
SUBSTITUTE SENATE BILL 5739

State of Washington

52nd Legislature

1991 Regular Session

By Senate Committee on Ways & Means (originally sponsored by Senators Anderson, Talmadge, von Reichbauer, McMullen, Amondson, Johnson, Oke, L. Smith and Sutherland).

Read first time March 11, 1991.

1 AN ACT Relating to juvenile serious habitual offenders; amending
2 RCW 13.50.050; adding a new chapter to Title 13 RCW; and creating a new
3 section.

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

5 NEW SECTION. **Sec. 1.** The legislature finds that a substantial
6 and disproportionate amount of serious crime is committed by a
7 relatively small number of chronic juvenile offenders commonly known as
8 serious habitual offenders. In enacting this chapter the legislature
9 intends to support increased efforts by the juvenile justice system
10 comprised of law enforcement, prosecuting attorneys, probation
11 departments, juvenile courts, schools, and the division of juvenile
12 rehabilitation to identify these offenders early in their careers, and
13 to work cooperatively to investigate and record their activities,
14 prosecute them aggressively, sentence them appropriately, and to
15 supervise them intensively in institutions and in the community. The

1 legislature further supports increased interagency efforts to gather
2 comprehensive data and actively disseminate it to the agencies in the
3 juvenile justice system, to produce more informed decisions by all
4 agencies in that system through organizational and operational
5 techniques that have already proven their effectiveness in this and
6 other states.

7 NEW SECTION. **Sec. 2.** (1) There is established within the
8 department of community development a program of financial assistance
9 for law enforcement, prosecuting attorneys, probation departments, and
10 schools, designated the "serious habitual offender program." All funds
11 appropriated to the department of community development for the
12 purposes of this chapter shall be administered and disbursed by the
13 department, and shall, to the greatest extent feasible, be coordinated
14 or consolidated with federal funds that may be made available for these
15 purposes. Funding for this program shall include the cost to the
16 department of community development for administering the grants.

17 (2) Allocation and award of funds for the purposes of this chapter
18 shall be made upon application by a prosecuting attorney, a local law
19 enforcement agency, a probation department, or a school district.

20 A policy board shall be established consisting of one
21 representative each from prosecuting attorneys, law enforcement
22 agencies, probation departments, and school districts, and two
23 representatives from the department of social and health services, one
24 being from the division of juvenile rehabilitation. The policy board
25 shall assist the department of community development in an advisory
26 capacity in the selection of applicants to receive grants and oversee
27 the serious habitual offender program. The department may allocate and
28 award funds to those agencies that establish programs in substantial
29 compliance with the policies and criteria set forth in this chapter.

1 The applicant agency shall use the funds to create an information
2 gathering and analysis unit responsible for the identification of
3 serious habitual offenders and for the dissemination of information
4 about the activities of those offenders to the criminal justice system.
5 This unit shall participate in the planning, support, and assistance of
6 activities required in sections 4 through 6 of this act. Funds
7 disbursed under this chapter shall not supplant local funds that would,
8 in absence of the program established by this chapter, be made
9 available to support the juvenile justice system.

10 NEW SECTION. **Sec. 3.** (1) For a person to be the subject of
11 the efforts of programs established pursuant to this chapter, the
12 person must have been convicted or entered diversion for a crime and
13 have:

14 (a) Accumulated five or more total arrests; with at least three
15 arrests for crimes chargeable as felonies and at least three of those
16 five arrests having occurred within the preceding twelve months;

17 (b) Accumulated ten or more total arrests; with at least two
18 arrests for crimes chargeable as felonies and at least three arrests
19 having occurred within the preceding twelve months;

20 (c) Been arrested at least once for three or more burglaries,
21 robberies, or sexual assaults within the preceding twelve months; or

22 (d) Accumulated ten or more total arrests; with at least eight
23 arrests for misdemeanor crimes of theft, assault, battery, narcotics or
24 controlled substance possession, substance abuse, or use or possession
25 of weapons, and at least three of those arrests having occurred within
26 the preceding twelve months.

27 (2) Arrests for infractions or conduct described as status offenses
28 shall not be utilized in determining whether an individual is described
29 in subsection (1) of this section. All arrests used in determining

1 eligibility for selection for program participation that did not result
2 in a filing of charges by the prosecutor's office shall be certified by
3 the prosecutor as having been substantiated by probable cause.

