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**Children, Youth & Families Committee**

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**HB 2034**

**Brief Description:** Concerning juvenile records.

**Sponsors:** Representatives Frame, Harris-Talley, Berry, Fitzgibbon, Simmons, Ramel, Chase and Macri.

**Brief Summary of Bill**

- Creates a cause of action where any person, corporation, or government entity who disseminates sealed or destroyed juvenile records may be sued for damages by the subject of those records.
- Creates a process where certain sealed juvenile records must be destroyed when the subject of those records turns aged 23 years old.
- Creates a process for persons aged 23 and older may request that sealed juvenile records be destroyed.

**Hearing Date:** 1/24/22

**Staff:** Luke Wickham (786-7146).

**Background:**

*Juvenile Records.*

Juvenile adjudication records are public unless sealed. Records of non-adjudication juvenile cases, such as dependency or adoption records, are not open to public inspection.

*Sealing of Juvenile Records.*

Two methods by which individuals may seal their juvenile records include:

- an individual may make a motion to seal the official juvenile court record, the social file, and records of the court and any other agency in the case; or

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- an individual may have their record sealed during regularly held administrative sealing hearings.

Once a juvenile record is sealed, the proceedings in the case must be treated as if they never occurred. Any subsequent criminal adjudication or adult felony charge unseals the case.

#### *Destruction of Juvenile Records.*

All records maintained by any court or law enforcement agency must be automatically destroyed within 90 days of becoming eligible for destruction. Records are eligible for such destruction when:

- the person is at least 18 years of age;
- the records consist of successfully completed diversion agreements and counsel and release agreements, or both, which were completed on or after June 7, 2018; and
- there is no restitution owing in the case.

#### *Scoring Juvenile Offenses for Purposes of Adult Criminal Sentencing.*

The Sentencing Reform Act provides a determinate sentencing system in which sentencing courts generally impose sentences within a standard range. The standard range for a person is determined by reference to a grid, which provides a base sentence according to the person's offender score and the seriousness level of the present offense. The offender score is a point total based on the person's prior dispositions and convictions. Certain prior dispositions and convictions are excluded from offender score calculations if the person remains crime-free in the community for a specified period of time following release.

A person's juvenile disposition records are included in offender score calculations if the person is convicted of a subsequent adult felony. Prior juvenile dispositions are typically worth fewer points than equivalent adult convictions depending on the nature of the prior offense and the severity of the current offense. Class A and sex offenses are always included in the offender score. Class B offenses, other than sex offenses, are not included in the offender score if the person has spent 10 years in the community without receiving a subsequent conviction. Class C felony convictions are not included in the offender score if the person has spent five years in the community without receiving a subsequent conviction.

#### **Summary of Bill:**

##### *Cause of Action.*

Any person, corporation, business trust, estate, partnership, association, joint venture, any other legal or commercial entity, government, government subdivision, agency, municipality, or other legal person who disseminates sealed or destroyed records may be sued for damages by the subject of those records.

If the plaintiff prevails in such an action, the court may award:

- a per day penalty of \$100 a day for each day since the record is shared without corrective action or actual damages, whichever is greater; and

- any other relief the court deems appropriate.

The court must also award reasonable attorneys' fees and costs to any prevailing plaintiff.

*Juvenile Record Sealing.*

The subject of a sealed juvenile record may reply to an inquiry about 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.

*Juvenile Record Destruction.*

Eligibility for automatic destruction of juvenile records is expanded to include records where:

- the person is at least 23 years old;
- the records in question relate to a sealed juvenile record that remains sealed;
- the offense is not a serious violent offense, or an offense requiring registration based on being a sex or kidnapping offense;
- there is no pending proceeding seeking the conviction of the person;
- there is no restitution owing in the case; and
- the offense related to the record would no longer be considered a point or fraction of a point for purposes of criminal sentencing.

The court must also grant a request to destroy a juvenile record if:

- the person is at least 23 years old;
- the records in question relate to a sealed juvenile record that remains sealed;
- the offense is not a serious violent offense, or an offense requiring registration based on being a sex or kidnapping offense;
- there is no pending proceeding seeking the conviction of the person; and
- there is no restitution owing in the case; and
- the offense related to the record would no longer be considered a point or fraction of a point for purposes of criminal sentencing.

A person aged 23 or older may request to destroy sealed records that involves a serious violent offense or an offense requiring registration based on being a sex or kidnapping offense and would not be considered a point or fraction of a point during adult criminal sentencing and the court must grant such a request if the court finds that the person has rehabilitated such that destruction of the record would not be detrimental to public safety. A court may not grant such a request if there is a pending proceeding seeking the conviction of the person or there is restitution owing in the case. In determining whether to grant such a request, the court must consider certain criteria.

Any agency ordered to destroy its records must do so within 90 days. The Administrative Office of the Courts must send notice to individuals that may request record destruction within 90 days of the individual's ability to request destruction.

A record is considered destroyed when the document or file is permanently irretrievable, and any

connection between a juvenile arrest or adjudication to the individual is completely removed.

Every juvenile court must maintain a public juvenile destruction docket which must be available for public inspection listing the date of the adjudication, the offense, the date of destruction, and whether the record was destroyed based on the automatic process or based on a request to destroy. The juvenile court must also keep a confidential destruction docket that lists additional information, including the name and date of birth of the subject of the juvenile records. The confidential juvenile destruction docket can only be reviewed and shared with the subject of the record.

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.