
ENGROSSED SUBSTITUTE HOUSE BILL 1651

State of Washington

63rd Legislature

2013 Regular Session

By House Early Learning & Human Services (originally sponsored by Representatives Kagi, Walsh, Freeman, Roberts, Farrell, Zeiger, Goodman, Pollet, Sawyer, Appleton, Bergquist, Hunt, Moscoso, Jinkins, Ryu, and Morrell)

READ FIRST TIME 02/22/13.

1 AN ACT Relating to access to juvenile records; amending RCW
2 13.50.050 and 10.97.050; creating new sections; and providing an
3 effective date.

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

5 NEW SECTION. **Sec. 1.** The legislature finds that:

6 (1) The primary goal of the Washington state juvenile justice
7 system is the rehabilitation and reintegration of former juvenile
8 offenders. The public has a compelling interest in the rehabilitation
9 of former juvenile offenders and their successful reintegration into
10 society as active, law-abiding, and contributing members of their
11 communities. When juvenile court records are publicly available,
12 former juvenile offenders face a substantial barrier to reintegration,
13 as they are denied housing, employment, and education opportunities on
14 the basis of these records.

15 (2) The Washington state Constitution establishes that the public
16 has the right to an open court system. However, the public's right of
17 access to court records is not absolute and may be limited to protect
18 other interests. The legislature intends that juvenile court

1 proceedings be openly administered but that the records of these
2 proceedings be presumptively closed and not disseminated.

3 (3) Given the rehabilitative goals of the juvenile justice system,
4 the scientifically documented differences between the brain development
5 of juveniles and adults, and the differences between the structure and
6 goals of the juvenile justice system and the adult criminal justice
7 system, the legislature declares that it is the policy of the state of
8 Washington that the interest in juvenile rehabilitation and
9 reintegration constitutes compelling circumstances that outweigh the
10 public interest in continued availability of juvenile court records.

11 **Sec. 2.** RCW 13.50.050 and 2012 c 177 s 2 are each amended to read
12 as follows:

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

15 (2) The official juvenile court file of any alleged or proven
16 juvenile offender shall be ~~((open to public inspection, unless sealed
17 pursuant to subsection (12) of this section))~~ confidential unless the
18 juvenile has been adjudicated of a sex offense under chapter 9A.44 RCW,
19 a serious violent offense as defined in RCW 9.94A.030, arson in the
20 first degree or criminal solicitation of or criminal conspiracy to
21 commit arson in the first degree, assault of a child in the second
22 degree, kidnapping in the second degree, leading organized crime, or
23 malicious placement of an explosive in the first degree. In which
24 case, the official juvenile court file shall be open to the public in
25 its entirety.

26 (3) Access to the confidential official juvenile court file of any
27 alleged or proven juvenile offender shall be limited to the court,
28 prosecuting attorney, the parties and their attorneys, and only as
29 provided in subsection (4) of this section, juvenile justice or care
30 agencies.

31 (4) A juvenile justice or care agency shall have access to the
32 confidential official juvenile court file only when an investigation or
33 case involving the juvenile in question is being pursued by the
34 juvenile justice or care agency or when the juvenile justice or care
35 agency is responsible for supervising the juvenile.

36 (5) Nothing in this section shall limit the access by agencies to

1 any juvenile records for research and data-gathering purposes as
2 provided in RCW 13.50.010.

3 (6) Upon application of any interested party, after a hearing with
4 notice to all parties, and for good cause shown, the court may release
5 individual records and reports, or certain information contained
6 therein, to the petitioner, limited to the specific purpose expressly
7 authorized by the court, and upon the court's written finding that:

8 (a) Anyone present when the motion was heard had an opportunity to
9 address the motion to open the juvenile court file to public
10 inspection;

11 (b) The court has weighed the competing privacy interests of the
12 juvenile with the interests identified by petitioners as they apply to
13 the specific court record, with the presumption in favor of
14 confidentiality;

15 (c) The court has determined that a compelling reason exists for
16 such inspection and that the release or disclosure is necessary for the
17 protection of a compelling public or private interest; and

18 (d) The order of the court is no broader in its application or
19 duration than necessary to serve its purpose.

20 ~~((+3))~~ (7) All records ~~((other than))~~ retained or produced, which
21 are not part of the official juvenile court file, are confidential and
22 may be released only as provided in this section, RCW 13.50.010,
23 13.40.215, and 4.24.550.

24 ~~((+4))~~ (8) Except as otherwise provided in this section and RCW
25 13.50.010, records retained or produced by any juvenile justice or care
26 agency may be released to other participants in the juvenile justice or
27 care system only when an investigation or case involving the juvenile
28 in question is being pursued by the other participant or when that
29 other participant is assigned the responsibility for supervising the
30 juvenile.

