

SENATE BILL REPORT

SB 5644

As of February 7, 2023

Title: An act relating to juvenile records.

Brief Description: Concerning juvenile records.

Sponsors: Senators Frame, Wilson, C., Kuderer, Lovelett, Nguyen, Nobles, Trudeau and Wellman.

Brief History:

Committee Activity: Human Services: 2/07/23.

Brief Summary of Bill

- Explains that all records relating to the commission of juvenile offenses are confidential.
- Requires courts to provide written notice to individuals whose records are sealed that includes an explanation of what it means to have a sealed juvenile record.
- Creates a cause of action where various legal and government entities that disseminate sealed or destroyed juvenile records may be sued for damages by the subject of those records.
- Provides individuals whose records are eligible for sealing with access to an attorney if necessary.

SENATE COMMITTEE ON HUMAN SERVICES

Staff: Delika Steele (786-7486)

Background: Juvenile adjudication records are public unless sealed. Official juvenile records of alleged or proven juvenile offenders are open to the public unless sealed. Court

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records for juvenile cases that do not involve an adjudication, such as dependency or adoption records, are not open to public inspection.

Sealing of Juvenile Records. There are two methods by which individuals may seal their juvenile records, including 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, or through a regularly held administrative sealing hearing.

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

Administrative Sealing Hearing. At the disposition hearing of a juvenile offender, courts must schedule an administrative sealing hearing after the offender turns 18 years old, and is anticipated to have completed any probation and confinement. Courts must seal the individual's juvenile court record if the offense is not a most serious offense, a sex offense, or a felony drug offense. Respondents must also have completed the terms and conditions of disposition, including financial obligations, to seal a record during a regular sealing hearing.

Motion to Seal Juvenile Records. An individual may file a motion requesting that the court seal their juvenile record. An individual is eligible to have their record sealed after remaining in the community without further conviction for a period of time, and paying any restitution associated with the case.

For class A felonies, an individual must remain in the community without conviction for five years. For class B felonies, class C felonies, and all misdemeanors, an individual must remain in the community without conviction for two years.

Individuals convicted of rape in the first degree, rape in the second degree, and indecent liberties with forcible compulsion are not eligible for record sealing. Other sex offenses are eligible for sealing, but an individual must be relieved of the obligation to register as a sex offender.

Access to Sealed Records. Criminal justice agencies may not disclose confidential information or sealed records accessed through the Washington State Identification System or other means, and no information may be given to third parties other than Washington criminal justice agencies about the existence or nonexistence of confidential or sealed records. The Washington State Patrol must limit access to sealed juvenile record information to criminal justice agencies in Washington State.

Destruction of Juvenile Records. All records maintained by any court or law enforcement agency must be automatically destroyed within 90 days of becoming eligible for destruction. Records are eligible for such destruction when the person is at least 18 years of age; the records consist of successfully completed diversion agreements and counsel and

release agreements, or both, which were completed on or after June 7, 2018; and there is no restitution owing in the case.

Summary of Bill: Confidentiality. All records relating to commission of juvenile offenses, including records related to diversions are confidential and may be released in limited circumstances.

Cause of Action. Any corporation, business trust, estate, partnership, association, joint venture, or any other legal or commercial entity, government, government subdivision, agency, municipality, or other legal entity who disseminates sealed or destroyed records may be sued for damages by the subject of those records.

If a plaintiff prevails in bringing a civil action, the court may award actual damages or a per day penalty of \$100 since the record was shared without corrective action, or whichever amount is greater. Actual damages include mental pain and suffering endured by the subject of the records that were disseminated. The court may also award any other relief it deems appropriate. In addition to any relief awarded, the court must award reasonable attorneys' fees and costs to any prevailing plaintiff.

County clerks and employees of governments, governmental subdivisions, agencies, and municipalities are not personally liable for actions within the scope of their employment.

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 for illegally sharing a sealed or destroyed juvenile record if the entity did not have notice that a record is sealed or destroyed.

Juvenile Record Sealing. During a juvenile disposition hearing, the court must provide a juvenile and victims of the offense notice of the juvenile's eligibility for juvenile records sealing. The court must also provide a juvenile with notice of an upcoming administrative sealing hearing at least six months in advance of the scheduled hearing.

