

# SENATE BILL REPORT

## SB 6444

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As of February 3, 2020

**Title:** An act relating to juvenile records.

**Brief Description:** Concerning juvenile records.

**Sponsors:** Senators Kuderer, Das, Darneille, Wilson, C., Nguyen and Saldaña.

**Brief History:**

**Committee Activity:** Human Services, Reentry & Rehabilitation: 1/29/20.

### Brief Summary of Bill

- Removes exclusion of juvenile drug offenses from regular sealing hearing procedures.
- Requires the Washington State Patrol to remove sealed juvenile records from the Washington State Information System and any other system it maintains by October 1, 2020.
- Provides for automatic destruction of juvenile records upon the age of 23 if the record is sealed and there is no subsequent felony conviction or pending criminal charge.

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### SENATE COMMITTEE ON HUMAN SERVICES, REENTRY & REHABILITATION

**Staff:** Kevin Black (786-7747)

**Background:** Juvenile court records are open to public inspection. Two statutory processes are available to remove juvenile records from public view—sealing and destruction.

Juvenile Record Sealing. A juvenile court record which is sealed must be treated as if it never happened, and the person who is the subject of the record may reply accordingly to any inquiry. No agency may give information about the existence or nonexistence of a sealed juvenile record except upon motion by the person who is the subject of the record, for limited research purposes, and through correspondence related to restitution requirements. An adjudication for a crime or the charging of a felony offense subsequent to sealing nullifies a sealing order.

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

Juvenile records may be sealed through regular sealing hearings, held upon the later of the juvenile's end of supervision, the juvenile's release from confinement, or the juvenile's eighteenth birthday. A regular sealing hearing is not available if the conviction consists of a most serious offense, a sex offense, or a drug offense. The court may deny regular sealing if the juvenile has not completed the terms of conditions of disposition, including payment of restitution, or if the court finds following a hearing that there is a compelling reason to not seal the record. The court also may seal juvenile records by motion. The court must grant a motion to seal a juvenile record if five years have elapsed since the person's release from confinement for a class A felony without a further conviction or adjudication, or two years following release of confinement for a lesser crime. The court may not grant sealing if the person has not paid the full amount of restitution to any individual victims named in a restitution order or if the conviction or adjudication is for rape 1, rape 2, or indecent liberties with forcible compulsion.

Access to Sealed Juvenile Records by Law Enforcement Agencies. An amendment enacted in 2015 requires the Washington State Patrol (WSP) to ensure the Washington State Identification System (WASIS) provides criminal justice agencies access to sealed juvenile record information. Criminal justice agencies is defined under the Washington State Criminal Records Privacy Act to mean any court or government agency which performs the administration of criminal justice pursuant to statute or executive order which allocates a substantial part of its annual budget to the administration of criminal justice. WSP provides full access to WASIS, including sealed juvenile record information, to entities that apply for access that it deems to be law enforcement agencies or designates as certified criminal justice agencies, regardless of state, federal, or international jurisdiction. A 2015 list of certified criminal justice agencies granted full access to WASIS information by WSP includes 17 state agencies, including divisions of the Department of Social and Health Services, Department of Health, Department of Fish and Wildlife, the Liquor Control Board, and 22 federal agencies, including the U.S. Department of Defense, U.S. Customs and Border Protection, U.S. Immigration and Customs Enforcement, and the Central Intelligence Agency.

Juvenile Record Destruction. Destruction of juvenile records refers to all records maintained by a court or law enforcement agency, including the juvenile court, local law enforcement, WSP, and the prosecutor's office. Juvenile records must be destroyed within 30 days of the person receiving a full and unconditional pardon, or upon motion of a person who is at least 23 years old whose criminal history consists entirely of referrals for diversion that have been successfully completed who have no pending criminal proceeding. Juvenile records must be automatically destroyed within 90 days of becoming eligible for destruction. Juvenile records are eligible for destruction when the person is 18 years old, the records consist of successfully completed diversion agreements or counsel and release agreements completed after June 7, 2018, and there is no restitution owing in the case. Juvenile justice agencies and care agencies are permitted, but not required, to routinely destroy juvenile records after the person turns 23 years of age. Destruction of juvenile records does not prohibit retention of identifying information by WSP such as fingerprints, photographs, palm prints, name, birthdate, or address, or retention of an electronic research copy of juvenile records by the Administrative Office of the Court which is restricted for research purposes only.

**Summary of Bill:** Juvenile drug offenses are not excluded from regular sealing hearings.

WSP must remove all sealed juvenile records from WASIS and any other system it maintains by October 1, 2020.

Juvenile records are eligible for automatic destruction when:

- the person is at least 23 years old;
- the record is sealed;
- the person has not been convicted of a felony offense subsequent to the disposition of the juvenile record; and
- there are no pending criminal cases against the person.

The court must grant a request for destruction of a person's juvenile records when the person meets the requirements for automatic destruction, including under circumstances when the juvenile record is not sealed, but is currently eligible for sealing.

**Appropriation:** None.

**Fiscal Note:** Available.

**Creates Committee/Commission/Task Force that includes Legislative members:** No.

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

**Staff Summary of Public Testimony:** PRO: Listening to incarcerated youth underscores the importance of what we do in young people's lives. The record sealing process needs change. Sealed records are being accessed at border screenings, background checks, housing applications, and more. As a result, the mistake for which they have already paid their debt keeps haunting them. We have made great progress in treating substance use disorder as a disease; sealing records of drug offenses will help reentry. Expunging juvenile records was the norm until state law changed in the 1990s. If the records exist, they will get out, and this is having unintended consequences. We should allow for destruction if the person reaches the age of 23 and stays out of trouble. Juvenile records information about youth on the path of rehabilitation harms them much more than it helps. Sealing drug offenses is helpful, especially to youth of color. Destruction is helpful. Federal law recognizes expungement for the purpose of removing records from federal law enforcement databases but not sealing. A person in Eastern Washington was charged with attempted unlawful possession of a firearm after applying lawfully for a concealed pistol license based on a supposedly sealed juvenile record from when she was 15.

CON: Simple possession is excluded from the definition of drug offenses used for record sealing. We have concerns about automatically sealing records of things like manufacturing and trafficking. We oppose expanding expungement from diversion records to adjudications. Having more information is always helpful for prosecutors and law enforcement entities. Some youth's misdemeanor convictions may be triggers or predicate crimes. Destruction would deprive prosecutors of the full picture to weigh young adults fairly against one another. Destruction would deprive defense attorneys of juvenile record information about witnesses who testify. The information is public at the time of offense and is subject to data mining so it will still be out there. Juvenile records could be used to help law enforcement

refer a person to diversion programs for issues like mental health. Criminal record information will still be reported and preserved in federal law enforcement databases.

**Persons Testifying:** PRO: Senator Patty Kuderer, Prime Sponsor; Antonio Ginatta, Columbia Legal Services; George Yeannakis, citizen.

CON: Russell Brown, Washington Association of Prosecuting Attorneys; Shawn Sant, Franklin County Prosecutor.

**Persons Signed In To Testify But Not Testifying:** No one.