31 ~~((+5))~~ (9) Except as provided in RCW 4.24.550, information not in
32 an official juvenile court file concerning a juvenile or a juvenile's
33 family may be released to the public only when that information could
34 not reasonably be expected to identify the juvenile or the juvenile's
35 family.

36 ~~((+6))~~ (10) Notwithstanding any other provision of this chapter,
37 the release, to the juvenile or his or her attorney, of law enforcement
38 and prosecuting attorneys' records pertaining to investigation,

1 diversion, and prosecution of juvenile offenses shall be governed by
2 the rules of discovery and other rules of law applicable in adult
3 criminal investigations and prosecutions.

4 ~~((+7))~~ (11) Upon the decision to arrest or the arrest, law
5 enforcement and prosecuting attorneys may cooperate with schools in
6 releasing information to a school pertaining to the investigation,
7 diversion, and prosecution of a juvenile attending the school. Upon
8 the decision to arrest or the arrest, incident reports may be released
9 unless releasing the records would jeopardize the investigation or
10 prosecution or endanger witnesses. If release of incident reports
11 would jeopardize the investigation or prosecution or endanger
12 witnesses, law enforcement and prosecuting attorneys may release
13 information to the maximum extent possible to assist schools in
14 protecting other students, staff, and school property.

15 ~~((+8))~~ (12) The juvenile court and the prosecutor may set up and
16 maintain a central recordkeeping system which may receive information
17 on all alleged juvenile offenders against whom a complaint has been
18 filed pursuant to RCW 13.40.070 whether or not their cases are
19 currently pending before the court. The central recordkeeping system
20 may be computerized. If a complaint has been referred to a diversion
21 unit, the diversion unit shall promptly report to the juvenile court or
22 the prosecuting attorney when the juvenile has agreed to diversion. An
23 offense shall not be reported as criminal history in any central
24 recordkeeping system without notification by the diversion unit of the
25 date on which the offender agreed to diversion.

26 ~~((+9))~~ (13) Upon request of the victim of a crime or the victim's
27 immediate family, the identity of an alleged or proven juvenile
28 offender alleged or found to have committed a crime against the victim
29 and the identity of the alleged or proven juvenile offender's parent,
30 guardian, or custodian and the circumstance of the alleged or proven
31 crime shall be released to the victim of the crime or the victim's
32 immediate family.

33 ~~((+10))~~ (14) Subject to the rules of discovery applicable in adult
34 criminal prosecutions, the juvenile offense records of an adult
35 criminal defendant or witness in an adult criminal proceeding shall be
36 released upon request to prosecution and defense counsel after a charge
37 has actually been filed. The juvenile offense records of any adult

1 convicted of a crime and placed under the supervision of the adult
2 corrections system shall be released upon request to the adult
3 corrections system.

4 ~~((+11+))~~ (15) In any case in which an information has been filed
5 pursuant to RCW 13.40.100 or a complaint has been filed with the
6 prosecutor and referred for diversion pursuant to RCW 13.40.070, the
7 person the subject of the information or complaint may file a motion
8 with the court to have the court vacate its order and findings, if any,
9 and, subject to subsection ~~((+23+))~~ (27) of this section, order the
10 sealing of the official juvenile court file, the social file, and
11 records of the court and of any other agency in the case.

12 ~~((+12+))~~ (16)(a) The court shall not grant any motion to seal
13 records for class A offenses made pursuant to subsection ~~((+11+))~~ (15)
14 of this section that is filed on or after July 1, 1997, unless:

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

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

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

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

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

30 (vi) Full restitution has been paid.

31 (b) The court shall not grant any motion to seal records for class
32 B, C, gross misdemeanor and misdemeanor offenses and diversions made
33 under subsection ~~((+11+))~~ (15) of this section unless:

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

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

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

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

8 (v) Full restitution has been paid.

9 (c) Notwithstanding the requirements in (a) or (b) of this
10 subsection, the court shall grant any motion to seal records of any
11 deferred disposition vacated under RCW 13.40.127(9) prior to June 7,
12 2012, if restitution has been paid and the person is eighteen years of
13 age or older at the time of the motion.

14 (~~(+13+)~~) (17) The person making a motion pursuant to subsection
15 (~~(+11+)~~) (15) of this section shall give reasonable notice of the
16 motion to the prosecution and to any person or agency whose files are
17 sought to be sealed.

18 (~~(+14+)~~) (18)(a) If the court grants the motion to seal made
19 pursuant to subsection (~~(+11+)~~) (15) of this section, it shall, subject
20 to subsection (~~(+23+)~~) (27) of this section, order sealed the official
21 juvenile court file, the social file, and other records relating to the
22 case as are named in the order. Thereafter, the proceedings in the
23 case shall be treated as if they never occurred, and the subject of the
24 records may reply accordingly to any inquiry about the events, records
25 of which are sealed. Any agency shall reply to any inquiry concerning
26 confidential or sealed records that records are confidential, and no
27 information can be given about the existence or nonexistence of records
28 concerning an individual.