If a court enters a written order sealing a juvenile court record, it must order that the official juvenile court file, social file, and other records relating to the case named in the order be sealed. Adjudication and proceedings in the case must be treated as if they never occurred.

The subject of a sealed juvenile record may reply to an inquiry about the subject's commission of a juvenile offense, including an inquiry about whether the subject has a disqualifying arrest or adjudication, or that the subject does not have a juvenile arrest or adjudication.

Courts must provide written notice to individuals whose records are sealed that includes information about the meaning of having a sealed juvenile record.

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 the official juvenile court record related to that offense remains open for public inspection.

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

Appropriation: None.

Fiscal Note: Requested on February 1, 2023.

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: Record sealing is the incentive for young people to get their lives back on track. Once the record is sealed it is treated like it never occurred so young people can go apply for jobs, apply for housing, and not be saddled with their youthful mistake for the rest of their lives.

Washington is currently breaking our promise to young people by allowing records to be leaked without consequence. This hinders the rehabilitative processes of youths. Reports have found that Washington ranks in the bottom 5 for how it handles juvenile court records. This legislation provides a mechanism for young people to hold public agencies and other entities responsible for leaking their records accountable. It also provides clarity for young people about how they can talk about what it means to have a sealed record. Young people have consistently expressed their feelings of frustration, confusion, and defeat of not being able to escape the effects of their juvenile records. This is about rehabilitation for young people to set them on a path for being productive members of society.

This is also a matter of racial justice. When the state fails to protect juvenile records, there is a disproportionate impact on Black and brown youth which compounds the systems of discrimination in our education, employment, and education system. Black youth are more likely than white youth to be arrested and to be referred for prosecution, and are less likely than their white counterparts to be offered diversion. This bill would provide equitable solutions by making all juvenile records as equally confidential as possible, leaving less opportunity for racial bias while strengthening individual privacy.

This bill will not affect access to juvenile hearings which will still be open and available on the Internet.

CON: This bill is in direct conflict with the purpose of collecting these records. Background

checks are required for employment when working with vulnerable children and adults. This bill also does nothing about the collection of this data for the federal FBI database which will continue to receive partial data.

This bill poses a paradox of right versus right. It is ethically right to want to protect the legitimate privacy interests of young persons involved in the juvenile justice system. It is also ethically right to protect the public's interest in overseeing and ensuring the fair administration of the juvenile justice system. The constitution guarantees the open administration of justice to the public. The changes in this bill are overly broad and will likely have unintended consequences. This is a radical departure from current standards that will undermine the accountability and public trust of the juvenile justice system. In order to improve the juvenile system, we need the public's input and transparency is key to that. All of us should be concerned about public safety and should be able to see these records for personal and community safety. Evidence-based studies need access to the records to create a public accounting of that information.

This bill also shows our children that it is okay to commit heinous crimes without anyone finding out just how deep their crimes go.

OTHER: This bill will create inconsistencies and confusion for already complicated and messy provisions of RCW 13.50. Court proceedings will remain open, and this creates liabilities that are very difficult to deal with. Concealing serious offenses is problematic. The public should be able to see what judges, prosecutors, law enforcement and others working for the justice system are doing.

Persons Testifying: PRO: Senator Noel Frame, Prime Sponsor; George Yeannakis, Office of Public Defense; Karen Pillar, Team Child; Katherine Hurley, Special Counsel for Criminal Practice and Policy King County Department of Public Defense; Roxanna Gomez, ACLU WA; Danni Jo Bechtold, The Mockingbird Society; Sabian Hart, The Mockingbird Society.

CON: James McMahan, WA Assoc Sheriffs & Police Chiefs; Fred Obee, Washington Newspaper Publishers Association; Michael Fancher, President, Washington Coalition for Open Government; Laci Miller; Rowland Thompson, Allied Daily Newspapers of WA, WA Newspaper Publishers Assn, WA State Assn of Broadcasters; Shawn Sant, Franklin County Prosecutor.

OTHER: Barbara Miner, Washington State Association of County Clerks.

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