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**SUBSTITUTE SENATE BILL 5019**

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**State of Washington                      62nd Legislature                      2011 Regular Session**

**By** Senate Human Services & Corrections (originally sponsored by Senators Regala, Kline, Harper, and Kohl-Welles)

READ FIRST TIME 02/21/11.

1            AN ACT Relating to privacy of nonconviction records; amending RCW  
2 10.97.050; adding a new section to chapter 26.50 RCW; adding a new  
3 chapter to Title 10 RCW; and creating a new section.

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

5            NEW SECTION.    **Sec. 1.**    The legislature finds that with the  
6 increasing ease of access to online information about individuals,  
7 including in court files, and the increasing use of such information in  
8 background checks for employment and housing and other purposes,  
9 individuals are being unfairly deprived of employment and housing  
10 opportunities and otherwise harmed by governmental records of cases  
11 that either never resulted in convictions or are not now convictions,  
12 are duplicative, or could be misleading. Statutes and court rules  
13 governing other remedies, such as sealing and redaction, have been  
14 either insufficient to, or inappropriate for, remedying this harm.

15            The legislature recognizes that most other states limit public  
16 dissemination of nonconviction data by the courts. These limits are in  
17 place because of the privacy interests harmed by unfettered  
18 dissemination. Despite the fact that Washington has traditionally been

1 very protective of individual privacy, Washington does not currently  
2 provide any of the protections against court dissemination of  
3 nonconviction data that are found in other states.

4 Washington's legislature has long provided protection to  
5 individuals for nonconviction data in law enforcement records. The  
6 legislature has given the courts effective mechanisms for sealing  
7 juvenile court records from public access when the affected individual  
8 makes a motion and showing to the court of certain specified  
9 circumstances. Finally, Washington courts already keep the information  
10 contained in some court records, such as those pertaining to paternity  
11 or adoption, confidential. These procedures have been in place for  
12 many years and they comply with the constitutional requirement for open  
13 courts.

14 Therefore, it is the intent of the legislature to provide clarity  
15 in the information publicly disseminated by the courts and other  
16 criminal justice agencies about individuals in order to protect  
17 people's privacy. This intent is best served by having the courts and  
18 other criminal justice agencies provide information to the public that  
19 does not involve either an unfiled case or a case that resulted in an  
20 exonerating disposition. With respect to criminal justice agencies,  
21 this goal is accomplished by way of statutes currently providing for  
22 deletion of qualifying records. With respect to the courts, this goal  
23 is best accomplished by statute requiring that qualifying records be  
24 kept confidential.

25 NEW SECTION. **Sec. 2.** The definitions in this section apply  
26 throughout this chapter unless the context clearly requires otherwise.

27 (1) "Criminal history record information" has the same meaning as  
28 in RCW 10.97.030(1).

29 (2) "Nonconviction data" has the same meaning as in RCW  
30 10.97.030(2), and shall also include all criminal history record  
31 information relating to a conviction that has been vacated under RCW  
32 9.94A.640 or 9.96.060.

33 (3) "Conviction record" means criminal history record information  
34 relating to an incident which has led to a conviction or other  
35 disposition adverse to the subject, unless that conviction has been  
36 vacated pursuant to RCW 9.94A.640 or 9.96.060.

1 (4) "Conviction or other disposition adverse to the subject" has  
2 the same meaning as in RCW 10.97.030(4).

3 (5) "Criminal justice agency" has the same meaning as in RCW  
4 10.97.030(5).

5 (6) "The administration of criminal justice" has the same meaning  
6 as in RCW 10.97.030(6).

7 (7) "Disposition" has the same meaning as in RCW 10.97.030(7).

8 (8) "Dissemination" has the same meaning as in RCW 10.97.030(8).

