

CERTIFICATION OF ENROLLMENT

SUBSTITUTE HOUSE BILL 2794

66th Legislature
2020 Regular Session

Passed by the House March 9, 2020
Yeas 62 Nays 34

**Speaker of the House of
Representatives**

Passed by the Senate March 4, 2020
Yeas 36 Nays 11

President of the Senate

Approved

Governor of the State of Washington

CERTIFICATE

I, Bernard Dean, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **SUBSTITUTE HOUSE BILL 2794** as passed by the House of Representatives and the Senate on the dates hereon set forth.

Chief Clerk

FILED

**Secretary of State
State of Washington**

SUBSTITUTE HOUSE BILL 2794

AS AMENDED BY THE SENATE

Passed Legislature - 2020 Regular Session

State of Washington 66th Legislature 2020 Regular Session

By House Human Services & Early Learning (originally sponsored by Representatives Frame, Davis, Peterson, Lekanoff, Pollet, and Santos)

READ FIRST TIME 02/07/20.

1 AN ACT Relating to juvenile record sealing; amending RCW
2 13.50.260 and 10.97.050; creating new sections; providing an
3 effective date; and providing an expiration date.

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

5 **Sec. 1.** RCW 13.50.260 and 2015 c 265 s 3 are each amended to
6 read as follows:

7 (1)(a) The court shall hold regular sealing hearings. During
8 these regular sealing hearings, the court shall administratively seal
9 an individual's juvenile record pursuant to the requirements of this
10 subsection (~~unless the court receives an objection to sealing or the~~
11 ~~court notes a compelling reason not to seal, in which case, the court~~
12 ~~shall set a contested hearing to be conducted on the record to~~
13 ~~address sealing)). Although the juvenile record shall be sealed, the~~
14 social file may be available to any juvenile justice or care agency
15 when an investigation or case involving the juvenile subject of the
16 records is being prosecuted by the juvenile justice or care agency or
17 when the juvenile justice or care agency is assigned the
18 responsibility of supervising the juvenile. (~~The contested hearing~~
19 ~~shall be set no sooner than eighteen days after notice of the hearing~~
20 ~~and the opportunity to object has been sent to the juvenile, the~~
21 ~~victim, and juvenile's attorney.)) The juvenile respondent's presence~~

1 is not required at ((a)) any administrative sealing hearing
2 (~~pursuant to this subsection~~).

3 (b) At the disposition hearing of a juvenile offender, the court
4 shall schedule an administrative sealing hearing to take place during
5 the first regularly scheduled sealing hearing after the latest of the
6 following events that apply:

7 (i) The respondent's eighteenth birthday;

8 (ii) Anticipated (~~completion~~) end date of a respondent's
9 probation, if ordered;

10 (iii) Anticipated release from confinement at the juvenile
11 rehabilitation administration, or the completion of parole, if the
12 respondent is transferred to the juvenile rehabilitation
13 administration.

14 (c) (~~A court shall enter a written order sealing an individual's~~
15 ~~juvenile court record pursuant to this subsection if:~~

16 ~~(i))~~ The court shall not schedule an administrative sealing
17 hearing at the disposition and no administrative sealing hearing
18 shall occur if one of the offenses for which the court has entered a
19 disposition is ((not)) at the time of commission of the offense:

20 ~~((A))~~ (i) A most serious offense, as defined in RCW 9.94A.030;

21 ~~((B))~~ (ii) A sex offense under chapter 9A.44 RCW; or

22 ~~((C))~~ (iii) A drug offense, as defined in RCW 9.94A.030(~~+~~
23 ~~and~~)).

24 ~~((ii))~~ (d) At the time of the scheduled administrative sealing
25 hearing, the court shall enter a written order sealing the
26 respondent's juvenile court record pursuant to this subsection if the
27 court finds by a preponderance of the evidence that the respondent
28 (~~has completed the terms and conditions of disposition, including~~
29 ~~affirmative conditions~~) is no longer on supervision for the case
30 being considered for sealing and has paid the full amount of
31 restitution owing to the individual victim named in the restitution
32 order, excluding restitution owed to any (~~insurance provider~~
33 ~~authorized under Title 48 RCW~~) public or private entity providing
34 insurance coverage or health care coverage. In determining whether
35 the respondent is on supervision or owes restitution, the court shall
36 take judicial notice of court records, including records of the
37 county clerk, and, if necessary, sworn testimony from a
38 representative of the juvenile department.

