finds
3 that all diversion agreements have been successfully completed and no
4 proceeding is pending against the person seeking the conviction of a
5 criminal offense.

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

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

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

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

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

27 (a) Records may be routinely destroyed only when the person the
28 subject of the information or complaint has attained twenty-three years
29 of age or older(~~(, or is eighteen years of age or older and his or her~~
30 ~~criminal history consists entirely of one diversion agreement and two~~
31 ~~years have passed since completion of the agreement)) or pursuant to
32 subsection (17)(a) of this section.~~

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

35 (23) No identifying information held by the Washington state patrol
36 in accordance with chapter 43.43 RCW is subject to destruction or
37 sealing under this section. For the purposes of this subsection,
38 identifying information includes photographs, fingerprints, palmprints,

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

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

Passed by the House March 10, 2008.

Passed by the Senate March 7, 2008.

Approved by the Governor March 28, 2008.

Filed in Office of Secretary of State March 28, 2008.