4 (3) In applying the selection criteria of this section, a program
5 may elect to limit its efforts to persons described in one or more of
6 the categories listed in subsection (1) of this section, or specified
7 felonies, if crime statistics demonstrate that the persons so
8 identified present a particularly serious problem in the county, or
9 that the incidence of the felonies so specified present a particularly
10 serious problem in the county. The above definitions are minimum
11 standards for identifying serious habitual offenders and do not
12 preclude program agencies from establishing stricter criteria in
13 identifying serious habitual offenders.

14 NEW SECTION. **Sec. 4.** Programs funded under this chapter shall
15 adopt and pursue the following policies:

16 (1) Each participating law enforcement agency shall do all of the
17 following:

18 (a) Gather data on identified serious habitual offenders.

19 (b) Compile data into a format usable state-wide by law
20 enforcement, prosecutors, probation officers, schools, and courts
21 pursuant to interagency agreement.

22 (c) Regularly update data and disseminate data to criminal justice
23 system agencies as needed.

24 (d) Establish local policies in cooperation with the prosecutor,
25 the probation officer, schools, the department of social and health
26 services, and the juvenile court regarding data collection, arrest, and
27 detention of serious habitual offenders.

28 (e) Provide support and assistance to other agencies engaged in the
29 program.

1 (2) Each participating prosecuting attorney's office shall do all
2 of the following:

3 (a) File charges based on the most serious provable offenses of
4 each arrest of a serious habitual offender.

5 (b) Use all reasonable prosecutorial efforts to resist the release,
6 where appropriate, of the serious habitual offender at all stages of
7 the prosecution.

8 (c) Seek an admission of guilt on all offenses charged in the
9 informations against the offender. The only cases in which the
10 prosecutor may request the court to reduce or dismiss the charges are
11 cases in which the prosecutor decides there is insufficient evidence to
12 prove the state's case, the testimony of a material witness cannot be
13 obtained, or a reduction or dismissal will not result in a substantial
14 change in sentence, or prosecution will not serve the public interest.
15 In those cases, the prosecutor shall inform the program agencies
16 stating the specific factual and legal basis for such a disposition.

17 (d) Prosecute aggressively all cases involving serious habitual
18 offenders, whereby the prosecutor who makes the initial filing decision
19 or appearance on such a case shall perform all subsequent court
20 appearances on that case through its conclusion, including the
21 disposition phase.

22 (e) Make all reasonable prosecutorial efforts to persuade the court
23 to impose the most appropriate sentence upon such an offender at the
24 time of disposition.

25 (f) Make all reasonable prosecutorial efforts to reduce the time
26 between arrest and disposition of the charge.

27 (g) Act as a liaison with the court and other criminal justice
28 agencies to establish local policies regarding the program and to
29 ensure interagency cooperation in the planning and implementation of
30 the program.

1 (h) Provide support and assistance to other agencies engaged in the
2 program.

3 (3) Each participating juvenile probation department shall do all
4 of the following:

5 (a) Cooperate in gathering data for use by all participating
6 agencies pursuant to interagency agreement.

7 (b) Give priority to detaining serious habitual offenders in
8 custody who lack proper and effective parental care and control and who
9 have no one willing to assume or capable of assuming the parental role
10 and the serious habitual offender is serving a sentence, on bail, or in
11 violation of a court order.

12 (c) Consider the data relating to serious habitual offenders when
13 making all decisions regarding the identified individual and include
14 relevant data in written reports to the court.

15 (d) File information on violations of probation with the court
16 immediately.

17 (e) Establish local policies in cooperation with law enforcement
18 and the prosecuting attorney, schools, and the juvenile court regarding
19 the program and provide support and assistance to other agencies
20 engaged in the program.

21 (4) For the purposes of this chapter, school districts shall be
22 juvenile care agencies as defined in RCW 13.50.010 and shall do all of
23 the following:

24 (a) Cooperate in providing data on students identified by
25 definition of this chapter as serious habitual offenders, for profiling
26 by participating agencies pursuant to interagency agreement. Such data
27 shall include but not be limited to past and current accounts of
28 truancy, disruptive behavior, disciplinary actions, and suspension or
29 expulsion history.