9 NEW SECTION. **Sec. 3.** (1) "Record of exonerating disposition"  
10 means a record held by a court or judicial agency that would be  
11 nonconviction data if collected by a criminal justice agency other than  
12 a court. This shall not include acquittals by reason of insanity or  
13 dismissals based on lack of competency. This shall include otherwise  
14 qualifying records that are part of court indices and records of public  
15 judicial proceedings. This shall also include a record relating to an  
16 incident where:

17 (a) A probable cause hearing was held and the court found there was  
18 no probable cause;

19 (b) A charge was resolved by the prosecutor's acceptance of bail  
20 forfeiture; or

21 (c) A charge was dismissed pursuant to a stipulated order of  
22 continuance.

23 (2) A record of exonerating disposition held by a court or judicial  
24 agency shall, upon the motion of the person who is the subject of the  
25 record, be kept confidential by that court or judicial agency, except  
26 that the information shall be available to court personnel, judicial  
27 officers, law enforcement, prosecuting agencies, the individual  
28 identified in the records, and the attorney for that individual.

29 (3) The person filing a motion under this section may file it  
30 within thirty days after the exonerating disposition occurs and bears  
31 the burden of proving: (a) The record consists of an exonerating  
32 disposition, and (b) continued public access to the record poses a risk  
33 of harm to the subject of the record. Proof of these two circumstances  
34 is sufficient to constitute a compelling circumstance and concern, a  
35 serious and imminent threat to important interests, and a need for  
36 confidentiality which outweighs the public interest in and need for  
37 access to the record. The person filing the motion shall also file,

1 together with the motion, the proposed order contained in section 4 of  
2 this act. Thereafter, the proceedings in the case shall be treated as  
3 if they never occurred, and the subject of the records may reply  
4 accordingly to any inquiry about the events, records of which are kept  
5 confidential. Any agency shall reply to any inquiry concerning  
6 confidential records that the records are confidential, and no  
7 information can be given about the existence or nonexistence of records  
8 concerning an individual.

9 (4) A reasonable processing fee, not to exceed fifty dollars, may  
10 be charged by the clerk of the court at the time the motion is filed.

11 (5) Upon a showing of need, a court may authorize public access to  
12 the information but with the defendant's name redacted.

13 (6) The administrative office of the courts shall provide forms to  
14 facilitate the filing motions under this section by persons not  
15 represented by an attorney.

16 NEW SECTION. **Sec. 4.** The following order shall be used by the  
17 court in ordering that records be kept confidential.

18 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

19 IN AND FOR THE COUNTY OF.....

20 STATE OF WASHINGTON

21 Plaintiff,

23 vs.

26 Defendant.

Case No.

ORDER TO KEEP RECORDS

CONFIDENTIAL PURSUANT TO

RCW.....

AGREED ORDER

CLERK'S ACTION: REQUIRED

27 I. BASIS

28 THIS MATTER has been brought before the court by the defendant, who seeks an order to make all court records of  
29 this case, including electronic indices, confidential. The court has carefully, and independent of the parties, considered (1)  
30 the relevant court records; (2) the files, pleadings, and other supporting materials submitted herein; (3) the requirements of  
31 GR 15; (4) the open courts provision of the Washington state Constitution (Article 1, section 10); and (5) cases interpreting  
32 those provisions. The defendant  HAS or  HAS NOT paid the reasonable fees associated with this motion.

33 II. FINDINGS

34 In support of this order, the court hereby makes the following FINDINGS:

35 2.1 An exonerating disposition  IS or  IS NOT the outcome in this case.

1 2.2 The defendant [ ] HAS or [ ] HAS NOT shown a need for keeping the records confidential and a compelling  
2 circumstance and concern, a serious and imminent threat to important interests, and a need for confidentiality because:  
3 [ ] There is a compelling need for privacy in these records, which is a concern recognized by the legislature in this act.  
4 The records were open to the public while the case was pending before the court. Public court records are, and will continue  
5 to be, freely and instantly available worldwide if they are not now held confidential. This dissemination creates a serious  
6 and imminent threat that they will then be used to unfairly deny access to employment, housing, travel, or other interests  
7 recognized as important by the legislature in this act. [ ] .....  
8 .....  
9 .....

10 2.3 Adequate notice [ ] WAS or [ ] WAS NOT given to the appropriate parties.

