H-2408.5

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**SUBSTITUTE HOUSE BILL 2034**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**State of Washington 67th Legislature 2022 Regular Session**

**By** House Children, Youth & Families (originally sponsored by Representatives Frame, Harris-Talley, Berry, Fitzgibbon, Simmons, Ramel, Chase, and Macri)

AN ACT Relating to juvenile records; amending RCW 13.50.260 and 13.50.270; adding new sections to chapter 13.50 RCW; and creating a new section.

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

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

(1) Since the creation of Washington state's juvenile courts, youth adjudicated of juvenile offenses have received differing degrees of legal protections related to their juvenile records.

(2) As legal protections for juvenile records expanded and contracted under different Washington legislatures, juvenile records and information related to those records have been disseminated in ways that hinder individuals adjudicated of juvenile offenses from effective reintegration and harm those individuals whose protected information has been shared without recourse or accountability.

(3) To remedy barriers created by the release of juvenile records and information related to those records, the legislature intends to emphasize that former individuals adjudicated of juvenile offenses can seek relief for harm caused by violations of this chapter and grant individuals the right to monetary damages for violations of this chapter.

NEW SECTION. **Sec.**  A new section is added to chapter 13.50 RCW to read as follows:

(1)(a) Any corporation, business trust, estate, trust, partnership, association, joint venture, any other legal or commercial entity, government, governmental subdivision, agency, municipality, and other similar legal entities capable of being sued in courts of law who, directly or by means of an agent, disseminates sealed or destroyed records or links the subject of a sealed juvenile record to the commission of a juvenile offense in violation of this chapter shall be subject to legal action for damages, to be brought by the subject of those records, claiming that a violation of this chapter has occurred.

(b) An individual alleging that the individual's records were disseminated in violation of this chapter may bring a civil action in any court of competent jurisdiction.

(c) In a civil action under this section in which the plaintiff prevails, the court may award:

(i) A per day penalty of $100 a day for each day since the record is shared in violation of this section without corrective action taken by the entity illegally sharing the record or actual damages, whichever is greater; and

(ii) Any other relief, including but not limited to an injunction, that the court deems appropriate.

(d) Actual damages under this section includes mental pain and suffering endured by the subject of the records that were disseminated in violation of this chapter.

(e) In addition to any relief awarded under (c) of this subsection, the court shall award reasonable attorneys' fees and costs to any prevailing plaintiff.

(2) Nothing in this section shall be construed to limit other remedies available for violations of the provisions of this chapter.

(3) Employees of governments, governmental subdivisions, agencies, and municipalities are not liable for civil damages under this section for actions taken as part of their work as such an employee.

(4) Any corporation, business trust, estate, trust, partnership, association, joint venture, any other legal or commercial entity, government, governmental subdivision, agency, municipality, and other legal entities are not liable under this section for illegally sharing a sealed or destroyed juvenile record if the entity did not have notice that a record is sealed under RCW 13.50.260 or destroyed under RCW 13.50.270.

**Sec.**  RCW 13.50.260 and 2020 c 184 s 1 are each amended to read as follows:

(1)(a) The court shall hold regular sealing hearings. During these regular sealing hearings, the court shall administratively seal an individual's juvenile record pursuant to the requirements of this subsection. Although the juvenile record shall be sealed, the social file may be available to any juvenile justice or care agency when an investigation or case involving the juvenile subject of the records is being prosecuted by the juvenile justice or care agency or when the juvenile justice or care agency is assigned the responsibility of supervising the juvenile. The juvenile respondent's presence is not required at any administrative sealing hearing.

(b) At ((~~the~~)) a juvenile disposition hearing ((~~of a juvenile offender~~)), the court shall provide notice of the juvenile's eligibility for juvenile records sealing to the juvenile and victims of the offense and schedule an administrative sealing hearing to take place during the first regularly scheduled sealing hearing after the latest of the following events that apply:

(i) The respondent's ((~~eighteenth~~)) 18th birthday;

(ii) Anticipated end date of a respondent's probation, if ordered;

(iii) Anticipated release from confinement at the juvenile rehabilitation administration, or the completion of parole, if the respondent is transferred to the juvenile rehabilitation administration.