29 (b) In the event the subject of the juvenile records receives a
30 full and unconditional pardon, the proceedings in the matter upon which
31 the pardon has been granted shall be treated as if they never occurred,
32 and the subject of the records may reply accordingly to any inquiry
33 about the events upon which the pardon was received. Any agency shall
34 reply to any inquiry concerning the records pertaining to the events
35 for which the subject received a pardon that records are confidential,
36 and no information can be given about the existence or nonexistence of
37 records concerning an individual.

1 (~~(15)~~) (19) Inspection of the files and records included in the
2 order to seal may thereafter be permitted only by order of the court
3 upon motion made by the person who is the subject of the information or
4 complaint, except as otherwise provided in RCW 13.50.010(8) and
5 subsection (~~(23)~~) (27) of this section.

6 (~~(16)~~) (20) Any adjudication of a juvenile offense or a crime
7 subsequent to sealing has the effect of nullifying the sealing order.
8 Any charging of an adult felony subsequent to the sealing has the
9 effect of nullifying the sealing order for the purposes of chapter
10 9.94A RCW. The administrative office of the courts shall ensure that
11 the superior court judicial information system provides prosecutors
12 access to information on the existence of sealed juvenile records.

13 (~~(17)~~) (21)(a)(i) Subject to subsection (~~(23)~~) (27) of this
14 section, all records maintained by any court or law enforcement agency,
15 including the juvenile court, local law enforcement, the Washington
16 state patrol, and the prosecutor's office, shall be automatically
17 destroyed within ninety days of becoming eligible for destruction.
18 Juvenile records are eligible for destruction when:

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

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

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

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

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

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

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

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

7 (c) A person eighteen years of age or older whose criminal history
8 consists entirely of one diversion agreement or counsel and release
9 entered prior to June 12, 2008, may request that the court order the
10 records in his or her case destroyed. The request shall be granted,
11 subject to subsection ~~((+23+))~~ (27) of this section, if the court finds
12 that two years have elapsed since completion of the agreement or
13 counsel and release.

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

21 ~~((+18+))~~ (22) If the court grants the motion to destroy records
22 made pursuant to subsection ~~((+17+))~~ (21)(c) or (d) of this section, it
23 shall, subject to subsection ~~((+23+))~~ (27) of this section, order the
24 official juvenile court file, the social file, and any other records
25 named in the order to be destroyed.

26 ~~((+19+))~~ (23) The person making the motion pursuant to subsection
27 ~~((+17+))~~ (21)(c) or (d) of this section shall give reasonable notice of
28 the motion to the prosecuting attorney and to any agency whose records
29 are sought to be destroyed.

30 ~~((+20+))~~ (24) Any juvenile to whom the provisions of this section
31 may apply shall be given written notice of his or her rights under this
32 section at the time of his or her disposition hearing or during the
33 diversion process.

34 ~~((+21+))~~ (25) Nothing in this section may be construed to prevent
35 a crime victim or a member of the victim's family from divulging the
36 identity of the alleged or proven juvenile offender or his or her
37 family when necessary in a civil proceeding.

1 ~~((+22+))~~ (26) Any juvenile justice or care agency may, subject to
2 the limitations in subsection ~~((+23+))~~ (27) of this section and (a) and
3 (b) of this subsection, develop procedures for the routine destruction
4 of records relating to juvenile offenses and diversions.

5 (a) Records may be routinely destroyed only when the person the
6 subject of the information or complaint has attained twenty-three years
7 of age or older or pursuant to subsection ~~((+17+))~~ (21)(a) of this
8 section.

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

11 ~~((+23+))~~ (27) Except for subsection ~~((+17+))~~ (21)(b) of this
12 section, no identifying information held by the Washington state patrol
13 in accordance with chapter 43.43 RCW is subject to destruction or
14 sealing under this section. For the purposes of this subsection,
15 identifying information includes photographs, fingerprints, palmprints,
16 soleprints, toeprints and any other data that identifies a person by
17 physical characteristics, name, birthdate or address, but does not
18 include information regarding criminal activity, arrest, charging,
19 diversion, conviction or other information about a person's treatment
20 by the criminal justice system or about the person's behavior.

