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HOUSE BILL 2541

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By Representatives Darneille, Dickerson, Jinkins, Roberts, Appleton, Kagi, and Kenney

Read first time 01/17/12. Referred to Committee on Early Learning & Human Services.

1 AN ACT Relating to sealing juvenile records; amending RCW  
2 13.40.127; and reenacting and amending RCW 13.50.050.

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

4 **Sec. 1.** RCW 13.40.127 and 2009 c 236 s 1 are each amended to read  
5 as follows:

6 (1) A juvenile is eligible for deferred disposition unless he or  
7 she:

8 (a) Is charged with a sex or violent offense;

9 (b) Has a criminal history which includes any felony;

10 (c) Has a prior deferred disposition or deferred adjudication; or

11 (d) Has two or more adjudications.

12 (2) The juvenile court may, upon motion at least fourteen days  
13 before commencement of trial and, after consulting the juvenile's  
14 custodial parent or parents or guardian and with the consent of the  
15 juvenile, continue the case for disposition for a period not to exceed  
16 one year from the date the juvenile is found guilty. The court shall  
17 consider whether the offender and the community will benefit from a  
18 deferred disposition before deferring the disposition.

19 (3) Any juvenile who agrees to a deferral of disposition shall:

1 (a) Stipulate to the admissibility of the facts contained in the  
2 written police report;

3 (b) Acknowledge that the report will be entered and used to support  
4 a finding of guilt and to impose a disposition if the juvenile fails to  
5 comply with terms of supervision; and

6 (c) Waive the following rights to: (i) A speedy disposition; and  
7 (ii) call and confront witnesses.

8 The adjudicatory hearing shall be limited to a reading of the  
9 court's record.

10 (4) Following the stipulation, acknowledgment, waiver, and entry of  
11 a finding or plea of guilt, the court shall defer entry of an order of  
12 disposition of the juvenile.

13 (5) Any juvenile granted a deferral of disposition under this  
14 section shall be placed under community supervision. The court may  
15 impose any conditions of supervision that it deems appropriate  
16 including posting a probation bond. Payment of restitution under RCW  
17 13.40.190 shall be a condition of community supervision under this  
18 section.

19 The court may require a juvenile offender convicted of animal  
20 cruelty in the first degree to submit to a mental health evaluation to  
21 determine if the offender would benefit from treatment and such  
22 intervention would promote the safety of the community. After  
23 consideration of the results of the evaluation, as a condition of  
24 community supervision, the court may order the offender to attend  
25 treatment to address issues pertinent to the offense.

26 (6) A parent who signed for a probation bond has the right to  
27 notify the counselor if the juvenile fails to comply with the bond or  
28 conditions of supervision. The counselor shall notify the court and  
29 surety of any failure to comply. A surety shall notify the court of  
30 the juvenile's failure to comply with the probation bond. The state  
31 shall bear the burden to prove, by a preponderance of the evidence,  
32 that the juvenile has failed to comply with the terms of community  
33 supervision.

34 (7) A juvenile's lack of compliance shall be determined by the  
35 judge upon written motion by the prosecutor or the juvenile's juvenile  
36 court community supervision counselor. If a juvenile fails to comply  
37 with terms of supervision, the court shall enter an order of  
38 disposition.

1 (8) At any time following deferral of disposition the court may,  
2 following a hearing, continue the case for an additional one-year  
3 period for good cause.

4 (9) At the conclusion of the period set forth in the order of  
5 deferral and upon a finding by the court of full compliance with  
6 conditions of supervision and payment of full restitution, the  
7 respondent's conviction shall be vacated and the court shall dismiss  
8 the case with prejudice, except that a conviction under RCW 16.52.205  
9 shall not be vacated.