39 ~~((d) Following a contested sealing hearing on the record after~~
40 ~~an objection is made pursuant to (a) of this subsection, the court~~

1 ~~shall enter a written order sealing the juvenile court record unless~~
2 ~~the court determines that sealing is not appropriate.))~~ (e) At the
3 time of the administrative sealing hearing, if the court finds the
4 respondent remains on supervision for the case being considered for
5 sealing, then the court shall continue the administrative sealing
6 hearing to a date within thirty days following the anticipated end
7 date of the respondent's supervision. At the next administrative
8 sealing hearing, the court shall again determine the respondent's
9 eligibility for sealing his or her juvenile court record pursuant to
10 (d) of this subsection, and, if necessary, continue the hearing again
11 as provided in this subsection.

12 (f) (i) During the administrative sealing hearing, if the court
13 finds the respondent is no longer on supervision for the case being
14 considered for sealing, but the respondent has not paid the full
15 amount of restitution owing to the individual victim named in the
16 restitution order, excluding any public or private entity providing
17 insurance coverage or health care coverage, the court shall deny
18 sealing the juvenile court record in a written order that: (A)
19 Specifies the amount of restitution that remains unpaid to the
20 original victim, excluding any public or private entity providing
21 insurance coverage or health care coverage; and (B) provides
22 direction to the respondent on how to pursue the sealing of records
23 associated with this cause of action.

24 (ii) Within five business days of the entry of the written order
25 denying the request to seal a juvenile court record, the juvenile
26 court department staff shall notify the respondent of the denial by
27 providing a copy of the order of denial to the respondent in person
28 or in writing mailed to the respondent's last known address in the
29 department of licensing database or the respondent's address provided
30 to the court, whichever is more recent.

31 (iii) At any time following entry of the written order denying
32 the request to seal a juvenile court record, the respondent may
33 contact the juvenile court department, provide proof of payment of
34 the remaining unpaid restitution to the original victim, excluding
35 any public or private entity providing insurance coverage or health
36 care coverage, and request an administrative sealing hearing. Upon
37 verification of the satisfaction of the restitution payment, the
38 juvenile court department staff shall circulate for signature an
39 order sealing the file, and file the signed order with the clerk's
40 office, who shall seal the record.

1 (iv) The administrative office of the courts must ensure that
2 sealed juvenile records remain private in case of an appeal and are
3 either not posted or redacted from any clerks papers that are posted
4 online with the appellate record, as well as taking any other prudent
5 steps necessary to avoid exposing sealed juvenile records to the
6 public.

7 (2) Except for dismissal of a deferred disposition under RCW
8 13.40.127, the court shall enter a written order immediately sealing
9 the official juvenile court record upon the acquittal after a fact
10 finding or upon the dismissal of charges with prejudice, subject to
11 the state's right, if any, to appeal the dismissal.

12 (3) If a juvenile court record has not already been sealed
13 pursuant to this section, in any case in which information has been
14 filed pursuant to RCW 13.40.100 or a complaint has been filed with
15 the prosecutor and referred for diversion pursuant to RCW 13.40.070,
16 the person who is the subject of the information or complaint may
17 file a motion with the court to have the court vacate its order and
18 findings, if any(~~7~~); resolve the status of any debts owing; and,
19 subject to RCW 13.50.050(13), order the sealing of the official
20 juvenile court record, the social file, and records of the court and
21 of any other agency in the case, with the exception of identifying
22 information under RCW 13.50.050(13).

