

SENATE BILL REPORT

E2SSB 6561

As Passed Senate, February 13, 2010

Title: An act relating to restricting access to juvenile offender records.

Brief Description: Restricting access to juvenile offender records.

Sponsors: Senate Committee on Ways & Means (originally sponsored by Senators Hargrove, McCaslin, Regala and Stevens).

Brief History:

Committee Activity: Human Services & Corrections: 1/29/10, 2/04/10 [DPS].

Ways & Means: 2/08/10, 2/09/10 [DP2S, w/oRec].

Passed Senate: 2/13/10, 41-4.

SENATE COMMITTEE ON HUMAN SERVICES & CORRECTIONS

Majority Report: That Substitute Senate Bill No. 6561 be substituted therefor, and the substitute bill do pass.

Signed by Senators Hargrove, Chair; Regala, Vice Chair; Stevens, Ranking Minority Member; Brandland, Carrell, Kauffman and McAuliffe.

Staff: Jennifer Strus (786-7316)

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: That Second Substitute Senate Bill No. 6561 be substituted therefor, and the second substitute bill do pass.

Signed by Senators Prentice, Chair; Fraser, Vice Chair, Capital Budget Chair; Tom, Vice Chair, Operating Budget; Fairley, Hobbs, Keiser, Kohl-Welles, McDermott, Murray, Oemig, Pridemore, Regala and Rockefeller.

Minority Report: That it be referred without recommendation.

Signed by Senators Zarelli, Ranking Minority Member; Brandland, Carrell, Hewitt, Honeyford, Parlette, Pflug and Schoesler.

Staff: Jenny Greenlee (786-7711)

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: A juvenile must make a motion to the court to have his or her juvenile record sealed. Courts do not have the authority to seal a record of an adjudication for a Class A offense or a Class B or C sex offense. The court does have discretion to order sealed the following records:

- Class B offenses where the person has spent five consecutive years since the last date of release from confinement, full-time residential treatment, or entry of disposition in the community without being convicted of any offense or crime;
- Class C offenses where the person has spent two consecutive years since the last date of release from confinement, full-time residential treatment, or entry of disposition in the community without being convicted of any offense or crime;
- gross misdemeanors and misdemeanors where the person has spent two consecutive years since the last date of release from confinement, full-time residential treatment, or entry of disposition in the community without being convicted of any offense or crime; and
- diversions where the person has spent two consecutive years in the community since the completion of the diversion agreement without being convicted of any offense or crime.

In addition, the court cannot order juvenile records sealed if there is: a proceeding pending against the moving party seeking his or her conviction for a juvenile or criminal offense; a proceeding pending seeking the formation of a diversion agreement with that person; and full restitution has not been paid.

If the court grants the motion to seal, the order to seal covers the juvenile court file, the social file, and other records relating to the case as are named in the order. The order to seal means the proceedings in the case can be treated as though they never occurred and the subject of the records may reply accordingly to any inquiry about the events contained in the record.

Summary of Engrossed Second Substitute Bill: The Legislature intends that, at some point in the near future, access to juvenile offender records is to be automatically restricted when the juvenile turns 18 and meets other requirements.

The term sealing is replaced with the term restricting access to.

The court has the authority to restrict access to records for Class A offenses if, since the last date of release from confinement, full time residential treatment 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; is not party to a pending proceeding seeking his or her conviction for a juvenile or criminal offense; is not a party to a proceeding seeking the formation of a diversion agreement; has not been convicted of a sex offense; and has paid full restitution.

A person who has reached his or her 18th birthday must petition the court to have access to his or her records for Class B, C, gross misdemeanor, misdemeanor and diversions, other than sex offenses, restricted. Before the court orders that access to the records will be restricted, the person must show that:

- he or she has resided in the community for two consecutive years since the date he or she was released from confinement, entry of disposition or completion of a diversion agreement without being convicted of any crime or offense;
- no proceeding is pending against him or her seeking conviction for a juvenile or adult crime;
- no proceeding is pending against him or her for the formation of a diversion agreement; and
- full restitution has been paid.

No juvenile offense records maintained by any court, law enforcement agency, or state agency may be sold or distributed to any private data base company. This provision does not apply to records maintained and distributed by the Washington Association of Sheriffs and Police Chiefs.

The term adjudication as used in the juvenile section of the statute has the same meaning as conviction but only for purposes of sentencing under the Sentencing Reform Act.