21 ~~((+24+))~~ (28) Information identifying child victims under age
22 eighteen who are victims of sexual assaults by juvenile offenders is
23 confidential and not subject to release to the press or public without
24 the permission of the child victim or the child's legal guardian.
25 Identifying information includes the child victim's name, addresses,
26 location, photographs, and in cases in which the child victim is a
27 relative of the alleged perpetrator, identification of the relationship
28 between the child and the alleged perpetrator. Information identifying
29 a child victim of sexual assault may be released to law enforcement,
30 prosecutors, judges, defense attorneys, or private or governmental
31 agencies that provide services to the child victim of sexual assault.

32 (29) Confidential juvenile offense records maintained by any court,
33 law enforcement agency, or state agency, including the juvenile court,
34 local law enforcement, the Washington state patrol, and the county
35 prosecutor's offices, may not be published, distributed, or sold.

36 (30) Nothing in this section shall affect or prevent the use of a
37 juvenile offender's prior adjudication in later juvenile offender or
38 adult criminal proceedings.

1 **Sec. 3.** RCW 10.97.050 and 2012 c 125 s 2 are each amended to read
2 as follows:

3 (1) Adult__conviction records may be disseminated without
4 restriction.

5 (2) No confidential juvenile offense records may be published or
6 distributed.

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.

13 (~~(3)~~) (4) Criminal history record information which includes
14 nonconviction data may be disseminated by a criminal justice agency to
15 another criminal justice agency for any purpose associated with the
16 administration of criminal justice, or in connection with the
17 employment of the subject of the record by a criminal justice or
18 juvenile justice agency. A criminal justice agency may respond to any
19 inquiry from another criminal justice agency without any obligation to
20 ascertain the purpose for which the information is to be used by the
21 agency making the inquiry.

22 (~~(4)~~) (5) Criminal history record information which includes
23 nonconviction data may be disseminated by a criminal justice agency to
24 implement a statute, ordinance, executive order, or a court rule,
25 decision, or order which expressly refers to records of arrest,
26 charges, or allegations of criminal conduct or other nonconviction data
27 and authorizes or directs that it be available or accessible for a
28 specific purpose.

29 (~~(5)~~) (6) Criminal history record information which includes
30 nonconviction data may be disseminated to individuals and agencies
31 pursuant to a contract with a criminal justice agency to provide
32 services related to the administration of criminal justice. Such
33 contract must specifically authorize access to criminal history record
34 information, but need not specifically state that access to
35 nonconviction data is included. The agreement must limit the use of
36 the criminal history record information to stated purposes and insure
37 the confidentiality and security of the information consistent with
38 state law and any applicable federal statutes and regulations.

1 ~~((6))~~ (7) Criminal history record information which includes
2 nonconviction data may be disseminated to individuals and agencies for
3 the express purpose of research, evaluative, or statistical activities
4 pursuant to an agreement with a criminal justice agency. Such
5 agreement must authorize the access to nonconviction data, limit the
6 use of that information which identifies specific individuals to
7 research, evaluative, or statistical purposes, and contain provisions
8 giving notice to the person or organization to which the records are
9 disseminated that the use of information obtained therefrom and further
10 dissemination of such information are subject to the provisions of this
11 chapter and applicable federal statutes and regulations, which shall be
12 cited with express reference to the penalties provided for a violation
13 thereof.

14 ~~((7))~~ (8) Every criminal justice agency that maintains and
15 disseminates criminal history record information must maintain
16 information pertaining to every dissemination of criminal history
17 record information except a dissemination to the effect that the agency
18 has no record concerning an individual. Information pertaining to
19 disseminations shall include:

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

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

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

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

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

27 ~~((8))~~ (9) In addition to the other provisions in this section
28 allowing dissemination of criminal history record information, RCW
29 4.24.550 governs dissemination of information concerning offenders who
30 commit sex offenses as defined by RCW 9.94A.030. Criminal justice
31 agencies, their employees, and officials shall be immune from civil
32 liability for dissemination on criminal history record information
33 concerning sex offenders as provided in RCW 4.24.550.

34 NEW SECTION. **Sec. 4.** (1) Section 2 of this act applies
35 prospectively and retroactively to all existing official juvenile court
36 files of any alleged or proven juvenile offender.

1 (2) Except for juvenile court files that have been sealed pursuant
2 to RCW 13.50.050, any existing official juvenile court file shall, upon
3 July 1, 2014, be public if the offender who is the subject of the file
4 has been adjudicated for arson in the first degree or criminal
5 solicitation of or criminal conspiracy to commit arson in the first
6 degree, assault of a child in the second degree, kidnapping in the
7 second degree, leading organized crime, malicious placement of an
8 explosion in the first degree, a sex offense, as defined in chapter
9 9A.44 RCW, or a serious violent offense, as defined in RCW 9.94A.030,
10 with the adjudication date prior to July 1, 2014.

11 NEW SECTION. **Sec. 5.** Sections 2 and 3 of this act take effect
12 July 1, 2014.

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