11 2.4 The request to keep the records confidential has been carefully analyzed and the defendant [ ] HAS shown that  
12 keeping the records confidential is the least restrictive means available and will be effective to protect the threatened interests  
13 of the defendant because the records will be kept intact but confidential, where they will remain accessible to court personnel,  
14 judicial officers, law enforcement, prosecuting agencies, the individual identified in the records, and the attorney for that  
15 individual. Public access to the information can be ordered upon a showing of need, with names redacted or [ ] HAS NOT  
16 shown that keeping the records confidential is the least restrictive means available and will be effective to protect the  
17 threatened interests of the defendant because: .....  
18 .....  
19 .....

20 2.5 As specifically as possible, the court has weighed the compelling interests of the defendant and the public and has  
21 considered suggested alternatives (such as redaction or partial sealing) and has concluded that [ ] NO ALTERNATIVE to  
22 keeping the records confidential would be adequate to prevent the risk of harm shown by the defendant or [ ] THE  
23 FOLLOWING ALTERNATIVE to keeping the records confidential would be adequate to prevent the risk of harm shown  
24 by the defendant .....  
25 .....  
26 .....

27 2.6 This order [ ] DOES NOT EXPIRE and is no broader in its application or duration than necessary to serve its  
28 purpose, in that the records remain intact and accessible for some purposes and can be made public (with names redacted)  
29 if a showing of need is made, and it would be an unjust burden to require the defendant to seek renewal of this order in the  
30 future when the outcome of the case is an exonerating disposition that will not change or [ ] EXPIRES ON .....  
31 ..., ....., unless application to renew this order is made.

32 III. ORDER

33 Based on the above findings, the defendant's motion to keep records confidential is:

34 (a) GRANTED and:

35 (i) All records in the above numbered action, including electronic indices, are now hereby ordered to be kept confidential  
36 and removed from public dissemination.

1 (ii) The proceedings in this case shall be treated as if they never occurred, and the subject of the records may reply  
2 accordingly to any inquiry about the events.

3 (iii) The courts and any agency shall reply to any inquiry concerning confidential records by indicating that the records  
4 are confidential, and no information can be given about the existence or nonexistence of records concerning an individual.

5 (b) DENIED [ ] with or [ ] without prejudice.

6 DATED this ..... day of ....., 20...

7 .....

8 JUDGE/COMMISSIONER

9 Submitted by:

10 .....

11 Defendant, Attorney for Defendant and WSBA No.

12 Copy received and [ ] Approved as to Form and [ ] Approved for Entry:

13 .....

14 Prosecuting Attorney, WSBA No.

15 NEW SECTION. **Sec. 5.** A new section is added to chapter 26.50 RCW  
16 to read as follows:

17 (1) Courts and other criminal justice agencies shall not make  
18 available publicly on the internet any information regarding the  
19 registration, filing of a petition for, or issuance of an order for  
20 protection if:

21 (a) Such publication would be likely to publicly reveal the  
22 identity or location of the party protected under such order;

23 (b) The request for issuance of an order for protection has been  
24 withdrawn; or

25 (c) After a hearing, the court has declined to issue an order for  
26 protection.

27 (2) Courts and other criminal justice agencies may share court and  
28 law enforcement generated information contained in secure, governmental  
29 registries on the internet for protection order enforcement purposes  
30 and for the purposes of oversight and accountability of the courts and  
31 criminal justice agencies.

32 (3) The administrative office of the courts shall seek, receive,  
33 and make use of any funds that may be available from federal or other  
34 sources in order to implement this section and shall make every effort  
35 to qualify for federal funding.

1           **Sec. 6.** RCW 10.97.050 and 2005 c 421 s 9 are each amended to read  
2 as follows:

3           (1) Conviction records may be disseminated without restriction.

4           (2) Nonconviction data may not be disseminated except as provided  
5 in this section or RCW 10.97.080, unless the individual identified in  
6 the data has provided express written permission for dissemination.