(c) The court shall not schedule an administrative sealing hearing at the disposition and no administrative sealing hearing shall occur if one of the offenses for which the court has entered a disposition is at the time of commission of the offense:

(i) A most serious offense, as defined in RCW 9.94A.030;

(ii) A sex offense under chapter 9A.44 RCW; or

(iii) A drug offense, as defined in RCW 9.94A.030.

(d) At the time of the scheduled administrative sealing hearing, the court shall enter a written order sealing the respondent's juvenile court record pursuant to this subsection if the court finds by a preponderance of the evidence that the respondent is no longer on supervision for the case being considered for sealing and has paid the full amount of restitution owing to the individual victim named in the restitution order, excluding restitution owed to any public or private entity providing insurance coverage or health care coverage. In determining whether the respondent is on supervision or owes restitution, the court shall take judicial notice of court records, including records of the county clerk, and, if necessary, sworn testimony from a representative of the juvenile department.

(e) At the time of the administrative sealing hearing, if the court finds the respondent remains on supervision for the case being considered for sealing, then the court shall continue the administrative sealing hearing to a date within ((~~thirty~~)) 30 days following the anticipated end date of the respondent's supervision. At the next administrative sealing hearing, the court shall again determine the respondent's eligibility for sealing ((~~his or her~~)) the respondent's juvenile court record pursuant to (d) of this subsection, and, if necessary, continue the hearing again as provided in this subsection.

(f)(i) During the administrative sealing hearing, if the court finds the respondent is no longer on supervision for the case being considered for sealing, but the respondent has not paid the full amount of restitution owing to the individual victim named in the restitution order, excluding any public or private entity providing insurance coverage or health care coverage, the court shall deny sealing the juvenile court record in a written order that: (A) Specifies the amount of restitution that remains unpaid to the original victim, excluding any public or private entity providing insurance coverage or health care coverage; and (B) provides direction to the respondent on how to pursue the sealing of records associated with this cause of action.

(ii) Within five business days of the entry of the written order denying the request to seal a juvenile court record, the juvenile court department staff shall notify the respondent of the denial by providing a copy of the order of denial to the respondent in person or in writing mailed to the respondent's last known address in the department of licensing database or the respondent's address provided to the court, whichever is more recent.

(iii) At any time following entry of the written order denying the request to seal a juvenile court record, the respondent may contact the juvenile court department, provide proof of payment of the remaining unpaid restitution to the original victim, excluding any public or private entity providing insurance coverage or health care coverage, and request an administrative sealing hearing. Upon verification of the satisfaction of the restitution payment, the juvenile court department staff shall circulate for signature an order sealing the file, and file the signed order with the clerk's office, who shall seal the record.

(iv) The administrative office of the courts must ensure that sealed juvenile records remain private in case of an appeal and are either not posted or redacted from any clerks papers that are posted online with the appellate record, as well as taking any other prudent steps necessary to avoid exposing sealed juvenile records to the public.

(2) Except for dismissal of a deferred disposition under RCW 13.40.127, the court shall enter a written order immediately sealing the official juvenile court record upon the acquittal after a fact finding or upon the dismissal of charges with prejudice, subject to the state's right, if any, to appeal the dismissal.

(3) If a juvenile court record has not already been sealed pursuant to this section, in any case in which information has been filed pursuant to RCW 13.40.100 or a complaint has been filed with the prosecutor and referred for diversion pursuant to RCW 13.40.070, the person who is the subject of the information or complaint may file a motion with the court to have the court vacate its order and findings, if any; resolve the status of any debts owing; and, subject to RCW 13.50.050(13), order the sealing of the official juvenile court record, the social file, and records of the court and of any other agency in the case, with the exception of identifying information under RCW 13.50.050(13).