23 (4) (a) The court shall grant any motion to seal records for class
24 A offenses made pursuant to subsection (3) of this section if:

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

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

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

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

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

1 (vi) The person has paid the full amount of restitution owing to
2 the individual victim named in the restitution order, excluding
3 restitution owed to any ~~((insurance provider authorized under Title~~
4 ~~48 RCW)) public or private entity providing insurance coverage or
5 health care coverage.~~

6 (b) The court shall grant any motion to seal records for class B,
7 class C, gross misdemeanor, and misdemeanor offenses and diversions
8 made under subsection (3) of this section if:

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

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

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

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

22 (v) The person has paid the full amount of restitution owing to
23 the individual victim named in the restitution order, excluding
24 restitution owed to any insurance provider authorized under Title 48
25 RCW.

26 (c) Notwithstanding the requirements in (a) or (b) of this
27 subsection, the court shall grant any motion to seal records of any
28 deferred disposition vacated under RCW 13.40.127(9) prior to June 7,
29 2012, if restitution has been paid and the person is eighteen years
30 of age or older at the time of the motion.

31 (5) The person making a motion pursuant to subsection (3) of this
32 section shall give reasonable notice of the motion to the prosecution
33 and to any person or agency whose records are sought to be sealed.

34 (6) (a) If the court enters a written order sealing the juvenile
35 court record pursuant to this section, it shall, subject to RCW
36 13.50.050(13), order sealed the official juvenile court record, the
37 social file, and other records relating to the case as are named in
38 the order. Thereafter, the proceedings in the case shall be treated
39 as if they never occurred, and the subject of the records may reply
40 accordingly to any inquiry about the events, records of which are

1 sealed. Any agency shall reply to any inquiry concerning confidential
2 or sealed records that records are confidential, and no information
3 can be given about the existence or nonexistence of records
4 concerning an individual.

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

14 (c) Effective July 1, 2019, the department of licensing may
15 release information related to records the court has ordered sealed
16 only to the extent necessary to comply with federal law and
17 regulation.

18 (7) Inspection of the files and records included in the order to
19 seal may thereafter be permitted only by order of the court upon
20 motion made by the person who is the subject of the information or
21 complaint, except as otherwise provided in RCW 13.50.010(8) and
22 13.50.050(13).

23 (8)(a) Any adjudication of a juvenile offense or a crime
24 subsequent to sealing has the effect of nullifying a sealing order;
25 however, the court may order the juvenile court record resealed upon
26 disposition of the subsequent matter if the case meets the sealing
27 criteria under this section and the court record has not previously
28 been resealed.

29 (b) Any charging of an adult felony subsequent to the sealing has
30 the effect of nullifying the sealing order.

31 (c) The administrative office of the courts shall ensure that the
32 superior court judicial information system provides prosecutors
33 access to information on the existence of sealed juvenile records.

34 (d) The Washington state patrol shall ensure that the Washington
35 state identification system provides Washington state criminal
36 justice agencies access to sealed juvenile records information.

37 (9) If the juvenile court record has been sealed pursuant to this
38 section, the record of an employee is not admissible in an action for
39 liability against the employer based on the former juvenile
40 offender's conduct to show that the employer knew or should have

1 known of the juvenile record of the employee. The record may be
2 admissible, however, if a background check conducted or authorized by
3 the employer contained the information in the sealed record.

4 (10) County clerks may interact or correspond with the
5 respondent, his or her parents, restitution recipients, and any
6 holders of potential assets or wages of the respondent for the
7 purposes of collecting an outstanding legal financial obligation
8 after juvenile court records have been sealed pursuant to this
9 section.

10 (11) Persons and agencies that obtain sealed juvenile records
11 information pursuant to this section may communicate about this
12 information with the respondent, but may not disseminate or be
13 compelled to release the information to any person or agency not
14 specifically granted access to sealed juvenile records in this
15 section.

16 (12) All criminal justice agencies must not disclose confidential
17 information or sealed records accessed through the Washington state
18 identification system or other means, and no information can be given
19 to third parties other than Washington state criminal justice
20 agencies about the existence or nonexistence of confidential or
21 sealed records concerning an individual.

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

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

25 (2) Any criminal history record information which pertains to an
26 incident that occurred within the last twelve months for which a
27 person is currently being processed by the criminal justice system,
28 including the entire period of correctional supervision extending
29 through final discharge from parole, when applicable, may be
30 disseminated without restriction.