Appropriation: None.

Fiscal Note: Available. New fiscal note requested on February 5th, 2010.

Committee/Commission/Task Force Created: No.

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

Staff Summary of Public Testimony on Original Bill (Human Services & Corrections):

PRO: She spent six years in a Juvenile Rehabilitation Administration institution for three Class A felonies. She took college classes while at JRA and when released was able to get into WSU. At WSU she moved into a dorm and applied for a job. As part of the application process they ran a background check on her. After she had been working at the job for awhile and had been promoted, they discovered that she had been convicted of a felony. Although she was able to keep her job, it took a lot of convincing. She is a senior at WSU and worried about being able to secure a professional job with her juvenile record following her. It is possible for youth to change, and we need to give them the opportunity to do so and move on with their lives, and this bill will help them do that. Most employers want to see the person's official records; this bill will allow youth to have their official records sealed. Several years ago, the Legislature passed a bill that reduced the time by half that was required to be spent in the community before sealing was allowed. That helped tremendously. Kids do not know that juvenile records will follow them into adulthood and impact their ability to get a job or a place to live. When a juvenile record is sealed, all impacted agencies are notified, and private companies who disperse this information are also obligated to not dispense the record - it generally takes them three months to accomplish that. Nevertheless, this bill would still make a huge difference. Sealing records is a strong incentive to pay off outstanding fines and restitution. Courts are not aggressive about notifying youth that they still owe money and when they try to seal their records, many youth are surprised that they still owe money. Ninety percent of the kids the sealing clinic deals with pay their outstanding balances within a couple of weeks of finding out that they owe money. Juvenile records showing that a youth was charged with something but not convicted

or where the case was dismissed still show up in records employers obtain and impact the juvenile's employability. Automatically restricting access to records would be more efficient and less expensive than the current process used to seal records. The process to seal records varies widely across the state but in every county the county clerk is involved and the process sometimes puts them in the position of giving legal advice which they are not supposed to do. An automatic process would remove this issue.

OTHER: No issue with the intent of the bill; concern is with the fiscal impact of the automatic sealing portion that requires courts to go back and look at old records of juveniles who have already turned 18. There is no computer system that connects all the players in the sealing process - courts, juvenile court administrators, prosecutors, law enforcement - hence there would be a substantial fiscal impact to accomplish the sealing for old records. The process created by the bill is unworkable - how does one restrict access to records that are already out there on the Internet? Employers ask about arrests now, not convictions - they have gotten more savvy about this distinction. Recommends that an index be created with a notation on it that all conditions of a sentence have been fulfilled and the youth is rehabilitated so it would be out there for the world to see. Also, youth should be issued a certificate of rehabilitation that they can take with them and show prospective employers, etc. and no action could be taken against them as a result if they have the certificate.

Persons Testifying (Human Services & Corrections): PRO: Starcia Ague, citizen; Casey Trupin, Columbia Legal Services; Katie Meyer, Street Youth Legal Advocates of Washington; Nicholas Lovrich, Washington State University.

OTHER: Pete Peterson, Washington Association of Juvenile Court Administrators; Teri Nielsen, Washington Association of County Clerks; Rowland Thompson, Allied Daily Newspapers.

Staff Summary of Public Testimony on Recommended First Substitute (Ways & Means): PRO: This bill is cheaper than the original version because it no longer applies retroactively. It is important to make the record restriction process easier for juveniles because many juveniles still owe victim restitution and other court costs. These must be paid in order for the juvenile to restrict their records. Making this process easier and having it apply to more records could generate \$1.8 million in crime victim restitution payments.

CON: Juvenile court administrators and court clerks oppose this bill based on the automatic restriction of access to juvenile records. This will require file review by clerks, which will take up to 30 minutes per case. Nothing happens automatically in the court system and this bill places a huge work burden on the courts.

OTHER: This bill contains language that preempts public disclosure laws by preventing courts and state agencies from selling juvenile offense records to private data base companies. Under current public disclosure law, one cannot discriminate based on the requester of the public record.

Persons Testifying (Ways & Means): PRO: Bruce Neas, Columbia Legal Services.

CON: Tom McBride, Washington Association of Juvenile Court Administrators; Debbie Wilke, Washington State Association of County Clerks.

OTHER: Rowland Thompson, Allied Daily Newspapers.