(4)(a) The court shall grant any motion to seal records for class A offenses made pursuant to subsection (3) of this section if:

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

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

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

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

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

(vi) The person has paid the full amount of restitution owing to the individual victim named in the restitution order, excluding restitution owed to any public or private entity providing insurance coverage or health care coverage.

(b) The court shall grant any motion to seal records for class B, class C, gross misdemeanor, and misdemeanor offenses and diversions made under subsection (3) of this section if:

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

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

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

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

(v) The person has paid the full amount of restitution owing to the individual victim named in the restitution order, excluding restitution owed to any insurance provider authorized under Title 48 RCW.

(c) Notwithstanding the requirements in (a) or (b) of this subsection, the court shall grant any motion to seal records of any deferred disposition vacated under RCW 13.40.127(9) prior to June 7, 2012, if restitution has been paid and the person is ((~~eighteen~~)) 18 years of age or older at the time of the motion.

(5) The person making a motion pursuant to subsection (3) of this section shall give reasonable notice of the motion to the prosecution and to any person or agency whose records are sought to be sealed.

(6)(a) If the court enters a written order sealing the juvenile court record pursuant to this section, it shall, subject to RCW 13.50.050(13), order sealed the official juvenile court ((~~record~~)) file, the social file, and other records relating to the case as are named in the order. Thereafter, the adjudication and proceedings in the case shall be treated as if they never occurred((~~, and the~~)). The subject of the sealed records may reply accordingly to any inquiry about ((~~the events, records of which are sealed~~)) the subject's commission of a juvenile offense, including an inquiry about whether the subject has a disqualifying arrest or adjudication, that the subject does not have a juvenile arrest or adjudication. Any agency shall reply to any inquiry concerning confidential or sealed records that any such records are confidential, and no information can be given about the existence or nonexistence of such records ((~~concerning an individual~~)).

(b) In the event the subject of the juvenile records receives a full and unconditional pardon, the proceedings in the matter upon which the pardon has been granted shall be treated as if they never occurred, and the subject of the records may reply accordingly to any inquiry about ((~~the events upon which the pardon was received~~)) the subject's commission of a juvenile offense, including an inquiry about whether the subject has a disqualifying adjudication, that the subject does not have such an adjudication. Any agency shall reply to any inquiry concerning the records pertaining to the events for which the subject received a pardon that any such records are confidential, and no information can be given about the existence or nonexistence of such records ((~~concerning an individual~~)).

(c) ((~~Effective July 1, 2019, the~~)) The department of licensing may release information related to records the court has ordered sealed only to the extent necessary to comply with federal law and regulation.

(d) The court shall provide written notice to individuals whose juvenile records are sealed under this section that includes information about the meaning of having a sealed juvenile record. The written notice required under this subsection shall be in substantially the following form:

NOTICE

Your juvenile record is sealed. Under Washington law, if an employer asks about your sealed adjudication, you can respond that you have no prior juvenile arrest or adjudication. You might be required to disclose the existence of a sealed adjudication under federal law. If you have a subsequent juvenile adjudication or are charged with an adult felony, your record will be unsealed.

(e) All Washington state government agencies that conduct state-based background checks for licensing or hiring determinations may not consider or use any information provided by an applicant related to the commission of a juvenile offense or information produced by a state source related to the commission of a juvenile offense unless the agency confirms that the official juvenile court record related to that offense remains open for public inspection.

(7) Inspection of the files and records included in the order to seal may thereafter be permitted only by order of the court upon motion made by the person who is the subject of the information or complaint, except as otherwise provided in RCW 13.50.010(8) and 13.50.050(13).

(8)(a) Any adjudication of a juvenile offense or a crime subsequent to sealing has the effect of nullifying a sealing order; however, the court may order the juvenile court record resealed upon disposition of the subsequent matter if the case meets the sealing criteria under this section and the court record has not previously been resealed.

(b) Any charging of an adult felony subsequent to the sealing has the effect of nullifying the sealing order.

