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**SENATE BILL 5644**

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**State of Washington 68th Legislature 2023 Regular Session**

**By** Senators Frame, C. Wilson, Kuderer, Lovelett, Nguyen, Nobles, Trudeau, and Wellman

AN ACT Relating to juvenile records; amending RCW 13.50.050 and 13.50.260; and adding new sections to chapter 13.50 RCW.

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

**Sec.**  RCW 13.50.050 and 2014 c 175 s 3 are each amended to read as follows:

(1) This section and RCW 13.50.260 and 13.50.270 govern records relating to the commission of juvenile offenses, including records relating to diversions.

(2) ((~~The official juvenile court file of any alleged or proven juvenile offender shall be open to public inspection, unless sealed pursuant to RCW 13.50.260.~~

~~(3)~~)) All records ((~~other than the official juvenile court file~~)) relating to the commission of juvenile offenses, including records related to diversions are confidential and may be released only as provided in this chapter((~~,~~)) and RCW 13.40.215 and 4.24.550.

((~~(4)~~)) (3) Except as otherwise provided in this chapter, records retained or produced by any juvenile justice or care agency may be released to other participants in the juvenile justice or care system only when an investigation or case involving the juvenile in question is being pursued by the other participant or when that other participant is assigned the responsibility for supervising the juvenile.

((~~(5)~~)) (4) Except as provided in RCW 4.24.550, information not in an official juvenile court file concerning a juvenile or a juvenile's family may be released to the public only when that information could not reasonably be expected to identify the juvenile or the juvenile's family.

((~~(6)~~)) (5) Notwithstanding any other provision of this chapter, the release, to the juvenile or his or her attorney, of law enforcement and prosecuting attorneys' records pertaining to investigation, diversion, and prosecution of juvenile offenses shall be governed by the rules of discovery and other rules of law applicable in adult criminal investigations and prosecutions.

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

((~~(8)~~)) (7) The juvenile court and the prosecutor may set up and maintain a central recordkeeping system which may receive information on all alleged juvenile offenders against whom a complaint has been filed pursuant to RCW 13.40.070 whether or not their cases are currently pending before the court. The central recordkeeping system may be computerized. If a complaint has been referred to a diversion unit, the diversion unit shall promptly report to the juvenile court or the prosecuting attorney when the juvenile has agreed to diversion. An offense shall not be reported as criminal history in any central recordkeeping system without notification by the diversion unit of the date on which the offender agreed to diversion.

((~~(9)~~)) (8) Upon request of the victim of a crime or the victim's immediate family, the identity of an alleged or proven juvenile offender alleged or found to have committed a crime against the victim and the identity of the alleged or proven juvenile offender's parent, guardian, or custodian and the circumstance of the alleged or proven crime shall be released to the victim of the crime or the victim's immediate family.

((~~(10)~~)) (9) Subject to the rules of discovery applicable in adult criminal prosecutions, the juvenile offense records of an adult criminal defendant or witness in an adult criminal proceeding shall be released upon request to prosecution and defense counsel after a charge has actually been filed. The juvenile offense records of any adult convicted of a crime and placed under the supervision of the adult corrections system shall be released upon request to the adult corrections system.

((~~(11)~~)) (10) Any juvenile to whom the provisions of this section or RCW 13.50.260 or 13.50.270 may apply shall be given written notice of his or her rights under this section at the time of his or her disposition hearing or during the diversion process.

((~~(12)~~)) (11) Nothing in this section or RCW 13.50.260 or 13.50.270 may be construed to prevent a crime victim or a member of the victim's family from divulging the identity of the alleged or proven juvenile offender or his or her family when necessary in a civil proceeding.

((~~(13)~~)) (12) Except as provided in RCW 13.50.270(2), no identifying information held by the Washington state patrol in accordance with chapter 43.43 RCW is subject to destruction or sealing under this section. For the purposes of this subsection, identifying information includes photographs, fingerprints, palmprints, soleprints, toeprints and any other data that identifies a person by physical characteristics, name, birthdate or address, but does not include information regarding criminal activity, arrest, charging, diversion, conviction or other information about a person's treatment by the criminal justice system or about the person's behavior.