7           (3) Any criminal history record information which pertains to an  
8 incident that occurred within the last twelve months for which a person  
9 is currently being processed by the criminal justice system, including  
10 the entire period of correctional supervision extending through final  
11 discharge from parole, when applicable, may be disseminated without  
12 restriction with the exception of a record being disseminated in  
13 response to a request for a conviction record under RCW 43.43.832. A  
14 request for a conviction record under RCW 43.43.832 shall not contain  
15 information for a person who, within the last twelve months, is  
16 currently being processed by the criminal justice system unless it  
17 pertains to information relating to a crime against a person as defined  
18 in RCW 9.94A.411.

19           (~~(3)~~) (4) Criminal history record information which includes  
20 nonconviction data may be disseminated by a criminal justice agency to  
21 another criminal justice agency for any purpose associated with the  
22 administration of criminal justice, or in connection with the  
23 employment of the subject of the record by a criminal justice or  
24 juvenile justice agency. A criminal justice agency may respond to any  
25 inquiry from another criminal justice agency without any obligation to  
26 ascertain the purpose for which the information is to be used by the  
27 agency making the inquiry.

28           (~~(4)~~) (5) Criminal history record information which includes  
29 nonconviction data may be disseminated by a criminal justice agency to  
30 implement a statute, ordinance, executive order, or a court rule,  
31 decision, or order which expressly refers to records of arrest,  
32 charges, or allegations of criminal conduct or other nonconviction data  
33 and authorizes or directs that it be available or accessible for a  
34 specific purpose.

35           (~~(5)~~) (6) Criminal history record information which includes  
36 nonconviction data may be disseminated to individuals and agencies  
37 pursuant to a contract with a criminal justice agency to provide  
38 services related to the administration of criminal justice. Such

1 contract must specifically authorize access to criminal history record  
2 information, but need not specifically state that access to  
3 nonconviction data is included. The agreement must limit the use of  
4 the criminal history record information to stated purposes and insure  
5 the confidentiality and security of the information consistent with  
6 state law and any applicable federal statutes and regulations.

7 ~~((+6+))~~ (7) Criminal history record information which includes  
8 nonconviction data may be disseminated to individuals and agencies for  
9 the express purpose of research, evaluative, or statistical activities  
10 pursuant to an agreement with a criminal justice agency. Such  
11 agreement must authorize the access to nonconviction data, limit the  
12 use of that information which identifies specific individuals to  
13 research, evaluative, or statistical purposes, and contain provisions  
14 giving notice to the person or organization to which the records are  
15 disseminated that the use of information obtained therefrom and further  
16 dissemination of such information are subject to the provisions of this  
17 chapter and applicable federal statutes and regulations, which shall be  
18 cited with express reference to the penalties provided for a violation  
19 thereof.

20 ~~((+7+))~~ (8) Every criminal justice agency that maintains and  
21 disseminates criminal history record information must maintain  
22 information pertaining to every dissemination of criminal history  
23 record information except a dissemination to the effect that the agency  
24 has no record concerning an individual. Information pertaining to  
25 disseminations shall include:

26 (a) An indication of to whom (agency or person) criminal history  
27 record information was disseminated;

28 (b) The date on which the information was disseminated;

29 (c) The individual to whom the information relates; and

30 (d) A brief description of the information disseminated.

31 The information pertaining to dissemination required to be  
32 maintained shall be retained for a period of not less than one year.

33 ~~((+8+))~~ (9) In addition to the other provisions in this section  
34 allowing dissemination of criminal history record information, RCW  
35 4.24.550 governs dissemination of information concerning offenders who  
36 commit sex offenses as defined by RCW 9.94A.030. Criminal justice  
37 agencies, their employees, and officials shall be immune from civil



1 liability for dissemination on criminal history record information  
2 concerning sex offenders as provided in RCW 4.24.550.

3 NEW SECTION. **Sec. 7.** If any provision of this act or its  
4 application to any person or circumstance is held invalid, the  
5 remainder of the act or the application of the provision to other  
6 persons or circumstances is not affected.

7 NEW SECTION. **Sec. 8.** Sections 1 through 4 of this act constitute  
8 a new chapter in Title 10 RCW.

9 NEW SECTION. **Sec. 9.** This act may be known and cited as the  
10 records privacy act of 2011.

--- END ---