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SENATE BILL 6493

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State of Washington

63rd Legislature

2014 Regular Session

By Senator Chase

Read first time 01/29/14. Referred to Committee on Human Services & Corrections.

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, 2015, 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, 2015.

11           NEW SECTION.   **Sec. 5.**   Sections 2 and 3 of this act take effect  
12 July 1, 2015.

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