((~~(14)~~)) (13) Information identifying child victims under age eighteen who are victims of sexual assaults by juvenile offenders is confidential and not subject to release to the press or public without the permission of the child victim or the child's legal guardian. Identifying information includes the child victim's name, addresses, location, photographs, and in cases in which the child victim is a relative of the alleged perpetrator, identification of the relationship between the child and the alleged perpetrator. Information identifying a child victim of sexual assault may be released to law enforcement, prosecutors, judges, defense attorneys, or private or governmental agencies that provide services to the child victim of sexual assault.

NEW SECTION. **Sec.**  A new section is added to chapter 13.50 RCW to read as follows:

(1)(a) Any corporation, business trust, estate, trust, partnership, association, joint venture, any other legal or commercial entity, government, governmental subdivision, agency, municipality, and other similar legal entities capable of being sued in courts of law that, directly or by means of an agent, disseminates sealed or destroyed records or links the subject of a sealed juvenile record to the commission of a juvenile offense in violation of this chapter shall be subject to legal action for damages, to be brought by the subject of those records, claiming that a violation of this chapter has occurred.

(b) An individual alleging that the individual's records were disseminated in violation of this chapter may bring a civil action in any court of competent jurisdiction.

(c) In a civil action under this section in which the plaintiff prevails, the court may award:

(i) A per day penalty of $100 for each day since the record is shared in violation of this section without corrective action taken by the entity illegally sharing the record or actual damages, whichever is greater; and

(ii) Any other relief, including but not limited to an injunction, that the court deems appropriate.

(d) Actual damages under this section includes mental pain and suffering endured by the subject of the records that were disseminated in violation of this chapter.

(e) In addition to any relief awarded under (c) of this subsection, the court shall award reasonable attorneys' fees and costs to any prevailing plaintiff.

(2) Nothing in this section shall be construed to limit other remedies available for violations of the provisions of this chapter.

(3) County clerks and employees of governments, governmental subdivisions, agencies, and municipalities are not personally liable for civil damages under this section for actions within the scope of their employment.

(4) Any corporation, business trust, estate, trust, partnership, association, joint venture, any other legal or commercial entity, government, governmental subdivision, agency, municipality, and other legal entities are not liable under this section for illegally sharing a sealed or destroyed juvenile record if the entity did not have notice that a record is sealed under RCW 13.50.260 or destroyed under RCW 13.50.270.

(5) Nothing in this section shall apply to the dissemination of records in connection with lawful and constitutionally protected activity.

**Sec.**  RCW 13.50.260 and 2020 c 184 s 1 are each amended to read as follows:

(1)(a) The court shall hold regular sealing hearings. During these regular sealing hearings, the court shall administratively seal an individual's juvenile record pursuant to the requirements of this subsection. Although the juvenile record shall be sealed, the social file may be available to any juvenile justice or care agency when an investigation or case involving the juvenile subject of the records is being prosecuted by the juvenile justice or care agency or when the juvenile justice or care agency is assigned the responsibility of supervising the juvenile. The juvenile respondent's presence is not required at any administrative sealing hearing.

(b)(i) At ((~~the~~)) a juvenile disposition hearing ((~~of a juvenile offender~~)), the court shall provide notice of the juvenile's eligibility for juvenile records sealing to the juvenile and victims of the offense and schedule an administrative sealing hearing to take place during the first regularly scheduled sealing hearing after the latest of the following events that apply:

((~~(i)~~)) (A) The respondent's ((~~eighteenth~~)) 18th birthday;

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

((~~(iii)~~)) (C) Anticipated release from confinement at the juvenile rehabilitation administration, or the completion of parole, if the respondent is transferred to the juvenile rehabilitation administration.