10 ~~(10)(a) ((Records of deferred disposition cases vacated under~~  
11 ~~subsection (9) of this section shall be sealed no later than thirty~~  
12 ~~days after the juvenile's eighteenth birthday provided that the~~  
13 ~~juvenile does not have any charges pending at that time. If a juvenile~~  
14 ~~has already reached his or her eighteenth birthday before July 26,~~  
15 ~~2009, and does not have any charges pending, he or she may request that~~  
16 ~~the court issue an order sealing the records of his or her deferred~~  
17 ~~disposition cases vacated under subsection (9) of this section, and~~  
18 ~~this request shall be granted.))~~ Any time the court vacates a  
19 conviction pursuant to subsection (9) of this section, the court shall  
20 enter a written order sealing the case. Any deferred disposition  
21 vacated prior to the effective date of this section is not subject to  
22 sealing under this subsection.

23 (b) Nothing in this subsection shall preclude a juvenile from  
24 petitioning the court to have the records of his or her deferred  
25 dispositions sealed under RCW 13.50.050 (11) and (12).

26 ~~((b))~~ (c) Records sealed under this provision shall have the same  
27 legal status as records sealed under RCW 13.50.050.

28 **Sec. 2.** RCW 13.50.050 and 2011 c 338 s 4 and 2011 c 333 s 4 are  
29 each reenacted and amended to read as follows:

30 (1) This section governs records relating to the commission of  
31 juvenile offenses, including records relating to diversions.

32 (2) The official juvenile court file of any alleged or proven  
33 juvenile offender shall be open to public inspection, unless sealed  
34 pursuant to subsection (12) of this section.

35 (3) All records other than the official juvenile court file are  
36 confidential and may be released only as provided in this section, RCW  
37 13.50.010, 13.40.215, and 4.24.550.

1 (4) Except as otherwise provided in this section and RCW 13.50.010,  
2 records retained or produced by any juvenile justice or care agency may  
3 be released to other participants in the juvenile justice or care  
4 system only when an investigation or case involving the juvenile in  
5 question is being pursued by the other participant or when that other  
6 participant is assigned the responsibility for supervising the  
7 juvenile.

8 (5) Except as provided in RCW 4.24.550, information not in an  
9 official juvenile court file concerning a juvenile or a juvenile's  
10 family may be released to the public only when that information could  
11 not reasonably be expected to identify the juvenile or the juvenile's  
12 family.

13 (6) Notwithstanding any other provision of this chapter, the  
14 release, to the juvenile or his or her attorney, of law enforcement and  
15 prosecuting attorneys' records pertaining to investigation, diversion,  
16 and prosecution of juvenile offenses shall be governed by the rules of  
17 discovery and other rules of law applicable in adult criminal  
18 investigations and prosecutions.

19 (7) Upon the decision to arrest or the arrest, law enforcement and  
20 prosecuting attorneys may cooperate with schools in releasing  
21 information to a school pertaining to the investigation, diversion, and  
22 prosecution of a juvenile attending the school. Upon the decision to  
23 arrest or the arrest, incident reports may be released unless releasing  
24 the records would jeopardize the investigation or prosecution or  
25 endanger witnesses. If release of incident reports would jeopardize  
26 the investigation or prosecution or endanger witnesses, law enforcement  
27 and prosecuting attorneys may release information to the maximum extent  
28 possible to assist schools in protecting other students, staff, and  
29 school property.

30 (8) The juvenile court and the prosecutor may set up and maintain  
31 a central recordkeeping system which may receive information on all  
32 alleged juvenile offenders against whom a complaint has been filed  
33 pursuant to RCW 13.40.070 whether or not their cases are currently  
34 pending before the court. The central recordkeeping system may be  
35 computerized. If a complaint has been referred to a diversion unit,  
36 the diversion unit shall promptly report to the juvenile court or the  
37 prosecuting attorney when the juvenile has agreed to diversion. An

1 offense shall not be reported as criminal history in any central  
2 recordkeeping system without notification by the diversion unit of the  
3 date on which the offender agreed to diversion.

