

SSB 6240 - H COMM AMD

By Committee on Early Learning & Human Services

ADOPTED AS AMENDED 03/02/2012

1 Strike everything after the enacting clause and insert the  
2 following:

3 "Sec. 1. RCW 13.40.127 and 2009 c 236 s 1 are each amended to read  
4 as follows:

5 (1) A juvenile is eligible for deferred disposition unless he or  
6 she:

7 (a) Is charged with a sex or violent offense;

8 (b) Has a criminal history which includes any felony;

9 (c) Has a prior deferred disposition or deferred adjudication; or

10 (d) Has two or more adjudications.

11 (2) The juvenile court may, upon motion at least fourteen days  
12 before commencement of trial and, after consulting the juvenile's  
13 custodial parent or parents or guardian and with the consent of the  
14 juvenile, continue the case for disposition for a period not to exceed  
15 one year from the date the juvenile is found guilty. The court shall  
16 consider whether the offender and the community will benefit from a  
17 deferred disposition before deferring the disposition. The court may  
18 waive the fourteen-day period anytime before the commencement of trial  
19 for good cause.

20 (3) Any juvenile who agrees to a deferral of disposition shall:

21 (a) Stipulate to the admissibility of the facts contained in the  
22 written police report;

23 (b) Acknowledge that the report will be entered and used to support  
24 a finding of guilt and to impose a disposition if the juvenile fails to  
25 comply with terms of supervision; (~~and~~)

26 (c) Waive the following rights to: (i) A speedy disposition; and  
27 (ii) call and confront witnesses; and

28 (d) Acknowledge the direct consequences of being found guilty and  
29 the direct consequences that will happen if an order of disposition is  
30 entered.

1 The adjudicatory hearing shall be limited to a reading of the  
2 court's record.

3 (4) Following the stipulation, acknowledgment, waiver, and entry of  
4 a finding or plea of guilt, the court shall defer entry of an order of  
5 disposition of the juvenile.

6 (5) Any juvenile granted a deferral of disposition under this  
7 section shall be placed under community supervision. The court may  
8 impose any conditions of supervision that it deems appropriate  
9 including posting a probation bond. Payment of restitution under RCW  
10 13.40.190 shall be a condition of community supervision under this  
11 section.

12 The court may require a juvenile offender convicted of animal  
13 cruelty in the first degree to submit to a mental health evaluation to  
14 determine if the offender would benefit from treatment and such  
15 intervention would promote the safety of the community. After  
16 consideration of the results of the evaluation, as a condition of  
17 community supervision, the court may order the offender to attend  
18 treatment to address issues pertinent to the offense.

19 (6) A parent who signed for a probation bond has the right to  
20 notify the counselor if the juvenile fails to comply with the bond or  
21 conditions of supervision. The counselor shall notify the court and  
22 surety of any failure to comply. A surety shall notify the court of  
23 the juvenile's failure to comply with the probation bond. The state  
24 shall bear the burden to prove, by a preponderance of the evidence,  
25 that the juvenile has failed to comply with the terms of community  
26 supervision.

27 ~~((A juvenile's lack of compliance shall be determined by the  
28 judge upon written motion by the prosecutor or the juvenile's juvenile  
29 court community supervision counselor. If a juvenile fails to comply  
30 with terms of supervision, the court shall enter an order of  
31 disposition))~~ (a) Anytime prior to the conclusion of the period of  
32 supervision, the prosecutor or the juvenile's juvenile court community  
33 supervision counselor may file a motion with the court requesting the  
34 court revoke the deferred disposition based on the juvenile's lack of  
35 compliance or treat the juvenile's lack of compliance as a violation  
36 pursuant to RCW 13.40.200.

37 (b) If the court finds the juvenile failed to comply with the terms  
38 of the deferred disposition, the court may:

1 (i) Revoke the deferred disposition and enter an order of  
2 disposition; or

3 (ii) Impose sanctions for the violation pursuant to RCW 13.40.200.

4 (8) At any time following deferral of disposition the court may,  
5 following a hearing, continue ~~((the case))~~ supervision for an  
6 additional one-year period for good cause.

7 ~~(9)(a) At the conclusion of the period ((set forth in the order of~~  
8 ~~deferral and upon a finding by the court of full compliance with~~  
9 ~~conditions of supervision and payment of full restitution))~~ of  
10 supervision, the court shall determine whether the juvenile is entitled  
11 to dismissal of the deferred disposition only when the court finds:

12 (i) The deferred disposition has not been previously revoked;

13 (ii) The juvenile has completed the terms of supervision;

14 (iii) There are no pending motions concerning lack of compliance  
15 pursuant to subsection (7) of this section; and

16 (iv) The juvenile has either paid the full amount of restitution,  
17 or, made a good faith effort to pay the full amount of restitution  
18 during the period of supervision.

19 (b) If the court finds the juvenile is entitled to dismissal of the  
20 deferred disposition pursuant to (a) of this subsection, the  
21 ((respondent's)) juvenile's conviction shall be vacated and the court  
22 shall dismiss the case with prejudice, except that a conviction under  
23 RCW 16.52.205 shall not be vacated. Whenever a case is dismissed with  
24 restitution still owing, the court shall enter a restitution order  
25 pursuant to RCW 13.40.190 for any unpaid restitution. Jurisdiction to  
26 enforce payment and modify terms of the restitution order shall be the  
27 same as those set forth in RCW 13.40.190.