(ii) The court shall provide notice to a juvenile of an upcoming administrative sealing hearing at least six months in advance of the scheduled hearing.

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

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

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

(iii) A drug offense, as defined in RCW 9.94A.030.

(d) At the time of the scheduled administrative sealing hearing, the court shall enter a written order sealing the respondent's juvenile court record pursuant to this subsection if the court finds by a preponderance of the evidence that the respondent is no longer on supervision for the case being considered for sealing and has paid the full amount of restitution owing to the individual victim named in the restitution order, excluding restitution owed to any public or private entity providing insurance coverage or health care coverage. In determining whether the respondent is on supervision or owes restitution, the court shall take judicial notice of court records, including records of the county clerk, and, if necessary, sworn testimony from a representative of the juvenile department.

(e) At the time of the administrative sealing hearing, if the court finds the respondent remains on supervision for the case being considered for sealing, then the court shall continue the administrative sealing hearing to a date within ((~~thirty~~)) 30 days following the anticipated end date of the respondent's supervision. At the next administrative sealing hearing, the court shall again determine the respondent's eligibility for sealing ((~~his or her~~)) the respondent's juvenile court record pursuant to (d) of this subsection, and, if necessary, continue the hearing again as provided in this subsection.

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

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

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

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

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

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

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

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

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

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

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

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

(vi) The person has paid the full amount of restitution owing to the individual victim named in the restitution order, excluding restitution owed to any public or private entity providing insurance coverage or health care coverage.

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

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

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

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

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

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

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

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

(6)(a) If the court enters a written order sealing the juvenile court record pursuant to this section, it shall, subject to RCW 13.50.050((~~(13)~~)) (12), order sealed the official juvenile court ((~~record~~)) file, the social file, and other records relating to the case as are named in the order. Thereafter, the adjudication and proceedings in the case shall be treated as if they never occurred((~~, and the~~)). The subject of the sealed records may reply accordingly to any inquiry about the ((~~events, records of which are sealed~~)) subject's commission of a juvenile offense, including an inquiry about whether the subject has a disqualifying arrest or adjudication, that the subject does not have a juvenile arrest or adjudication. Any agency shall reply to any inquiry concerning confidential or sealed records that any such records are confidential, and no information can be given about the existence or nonexistence of such records ((~~concerning an individual~~)).

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

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

(d) The court shall provide written notice to individuals whose juvenile records are sealed under this section that includes information about the meaning of having a sealed juvenile record. The written notice required under this subsection shall be in substantially the following form:

NOTICE

Your juvenile record is sealed. Under Washington law, if an employer asks about your sealed adjudication, you can respond that you have no prior juvenile arrest or adjudication. You might be required to disclose the existence of a sealed adjudication under federal law. If you have a subsequent juvenile adjudication or are charged with an adult felony, your record will be unsealed.

(e) All Washington state government agencies that conduct state-based background checks for licensing or hiring determinations may not consider or use any information provided by an applicant related to the commission of a juvenile offense or information produced by a state source related to the commission of a juvenile offense unless the agency confirms that the official juvenile court record related to that offense remains open for public inspection.

(7) Inspection of the files and records included in the order to seal may thereafter be permitted only by order of the court upon motion made by the person who is the subject of the information or complaint, except as otherwise provided in RCW 13.50.010(8) and 13.50.050((~~(13)~~)) (12).

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

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

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

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

(9) If the juvenile court record has been sealed pursuant to this section, the record of an employee is not admissible in an action for liability against the employer based on the ((~~former juvenile offender's~~)) conduct that is the subject of the sealed juvenile record to show that the employer knew or should have known of the juvenile record of the employee. The record may be admissible, however, if a background check conducted or authorized by the employer contained the information in the sealed record.

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

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

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

NEW SECTION. **Sec.**  A new section is added to chapter 13.50 RCW to read as follows:

A respondent, whose records are eligible for sealing, may be provided, if necessary, with access to an attorney for assistance with the sealing process.

**--- END ---**