

HOUSE BILL REPORT

ESHB 1600

As Passed House:
February 27, 2023

Title: An act relating to providing access to sealed juvenile records for firearm purposes.

Brief Description: Providing access to sealed juvenile records for firearm purposes.

Sponsors: House Committee on Civil Rights & Judiciary (originally sponsored by Representatives Goodman, Berry, Ramel and Pollet; by request of Washington State Patrol).

Brief History:

Committee Activity:

Civil Rights & Judiciary: 2/1/23, 2/10/23 [DPS].

Floor Activity:

Passed House: 2/27/23, 95-0.

Brief Summary of Engrossed Substitute Bill

- Allows for the sharing of sealed juvenile records with non-Washington criminal justice agencies solely for the purpose of conducting a background check for processing firearms transfers and licenses and releasing of firearms from evidence.

HOUSE COMMITTEE ON CIVIL RIGHTS & JUDICIARY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 10 members: Representatives Hansen, Chair; Farivar, Vice Chair; Graham, Assistant Ranking Minority Member; Cheney, Entenman, Goodman, Peterson, Rude, Thai and Walen.

Minority Report: Without recommendation. Signed by 1 member: Representative Walsh, Ranking Minority Member.

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.

Staff: Edie Adams (786-7180).

Background:

Background Checks for Firearms Transfers.

Certain categories of persons are disqualified from possessing firearms under state and federal law. This includes any person who has been convicted as an adult, or adjudicated as a juvenile, of a felony offense or certain domestic violence misdemeanor offenses. In addition, persons who have been involuntarily committed for mental health treatment or competency restoration, or who have certain other mental health related adjudications, are prohibited from possessing firearms under both state and federal law.

Under federal law, a dealer must, with few exceptions, conduct a background check on all firearms transfers to determine whether the purchaser is prohibited by state or federal law from possessing a firearm. This background check is conducted through the National Instant Criminal Background Check System (NICS). Under state law, a state background check in addition to the federal NICS background check is required for the purchase or transfer of a pistol or semiautomatic assault rifle. The state background check must be conducted by the local law enforcement agency, or the state once a state background check system is established.

Bipartisan Safer Communities Act.

The federal Bipartisan Safer Communities Act (BSCA), enacted in 2022, specifically provides that federal firearms prohibitions apply if the person's juvenile record includes a prohibiting criminal conviction or involuntary commitment or mental health adjudication. In addition, the BSCA established new provisions relating to background checks for persons under the age of 21. The NICS must contact state and local authorities to determine whether the individual has juvenile criminal or mental health records that would disqualify the person from purchasing a firearm. Mental health history records may only be accessed from the time the person turned 16. This enhanced background check requirement for persons under the age of 21 expires automatically after 10 years if not renewed.

Sealing of Juvenile Records.

Records of juvenile offense adjudications are public unless sealed. A juvenile offense record may be sealed through a regularly held administrative hearing or by filing a motion to seal the official juvenile court record, the social file, and records of the court and any other agency in the case. Once a juvenile record is sealed, the proceedings in the case must be treated as if they never occurred. With limited exceptions, once a juvenile record is sealed, files and records included in the sealing order may be inspected only by order of the court upon a motion made by the subject of the information of complaint.

Any subsequent juvenile adjudication or filing of an adult felony charge unseals the case. The Administrative Office of the Courts must ensure prosecutors have access to information on the existence of sealed juvenile records. In addition, the Washington State Patrol (WSP)

must provide Washington criminal justice agencies with access to sealed juvenile records information through the Washington State Identification System (WASIS). The WSP is not authorized to share this information through WASIS with criminal justice agencies outside of Washington. Criminal justice agencies are prohibited from disclosing confidential information or sealed records accessed through the WASIS or other means.

Summary of Engrossed Substitute Bill:

The WSP must ensure that non-Washington criminal justice agencies have access to sealed juvenile records only for the purpose of conducting a background check for processing and purchasing firearms, concealed pistol licenses, and alien firearms licenses, and releasing of firearms from evidence.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) This is request legislation from the WSP to allow for access to sealed juvenile records for the purpose of conducting background checks for firearms transactions. Current law restricts the WSP from sharing sealed juvenile criminal records to criminal justice agencies outside of Washington. The WSP may have information in Washington records that would prohibit a person from purchasing a firearm, but is unable to share this information with other states. Making a simple change in statute will ensure that appropriate sealed juvenile criminal history information is shared with other criminal justice agencies both inside and outside Washington state to reduce the likelihood of an unauthorized purchase of a firearm.

(Opposed) This bill raises a lot of concerns around privacy. Washington has assured juvenile offenders that if they stay out of trouble their juvenile records will be sealed and treated as if they never occurred so that they can move on with their adult lives, but this bill breaks that promise.

The bill is unnecessary because Washington already sends criminal justice information to the NICS program to be shared with other states, including unsealed juvenile records. This would allow WSP to share these records directly with other states, with no restrictions on redistributing the records. There should be a remedy if records are unlawfully accessed or disseminated. The bill provides too much access to the WSP, which does not have a good track record of protecting sealed juvenile records.

The bill is overly broad and vague. To be consistent with federal law, access should be limited to cases where a person under age 21 is attempting to access a firearm. Disclosable records should be restricted to cases where a person is adjudicated of a crime that is punishable by imprisonment in excess of a year, as required by federal law. Instead, the bill would allow the WSP to share all records, including misdemeanors. Federal law only requires reporting of convictions, not juvenile adjudications.

(Other) Currently, Washington law enforcement agencies have access to sealed juvenile records, and the bill appears to narrow that access to only purposes relating to firearms background checks. There are a number of valid reasons law enforcement needs access for other purposes. For example, if someone applies to be a law enforcement officer and has a history of committing assaults on officers of the court, law enforcement should have access to that information, or where somebody found in possession of a firearm has a history of domestic violence convictions, law enforcement should be able to see that so that the firearm can be removed.

Sealing of juvenile records is a crucial protection for young people so that they can be reintegrated into their communities and reach their full potential. The bill expands access to these records too broadly. It should be limited to situations where a person is attempting to access a firearm, and access should only be provided to law enforcement agencies. There needs to be a remedy if records are unlawfully accessed or disseminated.

Persons Testifying: (In support) Representative Roger Goodman, prime sponsor; and Neil Weaver and Kateri Candee, Washington State Patrol.

(Opposed) George Yeannakis, Washington State Office of Public Defense; and Kristin Mansfield.

(Other) James McMahan, Washington Association of Sheriffs and Police Chiefs; and Katherine Hurley, King County Department of Public Defense.

Persons Signed In To Testify But Not Testifying: None.