

SENATE BILL REPORT

SB 5339

As of January 28, 2021

Title: An act relating to juvenile records.

Brief Description: Concerning juvenile records.

Sponsors: Senators Das, Nguyen, Darneille, Liias, Lovelett, Nobles and Salomon.

Brief History:

Committee Activity: Human Services, Reentry & Rehabilitation: 1/28/21.

Brief Summary of Bill

- Defines the term "expunge" as destroying the applicable documents to make permanently irretrievable and erase any direct connection of the case to the offender in the system.
- Directs Washington State patrol to provide access to sealed records information after July 24, 2015, and removes all records sealed prior to that date.

SENATE COMMITTEE ON HUMAN SERVICES, REENTRY & REHABILITATION

Staff: Julie Tran (786-7283)

Background: Juvenile Records. Juvenile court records are public unless sealed. A juvenile court must schedule a hearing for all juvenile records that are not classified as a most serious offense, sex offense, or a drug offense, to take place after the latest of the following:

- the individual's 18th birthday;
- the individual's anticipated probation end date;
- the anticipated release from confinement; or
- anticipated probation completion.

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

In order to seal a juvenile record, the court must find that the juvenile has completed the full terms and conditions of the disposition, including affirmative conditions, and paid full restitution to any individual victim.

If not subject to regular sealing, a juvenile court record may be vacated and sealed by filing a motion, provided that if the person was charged with a class A felony, the juvenile, or former juvenile, must meet certain requirements, including spending five consecutive years in the community without being convicted or adjudicated of a crime, not being required to register as a sex offender, and full payment of restitution. Sealing by motion is not available to a person convicted of rape 1, rape 2, or indecent liberties with forcible compulsion.

Once a juvenile record is sealed, the proceedings in the case must be treated as if they never occurred. Any subsequent criminal adjudication or adult felony charge unseals the case.

Access to Sealed Juvenile Records by Law Enforcement Agencies. The Legislature passed SB5564 in 2015, which required the Washington State Patrol (WSP) to ensure the Washington State Identification System (WASIS) provides criminal justice agencies access to sealed juvenile record information. 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.

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. 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.

In 2020, the Legislature passed HB 2794, which required WSP to limit access to sealed juvenile record information to criminal justice agencies in Washington State and ensure criminal justice agencies may not disclose confidential information or sealed records accessed through WASIS. No information may be given to third parties other than Washington criminal justice agencies about the existence or nonexistence of confidential or sealed records. This law became effective January 1, 2021.

Summary of Bill: Sealed Juvenile Records. WASIS provides Washington State criminal justice agencies access to sealed juvenile records information, which were sealed after July 24, 2015. WSP must remove all records sealed prior to July 24, 2015, from WASIS and

any other system maintained by WSP.

Expungement Eligibility. For previously sealed juvenile records, individuals may petition the superior court to destroy and expunge in its entirety, the official juvenile court file, the social file, and records of the court and of any other agency in any case in which a juvenile offender's record resides. If the court finds all obligations have been completed, restitution has been paid in full, and no proceeding is pending seeking the conviction of a criminal offense, then the request is granted depending on the eligibility requirements, which include:

- the individual's offense history does not include a class A felony, a felony sex offense, or inclusion in the offender's score; and
- if the individual's offense history includes two offender cases, an additional two years must have passed since the individual's case has not been subject to inclusion in their offender score; or
- if the individual's offense history includes more than two offender cases, an additional two years for each subsequent case must have passed since the individual's cases have not been subject to inclusion in their offender score.

Expunge means to destroy the applicable documents or data named in the expungement order so as to make it permanently irretrievable and erase or completely remove any direct connection of the case to the offender in any system maintained by any agency as named in the order. Previous findings in an expunged case are considered vacated and non-existent.

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: Washington State should be one that sees people's full potential and works to give people access to opportunities to live a healthy and successful life. This bill is a second chance for Washingtonians that have been involved in our juvenile justice system. Band-aids cannot fix a broken system. Expungement is the only way to fulfill the promise made to our youth when a record is sealed. This pathway ensures these youth are not harmed decades later and the youth in our state can move forward.

Sealed records have negatively impacted people's lives 20-30 years later. It is a barrier to education, employment, and success for our Washington youth. Even after they have served their time and move forward, sealed records make people a criminal again. Keeping these records sealed serves no justifiable purpose. If we are going to serve the future and the children of Washington State, then we need to make sure they are safer.

CON: The youth records should not be out in public, but it should be available for agencies. Private companies have access to these records. If we seal or expunge, it does not fix the problem because the federal government and those private companies will still have the information. Expungement is not the right path. Let's fix the sealing process Washington State currently uses.

We also need to have the index open even if we seal or expunge records. With private companies having access to these records, we need to have exonerating language available to the public.

Persons Testifying: PRO: Senator Mona Das, Prime Sponsor; Jack Murphy, Washington Association of Juvenile Court Administrators; Xaxira Velasco Ponce de Leon, Columbia Legal Services; Eldgen Brost; Greg Melrose; Joe Studer; George Yeannakis, Washington State Office of Public Defense; Ali Hohman, Washington Defender Association; Kendrick Washington, ACLU of Washington.

CON: James McMahan, Washington Association of Sheriffs and Police Chiefs; Russell Brown, Washington Association of Prosecuting Attorneys; Rowland Thompson, Allied Daily Newspapers of Washington.

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