4 (9) Upon request of the victim of a crime or the victim's immediate  
5 family, the identity of an alleged or proven juvenile offender alleged  
6 or found to have committed a crime against the victim and the identity  
7 of the alleged or proven juvenile offender's parent, guardian, or  
8 custodian and the circumstance of the alleged or proven crime shall be  
9 released to the victim of the crime or the victim's immediate family.

10 (10) Subject to the rules of discovery applicable in adult criminal  
11 prosecutions, the juvenile offense records of an adult criminal  
12 defendant or witness in an adult criminal proceeding shall be released  
13 upon request to prosecution and defense counsel after a charge has  
14 actually been filed. The juvenile offense records of any adult  
15 convicted of a crime and placed under the supervision of the adult  
16 corrections system shall be released upon request to the adult  
17 corrections system.

18 (11) In any case in which an information has been filed pursuant to  
19 RCW 13.40.100 or a complaint has been filed with the prosecutor and  
20 referred for diversion pursuant to RCW 13.40.070, the person the  
21 subject of the information or complaint may file a motion with the  
22 court to have the court vacate its order and findings, if any, and,  
23 subject to subsection (23) of this section, order the sealing of the  
24 official juvenile court file, the social file, and records of the court  
25 and of any other agency in the case.

26 (12)(a) The court shall not grant any motion to seal records for  
27 class A offenses made pursuant to subsection (11) of this section that  
28 is filed on or after July 1, 1997, unless:

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

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

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

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

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

7 (vi) Full restitution has been paid.

8 (b) The court shall not grant any motion to seal records for class  
9 B, C, gross misdemeanor and misdemeanor offenses and diversions made  
10 under subsection (11) of this section unless:

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

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

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

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

23 (v) Full restitution has been paid.

24 (c) Notwithstanding the requirements in (a) or (b) of this  
25 subsection, the court shall grant any motion to seal records of any  
26 deferred disposition previously vacated under RCW 13.40.127(9) if the  
27 person is eighteen years of age or older at the time of the motion.

28 (13) The person making a motion pursuant to subsection (11) of this  
29 section shall give reasonable notice of the motion to the prosecution  
30 and to any person or agency whose files are sought to be sealed.

31 (14)(a) If the court grants the motion to seal made pursuant to  
32 subsection (11) of this section, it shall, subject to subsection (23)  
33 of this section, order sealed the official juvenile court file, the  
34 social file, and other records relating to the case as are named in the  
35 order. Thereafter, the proceedings in the case shall be treated as if  
36 they never occurred, and the subject of the records may reply  
37 accordingly to any inquiry about the events, records of which are  
38 sealed. Any agency shall reply to any inquiry concerning confidential

1 or sealed records that records are confidential, and no information can  
2 be given about the existence or nonexistence of records concerning an  
3 individual.

4 (b) In the event the subject of the juvenile records receives a  
5 full and unconditional pardon, the proceedings in the matter upon which  
6 the pardon has been granted shall be treated as if they never occurred,  
7 and the subject of the records may reply accordingly to any inquiry  
8 about the events upon which the pardon was received. Any agency shall  
9 reply to any inquiry concerning the records pertaining to the events  
10 for which the subject received a pardon that records are confidential,  
11 and no information can be given about the existence or nonexistence of  
12 records concerning an individual.

13 (15) Inspection of the files and records included in the order to  
14 seal may thereafter be permitted only by order of the court upon motion  
15 made by the person who is the subject of the information or complaint,  
16 except as otherwise provided in RCW 13.50.010(8) and subsection (23) of  
17 this section.

18 (16) Any adjudication of a juvenile offense or a crime subsequent  
19 to sealing has the effect of nullifying the sealing order. Any  
20 charging of an adult felony subsequent to the sealing has the effect of  
21 nullifying the sealing order for the purposes of chapter 9.94A RCW.  
22 The administrative office of the courts shall ensure that the superior  
23 court judicial information system provides prosecutors access to  
24 information on the existence of sealed juvenile records.