28 (c) If the court finds the juvenile is not entitled to dismissal of  
29 the deferred disposition pursuant to (a) of this subsection, the court  
30 shall revoke the deferred disposition and enter an order of  
31 disposition. A deferred disposition shall remain a conviction unless  
32 the case is dismissed and the conviction is vacated pursuant to (b) of  
33 this subsection or sealed pursuant to RCW 13.50.050.

34 ~~(10)(a) ((Records of deferred disposition cases vacated under~~  
35 ~~subsection (9) of this section shall be sealed no later than thirty~~  
36 ~~days after the juvenile's eighteenth birthday provided that the~~  
37 ~~juvenile does not have any charges pending at that time. If a juvenile~~  
38 ~~has already reached his or her eighteenth birthday before July 26,~~

1 2009, and does not have any charges pending, he or she may request that  
2 the court issue an order sealing the records of his or her deferred  
3 disposition cases vacated under subsection (9) of this section, and  
4 this request shall be granted.)) (i) Any time the court vacates a  
5 conviction pursuant to subsection (9) of this section, if the juvenile  
6 is eighteen years of age or older and the full amount of restitution  
7 ordered has been paid, the court shall enter a written order sealing  
8 the case.

9 (ii) Any time the court vacates a conviction pursuant to subsection  
10 (9) of this section, if the juvenile is not eighteen years of age or  
11 older and full restitution ordered has been paid, the court shall  
12 schedule an administrative sealing hearing to take place no later than  
13 thirty days after the respondent's eighteenth birthday, at which time  
14 the court shall enter a written order sealing the case. The  
15 respondent's presence at the administrative sealing hearing is not  
16 required.

17 (iii) Any deferred disposition vacated prior to the effective date  
18 of this section is not subject to sealing under this subsection.

19 (b) Nothing in this subsection shall preclude a juvenile from  
20 petitioning the court to have the records of his or her deferred  
21 dispositions sealed under RCW 13.50.050 (11) and (12).

22 ~~((b))~~ (c) Records sealed under this provision shall have the same  
23 legal status as records sealed under RCW 13.50.050.

24 **Sec. 2.** RCW 13.50.050 and 2011 c 338 s 4 and 2011 c 333 s 4 are  
25 each reenacted and amended to read as follows:

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

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

31 (3) All records other than the official juvenile court file are  
32 confidential and may be released only as provided in this section, RCW  
33 13.50.010, 13.40.215, and 4.24.550.

34 (4) Except as otherwise provided in this section and RCW 13.50.010,  
35 records retained or produced by any juvenile justice or care agency may  
36 be released to other participants in the juvenile justice or care  
37 system only when an investigation or case involving the juvenile in

1 question is being pursued by the other participant or when that other  
2 participant is assigned the responsibility for supervising the  
3 juvenile.

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

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

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

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

37 (9) Upon request of the victim of a crime or the victim's immediate  
38 family, the identity of an alleged or proven juvenile offender alleged

1 or found to have committed a crime against the victim and the identity  
2 of the alleged or proven juvenile offender's parent, guardian, or  
3 custodian and the circumstance of the alleged or proven crime shall be  
4 released to the victim of the crime or the victim's immediate family.

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

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

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

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

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

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

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

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

1 (vi) Full restitution has been paid.

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

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

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

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

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

17 (v) Full restitution has been paid.

18 (c) Notwithstanding the requirements in (a) or (b) of this  
19 subsection, the court shall grant any motion to seal records of any  
20 deferred disposition vacated under RCW 13.40.127(9) prior to the  
21 effective date of this section if the person is eighteen years of age  
22 or older at the time of the motion.

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

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

37 (b) In the event the subject of the juvenile records receives a  
38 full and unconditional pardon, the proceedings in the matter upon which

1 the pardon has been granted shall be treated as if they never occurred,  
2 and the subject of the records may reply accordingly to any inquiry  
3 about the events upon which the pardon was received. Any agency shall  
4 reply to any inquiry concerning the records pertaining to the events  
5 for which the subject received a pardon that records are confidential,  
6 and no information can be given about the existence or nonexistence of  
7 records concerning an individual.

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

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

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

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

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

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

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

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

35 (ii) No less than quarterly, the administrative office of the  
36 courts shall provide a report to the juvenile courts of those  
37 individuals whose records may be eligible for destruction. The  
38 juvenile court shall verify eligibility and notify the Washington state

1 patrol and the appropriate local law enforcement agency and  
2 prosecutor's office of the records to be destroyed. The requirement to  
3 destroy records under this subsection is not dependent on a court  
4 hearing or the issuance of a court order to destroy records.

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

8 (b) All records maintained by any court or law enforcement agency,  
9 including the juvenile court, local law enforcement, the Washington  
10 state patrol, and the prosecutor's office, shall be automatically  
11 destroyed within thirty days of being notified by the governor's office  
12 that the subject of those records received a full and unconditional  
13 pardon by the governor.

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

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

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

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

37 (20) Any juvenile to whom the provisions of this section may apply

1 shall be given written notice of his or her rights under this section  
2 at the time of his or her disposition hearing or during the diversion  
3 process.

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

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

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

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

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

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



(5) Removes the provision which requires the juvenile court to notify a juvenile's school when he or she is found guilty of certain offenses in a deferred disposition proceeding.

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