31 (3) Criminal history record information which includes
32 nonconviction data may be disseminated by a criminal justice agency
33 to another criminal justice agency for any purpose associated with
34 the administration of criminal justice, or in connection with the
35 employment of the subject of the record by a criminal justice or
36 juvenile justice agency, except as provided under RCW 13.50.260. A
37 criminal justice agency may respond to any inquiry from another
38 criminal justice agency without any obligation to ascertain the

1 purpose for which the information is to be used by the agency making
2 the inquiry.

3 (4) Criminal history record information which includes
4 nonconviction data may be disseminated by a criminal justice agency
5 to implement a statute, ordinance, executive order, or a court rule,
6 decision, or order which expressly refers to records of arrest,
7 charges, or allegations of criminal conduct or other nonconviction
8 data and authorizes or directs that it be available or accessible for
9 a specific purpose.

10 (5) Criminal history record information which includes
11 nonconviction data may be disseminated to individuals and agencies
12 pursuant to a contract with a criminal justice agency to provide
13 services related to the administration of criminal justice. Such
14 contract must specifically authorize access to criminal history
15 record information, but need not specifically state that access to
16 nonconviction data is included. The agreement must limit the use of
17 the criminal history record information to stated purposes and insure
18 the confidentiality and security of the information consistent with
19 state law and any applicable federal statutes and regulations.

20 (6) Criminal history record information which includes
21 nonconviction data may be disseminated to individuals and agencies
22 for the express purpose of research, evaluative, or statistical
23 activities pursuant to an agreement with a criminal justice agency.
24 Such agreement must authorize the access to nonconviction data, limit
25 the use of that information which identifies specific individuals to
26 research, evaluative, or statistical purposes, and contain provisions
27 giving notice to the person or organization to which the records are
28 disseminated that the use of information obtained therefrom and
29 further dissemination of such information are subject to the
30 provisions of this chapter and applicable federal statutes and
31 regulations, which shall be cited with express reference to the
32 penalties provided for a violation thereof.

33 (7) Every criminal justice agency that maintains and disseminates
34 criminal history record information must maintain information
35 pertaining to every dissemination of criminal history record
36 information except a dissemination to the effect that the agency has
37 no record concerning an individual. Information pertaining to
38 disseminations shall include:

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

- 1 (b) The date on which the information was disseminated;
- 2 (c) The individual to whom the information relates; and
- 3 (d) A brief description of the information disseminated.

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

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

13 NEW SECTION. **Sec. 3.** (1) The department of children, youth, and
14 families and the office of the superintendent of public instruction
15 shall develop policies and procedures that prevent any information
16 from being included on a student transcript indicating that a student
17 received credit while confined in a detention facility as defined
18 under RCW 13.40.020, institution as defined under RCW 13.40.020,
19 juvenile correctional facility under alternative administration
20 operated by a consortium of counties under RCW 13.04.035, community
21 facility as defined under RCW 72.05.020, or correctional facility as
22 defined under RCW 70.48.020.

23 (2) By November 1, 2020, and in compliance with RCW 43.01.036,
24 the department of children, youth, and families and the office of the
25 superintendent of public instruction shall provide a report to the
26 appropriate committees of the legislature and the governor describing
27 the actions, policies, and procedures in place to prevent information
28 from being included on a student transcript indicating that a student
29 received credit while confined in a detention facility as defined
30 under RCW 13.40.020, institution as defined under RCW 13.40.020,
31 juvenile correctional facility under alternative administration
32 operated by a consortium of counties under RCW 13.04.035, community
33 facility as defined under RCW 72.05.020, or correctional facility as
34 defined under RCW 70.48.020.

35 (3) This section expires June 30, 2021.

36 NEW SECTION. **Sec. 4.** This act applies to all juvenile record
37 sealing hearings commenced on or after the effective date of this
38 section, regardless of when the underlying hearing was scheduled or

1 the underlying record was created. To this extent, this act applies
2 retroactively, but in all other respects it applies prospectively.

3 NEW SECTION. **Sec. 5.** Sections 1, 2, and 4 of this act take
4 effect January 1, 2021.

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