(c) The administrative office of the courts shall ensure that the superior court judicial information system provides prosecutors access to information on the existence of sealed juvenile records.

(d) The Washington state patrol shall ensure that the Washington state identification system provides Washington state criminal justice agencies access to sealed juvenile records information.

(9) If the juvenile court record has been sealed pursuant to this section, the record of an employee is not admissible in an action for liability against the employer based on the ((~~former juvenile offender's~~)) subject of the sealed juvenile record's conduct to show that the employer knew or should have known of the juvenile record of the employee. The record may be admissible, however, if a background check conducted or authorized by the employer contained the information in the sealed record.

(10) County clerks may interact or correspond with the respondent, ((~~his or her~~)) the respondent's parents, restitution recipients, and any holders of potential assets or wages of the respondent for the purposes of collecting an outstanding legal financial obligation after juvenile court records have been sealed pursuant to this section.

(11) Persons and agencies that obtain sealed juvenile records information pursuant to this section may communicate about this information with the respondent, but may not disseminate or be compelled to release the information to any person or agency not specifically granted access to sealed juvenile records in this section.

(12) All criminal justice agencies must not disclose confidential information or sealed records accessed through the Washington state identification system or other means, and no information can be given to third parties other than Washington state criminal justice agencies about the existence or nonexistence of confidential or sealed records concerning an individual.

**Sec.**  RCW 13.50.270 and 2018 c 82 s 5 are each amended to read as follows:

(1)(a) Subject to RCW 13.50.050(13), all records maintained by any court or law enforcement agency, including the juvenile court, local law enforcement, the Washington state patrol, and the prosecutor's office, shall be automatically destroyed within ((~~ninety~~)) 90 days of becoming eligible for destruction. Juvenile records are eligible for destruction when:

(i) The person who is the subject of the information or complaint is at least ((~~eighteen~~)) 18 years of age;

(ii) The records in question consist of successfully completed diversion agreements and counsel and release agreements, or both, which were completed on or after June 7, 2018; and

(iii) There is no restitution owing in the case.

(b) Notwithstanding this subsection (1), records of successfully completed diversion agreements and counsel and release agreements remain subject to destruction under the terms set forth in subsections (2) through (4) of this section, as well as sealing under RCW 13.50.260.

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

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

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

(3)(a) A person may request that the court order the records in his or her case destroyed as follows:

(i) A person ((~~eighteen~~)) 18 years of age or older whose criminal history consists entirely of one diversion agreement or counsel and release entered prior to June 12, 2008. The request shall be granted if the court finds that two years have elapsed since completion of the agreement or counsel and release.

(ii) A person ((~~twenty-three~~)) 23 years of age or older whose criminal history consists of only referrals for diversion. The request shall be granted if the court finds that all diversion agreements have been successfully completed and no proceeding is pending against the person seeking the conviction of a criminal offense.

(b) If the court grants the motion to destroy records made pursuant to this subsection, it shall, subject to RCW 13.50.050(13), order the official juvenile court record, the social file, and any other records named in the order to be destroyed.

(c) The person making the motion pursuant to this subsection must give reasonable notice of the motion to the prosecuting attorney and to any agency whose records are sought to be destroyed.

(4) Any juvenile justice or care agency may, subject to the limitations in RCW 13.50.050(13) and this section, develop procedures for the routine destruction of records relating to juvenile offenses and diversions.

(a) Records may be routinely destroyed only when the person the subject of the information or complaint has attained ((~~twenty-three~~)) 23 years of age or older or pursuant to subsection (1) of this section.

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

NEW SECTION. **Sec.**  A new section is added to chapter 13.50 RCW to read as follows:

The department of children, youth, and families shall adopt rules governing the use of records sealed under RCW 13.50.260 related to the commission of a juvenile offense, and adopt rules creating an automatic sealing process governing the use of records that the agency holds arising from, relating to, or revealing the existence of a juvenile adjudication. These rules must specify the circumstances under which such records may be referred to, used, disclosed, or disseminated.

**--- END ---**