25 (17)(a)(i) Subject to subsection (23) of this section, all records  
26 maintained by any court or law enforcement agency, including the  
27 juvenile court, local law enforcement, the Washington state patrol, and  
28 the prosecutor's office, shall be automatically destroyed within ninety  
29 days of becoming eligible for destruction. Juvenile records are  
30 eligible for destruction when:

31 (A) The person who is the subject of the information or complaint  
32 is at least eighteen years of age;

33 (B) His or her criminal history consists entirely of one diversion  
34 agreement or counsel and release entered on or after June 12, 2008;

35 (C) Two years have elapsed since completion of the agreement or  
36 counsel and release;

37 (D) No proceeding is pending against the person seeking the  
38 conviction of a criminal offense; and

1 (E) There is no restitution owing in the case.

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

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

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

19 (c) A person eighteen years of age or older whose criminal history  
20 consists entirely of one diversion agreement or counsel and release  
21 entered prior to June 12, 2008, may request that the court order the  
22 records in his or her case destroyed. The request shall be granted,  
23 subject to subsection (23) of this section, if the court finds that two  
24 years have elapsed since completion of the agreement or counsel and  
25 release.

26 (d) A person twenty-three years of age or older whose criminal  
27 history consists of only referrals for diversion may request that the  
28 court order the records in those cases destroyed. The request shall be  
29 granted, subject to subsection (23) of this section, if the court finds  
30 that all diversion agreements have been successfully completed and no  
31 proceeding is pending against the person seeking the conviction of a  
32 criminal offense.

33 (18) If the court grants the motion to destroy records made  
34 pursuant to subsection (17)(c) or (d) of this section, it shall,  
35 subject to subsection (23) of this section, order the official juvenile  
36 court file, the social file, and any other records named in the order  
37 to be destroyed.



1 (19) The person making the motion pursuant to subsection (17)(c) or  
2 (d) of this section shall give reasonable notice of the motion to the  
3 prosecuting attorney and to any agency whose records are sought to be  
4 destroyed.

5 (20) Any juvenile to whom the provisions of this section may apply  
6 shall be given written notice of his or her rights under this section  
7 at the time of his or her disposition hearing or during the diversion  
8 process.

9 (21) Nothing in this section may be construed to prevent a crime  
10 victim or a member of the victim's family from divulging the identity  
11 of the alleged or proven juvenile offender or his or her family when  
12 necessary in a civil proceeding.

13 (22) Any juvenile justice or care agency may, subject to the  
14 limitations in subsection (23) of this section and (a) and (b) of this  
15 subsection, develop procedures for the routine destruction of records  
16 relating to juvenile offenses and diversions.

17 (a) Records may be routinely destroyed only when the person the  
18 subject of the information or complaint has attained twenty-three years  
19 of age or older or pursuant to subsection (17)(a) of this section.

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

22 (23) Except for subsection (17)(b) of this section, no identifying  
23 information held by the Washington state patrol in accordance with  
24 chapter 43.43 RCW is subject to destruction or sealing under this  
25 section. For the purposes of this subsection, identifying information  
26 includes photographs, fingerprints, palmprints, soleprints, toeprints  
27 and any other data that identifies a person by physical  
28 characteristics, name, birthdate or address, but does not include  
29 information regarding criminal activity, arrest, charging, diversion,  
30 conviction or other information about a person's treatment by the  
31 criminal justice system or about the person's behavior.

32 (24) Information identifying child victims under age eighteen who  
33 are victims of sexual assaults by juvenile offenders is confidential  
34 and not subject to release to the press or public without the  
35 permission of the child victim or the child's legal guardian.  
36 Identifying information includes the child victim's name, addresses,  
37 location, photographs, and in cases in which the child victim is a  
38 relative of the alleged perpetrator, identification of the relationship

1 between the child and the alleged perpetrator. Information identifying  
2 a child victim of sexual assault may be released to law enforcement,  
3 prosecutors, judges, defense attorneys, or private or governmental  
4 agencies that provide services to the child victim of sexual assault.

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