

SENATE BILL REPORT

SB 5689

As Reported by Senate Committee On:
Human Services & Corrections, February 20, 2013
Ways & Means, February 28, 2013

Title: An act relating to access to juvenile records.

Brief Description: Concerning access to juvenile records.

Sponsors: Senator Darneille.

Brief History:

Committee Activity: Human Services & Corrections: 2/19/13, 2/20/13 [DPS-WM].
Ways & Means: 2/27/13, 2/28/13 [DP2S, DNP, w/oRec].

SENATE COMMITTEE ON HUMAN SERVICES & CORRECTIONS

Majority Report: That Substitute Senate Bill No. 5689 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Carrell, Chair; Pearson, Vice Chair; Darneille, Ranking Member; Hargrove, Harper and Padden.

Staff: Shani Bauer (786-7468)

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: That Second Substitute Senate Bill No. 5689 be substituted therefor, and the second substitute bill do pass.

Signed by Senators Hill, Chair; Baumgartner, Vice Chair; Hargrove, Ranking Member; Nelson, Assistant Ranking Member; Bailey, Becker, Conway, Dammeier, Fraser, Hasegawa, Hatfield, Keiser, Kohl-Welles, Murray, Padden, Ranker, Rivers, Schoesler and Tom.

Minority Report: Do not pass.

Signed by Senator Honeyford, Capital Budget Chair.

Minority Report: That it be referred without recommendation.

Signed by Senators Braun and Parlette.

Staff: Dianne Criswell (786-7433)

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Background: In 1977, the Legislature passed HB 371 which made juvenile offender records accessible to the public. Under current law, a person may seal their juvenile record if the person meets certain criteria. The criteria for sealing juvenile records since 1977 gradually became more stringent until 1997. Since 2004, the Legislature has enacted provisions that decrease the amount of time a person must wait before being eligible to have a juvenile record sealed and has allowed more serious offenses to be sealed.

Before a juvenile offender record may be sealed, the person must not have any pending diversion or criminal charges, must have been relieved of any duty to register as a sex offender, and must have paid any restitution ordered in full. The person must have also spent a specified period of time in the community without committing a new offense: five years for a class A felony and two years for other felonies, misdemeanors, and diversions.

In 2011, the Legislature established the Joint Legislative Task Force on Juvenile Record Sealing (Task Force) to:

- determine how to cost-effectively restrict public access to juvenile records when an individual has met statutory criteria without requiring a motion in court;
- determine whether and how to restrict access to diversion records; and
- address other juvenile criminal record access issues that may arise during the work of the Task Force.

The Task Force completed its report in December 2012. The Task Force explored several alternatives and options but did not come to consensus recommendations.

Serious violent offenses are defined in the Sentencing Reform Act to include murder 1 and 2, homicide by abuse, manslaughter 1, assault 1, kidnapping 1, rape 1, assault of a child 1, or an attempt to commit any of those crimes.

Summary of Bill (Recommended Second Substitute): Court records and public court indices containing nonadjudication or nonconviction information relating to the commission of juvenile offenses are restricted from public access. Nonadjudication or nonconviction information means information contained in records collected by the courts relating to arrest, probable cause hearings, citation, and charges that did not lead to an adjudication; charges resulting in a dismissal or acquittal; and charges dismissed pursuant to a diversion or deferred sentence.

All other juvenile court records remain open for public access. The restriction on nonadjudication or nonconviction information does not limit access by agencies for research purposes. These provisions apply prospectively and retroactively.

EFFECT OF CHANGES MADE BY WAYS & MEANS COMMITTEE (Recommended Second Substitute): Adds that the restriction on nonadjudication or nonconviction information does not limit access by agencies for research purposes, as provided elsewhere in statute and expressly permitted for sealed juvenile records.

EFFECT OF CHANGES MADE BY HUMAN SERVICES & CORRECTIONS COMMITTEE (Recommended First Substitute): Court records containing nonadjudication or nonconviction information relating to the commission of juvenile offenses are restricted from public access. Nonadjudication or nonconviction information is defined to include arrest and probable cause records that did not lead to a conviction, charges resulting in a dismissal or acquittal, and charges dismissed pursuant to a diversion.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

Effective Date: The bill takes effect on July 1, 2014.

Staff Summary of Public Testimony on Original Bill (Human Services & Corrections):
PRO: Juvenile records are shackling youth for life for childhood mistakes. Open records keep youth at a disadvantage compared to other states. Youth are trapped in a cycle of homelessness and joblessness which is a drain on public resources. Their records will determine long-term outcomes before they have a chance. Once a record is placed online that record is never truly sealed. It costs at least \$500 to hire an attorney for assistance. We spend countless hours training law clinic attorneys to navigate background checks and work through the sealing process. This is not something a youth can easily do on their own.

Juvenile courts are designed in recognition that young people are different. Research now further reaffirms the differences between young people and adults. Youth do foolish things that they regret and will not do again. This bill has a one-time fiscal impact. The amount of money is not worth holding up justice for these youth. The current policy also has a disparate impact on minorities. Juvenile court proceedings will remain open to public and will not impact accountability.

CON: Juvenile records did not become an issue until juvenile crime and consequences became more serious. In large part, the system was open so that the public could examine what was going on and could see that the process was fair. Records are not sold. Courts found that it was less onerous if they entered into contracts with organizations to allow access to records so that screen scrapers would not crash the system. Less than ten juveniles per year are charged with serious violent crimes.

OTHER: We have a couple of suggested changes. First, to allow the release of the certificate of probable cause. Prosecutors' offices often get asked why they filed charges and usually provide the certificate of probable cause in response as a matter of accountability. The use of the word confidential is also a problem. We do not think we can operate in complete confidentiality with juvenile records. A certain amount of disclosure is needed to ensure the accountability of the prosecuting office.

Persons Testifying (Human Services & Corrections): PRO: Priya Rai, Jane Schroeder, University of Washington Law – Children and Youth Legislative Advocacy Clinic; Angie Savino, King County Records Sealing Clinic; Katy Lee, citizen; Laura Inveen, Superior

Court Judges Assn.; Mike Fenton, WA Assn. of Juvenile Court Administrators; Bailey Stober, WA State Commission on African American Affairs.

CON: Rowland Thompson, Allied Daily Newspapers of WA.

OTHER: Tom McBride, WA Assn. of Prosecuting Attorneys.

Staff Summary of Public Testimony as Heard in Committee (Ways & Means): PRO: Increasing public access to these records is trapping youth in poverty. Even if charges are dismissed, arrest records create disadvantages in the job market, in education, and in housing. Removing barriers to self sufficiency will save public resources. Diversions are already expunged from these records. There are concerns about the fiscal note on the bill as introduced, as well as the substitute bill. The costs are larger than were estimated on similar proposals last year.

CON: Local courts should be concerned about the potential costs of implementing the requirements in the substitute bill. Landlords do background checks because they have a duty to protect the health, welfare, and safety of their tenants. Publicly available information should not be limited.

Persons Testifying (Ways & Means): PRO: Jane Schroeder, Briya Rai, University of WA Law Children and Youth Legislative Advocacy Clinic.

CON: Rowland Thompson, Allied Daily Newspapers; Chester Baldwin, WA Apartment Assn.; Kyle Woodring, Rental Housing Assn.