1 (b) Report all crimes that are committed on campus by serious
2 habitual offenders to law enforcement.

3 (c) Report all violations of probation committed on campus by
4 serious habitual offenders to the probation officer or program
5 coordinator.

6 (d) Provide educational supervision and social or educational
7 services appropriate to serious habitual offenders attending schools.

8 (e) Establish local policies in cooperation with law enforcement,
9 the prosecuting attorney, the probation department, and the juvenile
10 court regarding the program and provide support and assistance to other
11 agencies engaged in the program.

12 (f) Special services units of participating school districts shall
13 have the option of notifying participating agencies under this chapter,
14 individually or collectively, about students of concern which have come
15 to their attention as being potentially at risk of becoming serious
16 habitual offenders, the purpose of which shall be to utilize the
17 combined agencies' resources for deterring juveniles from acquiring
18 serious habitual offender status.

19 (5) The department of social and health services shall do all of
20 the following:

21 (a) Coordinate with participating agencies under this chapter per
22 interagency agreement to identify serious habitual offenders.

23 (b) Cooperate in providing data on juveniles identified by this
24 chapter as serious habitual offenders for profiling by participating
25 agencies pursuant to interagency agreement. Such data shall include,
26 but not be limited to, child protective services reports involving the
27 serious habitual offender, contacts, state or county-funded
28 intelligence and psychological evaluations, and group home placement
29 behavior reports.

1 (6) By January 1, 1993, the participating funded programs shall
2 submit to the department of community development a written report
3 regarding achievement of program goals. The department of community
4 development will then submit to the legislature a written summary of
5 the reports. The reports, individually and collectively shall do all
6 of the following:

7 (a) Document the amount of serious crime committed by a relatively
8 small number of serious habitual offenders.

9 (b) Provide statistical documentation regarding the total number of
10 juveniles in the program, the types of offenses committed, the manner
11 in which cases are disposed, and a statistical profile of the average
12 juvenile who qualifies for the program.

13 (c) Evaluate program costs.

14 (d) Review new operational and organizational techniques used in
15 gathering and disseminating information, and in prosecution and in
16 monitoring and supervising serious habitual offenders.

17 (e) Compare this program and its effectiveness with the techniques
18 and methods used prior to the implementation of the program.

19 NEW SECTION. **Sec. 5.** The division of juvenile rehabilitation
20 shall give priority to institutional placement of convicted offenders
21 sentenced to sixteen weeks or more and identified as serious habitual
22 offenders. Serious habitual offenders sentenced to thirteen weeks or
23 more shall not be placed in community-based group homes or other
24 nonsecure facilities.

25 NEW SECTION. **Sec. 6.** The administrator for the courts shall
26 provide participating agencies providing juvenile court services with
27 monthly print-outs identifying juveniles by name and date of birth who
28 have three or more arrests for the calendar year within the county, the

1 number of arrests for the calendar year, and the total lifetime arrest
2 violations of the identified juveniles; the purpose of which will be to
3 assist the program agencies in identifying the juveniles who are
4 serious habitual offenders.

5 NEW SECTION. **Sec. 7.** This chapter authorizes the inspection
6 of juvenile court records, probation, and division of juvenile
7 rehabilitation records, prosecuting attorney records, school records,
8 and law enforcement records by the participating law enforcement agency
9 charged with the compilation of the data relating to serious habitual
10 offenders into the format used by all participating agencies.
11 Confidentiality of records information shall not apply to serious
12 habitual offenders within the scope of information exchange between law
13 enforcement, juvenile justice, and juvenile care agencies. Neither
14 these records provided to the program agencies, nor the records
15 developed from the information shall be available for public disclosure
16 or inspection.

17 NEW SECTION. **Sec. 8.** Within one month of implementation of
18 the program, all participating agencies in a county shall execute a
19 written interagency agreement outlining their role in the program,
20 including the duties they will perform, the duties other agencies will
21 perform for and with them, and the categories of information to be
22 collected and the plan for its distribution and use. All participating
23 agencies will meet no less than once each month to plan, implement, and
24 refine the operation of the program and to exchange information about
25 individuals subject to the program or other related topics.

