

SENATE BILL REPORT

SB 5182

As Reported by Senate Committee On:
Human Services, Reentry & Rehabilitation, January 28, 2020

Title: An act relating to juvenile record sealing.

Brief Description: Concerning juvenile record sealing.

Sponsors: Senators Kuderer, Darneille, Wellman, Hunt, Hasegawa, Saldaña and Wilson, C.

Brief History:

Committee Activity: Human Services, Reentry & Rehabilitation: 1/23/19, 2/19/19 [DPS, DNP]; 1/15/20, 1/28/20 [DP2S].

Brief Summary of Second Substitute Bill

- Eliminates contested sealing hearings for juvenile court records, making sealing automatic if the juvenile has turned eighteen years old, completed supervision, and fully paid restitution owed to individual victims.
- Allows a juvenile to apply to have a court record sealed upon providing proof of payment of restitution and other requirements.
- Prohibits a criminal justice agency from disclosing sealed juvenile record information accessed through the Washington State Information System to third parties who are not Washington state criminal justice agencies.

SENATE COMMITTEE ON HUMAN SERVICES, REENTRY & REHABILITATION

Majority Report: That Second Substitute Senate Bill No. 5182 be substituted therefor, and the second substitute bill do pass.

Signed by Senators Darneille, Chair; Nguyen, Vice Chair; Walsh, Ranking Member; Cleveland, O'Ban, Wilson, C. and Zeiger.

Staff: Kevin Black (786-7747)

Background: Juvenile Record Sealing. Juvenile court records are open to public inspection, unless sealed. A juvenile court must schedule a sealing hearing for all juvenile records that are not classified as most serious offenses, sex offenses, or drug offenses, to take place upon

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the later of a juvenile's eighteenth birthday, anticipated completion of probation, or anticipated release from confinement. The court must hold a contested sealing hearing if the court receives an objection to sealing, or if the court notes on its own motion a compelling reason not to seal. In order to seal a juvenile record, the court must find that the juvenile has completed the full terms and conditions of the disposition, including affirmative conditions, and paid full restitution to any individual victim.

If not subject to regular sealing, a juvenile court record may be vacated and sealed by motion, provided that if the person was charged with a class A felony, the juvenile, or former juvenile, must meet certain requirements, including spending five consecutive years in the community without being convicted or adjudicated of a crime, not being required to register as a sex offender, and full payment of restitution. Sealing by motion is not available to a person convicted of rape 1, rape 2, or indecent liberties with forcible compulsion.

A sealing order is nullified if the juvenile, or former juvenile, is adjudicated of a juvenile offense or convicted of a crime subsequent to the sealing, or is charged with an adult felony.

Access to Sealed Juvenile Records by Law Enforcement Agencies. An amendment enacted in 2015 requires the Washington State Patrol (WSP) to ensure that the Washington State Identification System (WASIS) provides criminal justice agencies access to sealed juvenile record information. Criminal justice agencies is defined under the Washington State Criminal Records Privacy Act to mean any court or government agency which performs the administration of criminal justice pursuant to statute or executive order which allocates a substantial part of its annual budget to the administration of criminal justice. WSP provides full access to WASIS, including sealed juvenile record information, to entities that apply for access that it deems to be law enforcement agencies or designates as certified criminal justice agencies, regardless of state, federal, or international jurisdiction. A 2015 list of certified criminal justice agencies granted full access to WASIS information by WSP includes 17 state agencies, including divisions of the Department of Social and Health Services, Department of Health, Department of Fish and Wildlife, and Liquor Control Board, and 22 federal agencies, including the U.S. Department of Defense, U.S. Customs and Border Protection, U.S. Immigration and Customs Enforcement, and Central Intelligence Agency.

Summary of Bill: The bill as referred to committee not considered.

Summary of Bill (Second Substitute): Contested sealing hearings for juvenile records are eliminated. If the record is eligible for sealing, sealing is automatic upon the juvenile's eighteenth birthday, or end of supervision, or term of confinement, whichever comes later, as long as the court finds by a preponderance of the evidence that the juvenile has completed payment of any restitution, excluding restitution owed to insurance providers. If the juvenile remains on supervision at the time of the sealing hearing, the court must continue the sealing hearing until a date within 30 days of the anticipated end of supervision.

If the court finds that restitution has not been paid, the court must deny sealing and notify the juvenile of the denial and the unpaid amount of restitution within five business days at the juvenile's last known address. The juvenile may subsequently contact the court with proof of payment of restitution, in which case the court must seal the juvenile record within five

business days. The court must schedule a hearing within 60 days if the court fails to seal the juvenile record for any reason.

A dismissal of a deferred disposition is exempted from the requirement that the court must seal any juvenile record immediately upon any acquittal or dismissal with prejudice.

A successful motion to seal juvenile court records must not vacate the court finding.

A criminal justice agency must not disclose information contained in sealed juvenile records access through WASIS or other means to third parties who are not Washington state criminal justice agencies.

The Administrative Office of the Courts must take prudent steps to ensure that sealed juvenile records are not disclosed online in the case of an appeal. A court clerk may correspond with restitution recipients with respect to juvenile sealed records.

EFFECT OF CHANGES MADE BY HUMAN SERVICES, REENTRY & REHABILITATION COMMITTEE (Second Substitute):

- Prohibits criminal justice agencies from disclosing sealed juvenile record information accessed through WASIS to third parties that are not Washington state criminal justice agencies.
- Requires the Administrative Office of the Courts to ensure sealed juvenile records are not disclosed during an appeal.
- Allows court clerks to correspond with restitution recipients about sealed juvenile records.

Appropriation: None.

Fiscal Note: Requested on January 15, 2020.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Original Bill (Regular Session 2019): *The committee recommended a different version of the bill than what was heard.* PRO: This is an opportunity to give second chances to people so they can build a new future without being haunted by what they did as a youth. The current system to seal records is daunting. Some of us had privileges as youth because the police just brought us home. This bill originated as a technical fix for the sealing statute enacted in 2014. County practices are inconsistent. Some people request inappropriate hearings. Kids should have a chance to seal records which do not relate to serious matters. Under current practice sealed records can still come up and be used inappropriately. It is a good idea to limit providing this information to the Washington State Patrol. Records are not effectively sealed while they remain available in electronic databases.

CON: Criminal justice agencies should retain access to sealed juvenile records. We support rehabilitation and reentry. This information is important for officer safety and public safety. Withheld sealed juvenile records could be used to deny a concealed pistols license. There is no way for federal officers to get access to Washington State Identification System data.

Persons Testifying: PRO: Senator Patty Kuderer, Prime Sponsor; Todd Dowell, Washington Association of Prosecuting Attorneys; Hillary Madsen, Columbia Legal Services; Tom McBride, Washington Association of Juvenile Court Administrators.

CON: James McMahan, Washington Association of Sheriffs and Police Chiefs.

Persons Signed In To Testify But Not Testifying: No one.

Staff Summary of Public Testimony on Proposed Substitute (Regular Session 2020): *The committee recommended a different version of the bill than what was heard.* PRO: This is about fairness and second chances. Brain science tells us juveniles are programmed to make mistakes. When juvenile records are public it is difficult for a person to get a job, get a roof over their head, and move on with their lives. The difficult record sealing process is a barrier. The process is onerous and some juveniles do not know it exists. This bill has been worked on a lot in stakeholder meetings. We owe it to juveniles who have served their sentence and paid restitution to give them a second chance. This does not increase eligibility for sealing, it just streamlines the process.

CON: Our opposition is centered on the provision which includes law enforcement in the definition of agencies that are prohibited from giving out information about sealed juvenile records. If law enforcement cannot make use of juvenile sealed record information, it makes our access to the information meaningless. A recent Washington Supreme Court case affirms that law enforcement may consider information related to sealed juvenile records for the purpose of reviewing concealed pistol license applications. If a law enforcement agency has information, it should be able to act on it.

OTHER: We appreciate the work being done on this topic. We are trying to sort out the recent revisions and work through the recent changes, some of which could raise some issues. We appreciate clarifying how to handle deferred dispositions.

Persons Testifying: PRO: Senator Patty Kuderer, Prime Sponsor.

CON: James McMahan, Washington Association of Sheriffs and Police Chiefs.

OTHER: Russell Brown, Washington Association of Prosecuting Attorneys.

Persons Signed In To Testify But Not Testifying: No one.