26 NEW SECTION. **Sec. 9.** Law enforcement agencies and prosecuting
27 attorneys participating in programs pursuant to this chapter shall

1 adopt procedures to require a check of juvenile criminal history of all
2 adults whose cases are presented to the prosecuting attorney's office
3 for filing. The juvenile criminal history shall be considered by the
4 prosecuting attorney in the charging decision and establishing the
5 prosecuting attorney's position on the appropriate plea and sentence.

6 **Sec. 10.** RCW 13.50.050 and 1990 c 3 s 125 are each amended to read
7 as follows:

8 (1) This section governs records relating to the commission of
9 juvenile offenses, including records relating to diversions.

10 (2) The official juvenile court file of any alleged or proven
11 juvenile offender shall be open to public inspection, unless sealed
12 pursuant to subsection (11) of this section.

13 (3) All records other than the official juvenile court file are
14 confidential and may be released only as provided in this section,
15 section 7 of this act, RCW 13.50.010, 13.40.215, and 4.24.550.

16 (4) Except as otherwise provided in this section, section 7 of this
17 act, and RCW 13.50.010, records retained or produced by any juvenile
18 justice or care agency may be released to other participants in the
19 juvenile justice or care system only when an investigation or case
20 involving the juvenile in question is being pursued by the other
21 participant or when that other participant is assigned the
22 responsibility for supervising the juvenile.

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

28 (6) Notwithstanding any other provision of this chapter, the
29 release, to the juvenile or his or her attorney, of law enforcement and

1 prosecuting attorneys' records pertaining to investigation, diversion,
2 and prosecution of juvenile offenses shall be governed by the rules of
3 discovery and other rules of law applicable in adult criminal
4 investigations and prosecutions.

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

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

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

1 (10) In any case in which an information has been filed pursuant to
2 RCW 13.40.100 or a complaint has been filed with the prosecutor and
3 referred for diversion pursuant to RCW 13.40.070, the person the
4 subject of the information or complaint may file a motion with the
5 court to have the court vacate its order and findings, if any, and,
6 subject to subsection (24) of this section, order the sealing of the
7 official juvenile court file, the social file, and records of the court
8 and of any other agency in the case.

9 (11) The court shall grant the motion to seal records made pursuant
10 to subsection (10) of this section if it finds that:

11 (a) Two years have elapsed from the later of: (i) Final discharge
12 of the person from the supervision of any agency charged with
13 supervising juvenile offenders; or (ii) from the entry of a court order
14 relating to the commission of a juvenile offense or a criminal offense;

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

17 (c) No proceeding is pending seeking the formation of a diversion
18 agreement with that person.

19 (12) The person making a motion pursuant to subsection (10) of this
20 section shall give reasonable notice of the motion to the prosecution
21 and to any person or agency whose files are sought to be sealed.

22 (13) If the court grants the motion to seal made pursuant to
23 subsection (10) of this section, it shall, subject to subsection (24)
24 of this section, order sealed the official juvenile court file, the
25 social file, and other records relating to the case as are named in the
26 order. Thereafter, the proceedings in the case shall be treated as if
27 they never occurred, and the subject of the records may reply
28 accordingly to any inquiry about the events, records of which are
29 sealed. Any agency shall reply to any inquiry concerning confidential
30 or sealed records that records are confidential, and no information can

1 be given about the existence or nonexistence of records concerning an
2 individual.

3 (14) Inspection of the files and records included in the order to
4 seal may thereafter be permitted only by order of the court upon motion
5 made by the person who is the subject of the information or complaint,
6 except as otherwise provided in RCW 13.50.010(8) and subsection (24) of
7 this section.

8 (15) Any adjudication of a juvenile offense or a crime subsequent
9 to sealing has the effect of nullifying the sealing order. Any
10 conviction for any adult felony subsequent to the sealing has the
11 effect of nullifying the sealing order for the purposes of chapter
12 9.94A RCW for any juvenile adjudication of guilt for a class A offense
13 or a sex offense as defined in RCW 9.94A.030.

14 (16) In any case in which an information has been filed pursuant to
15 RCW 13.40.100 or a complaint has been filed with the prosecutor and
16 referred for diversion pursuant to RCW 13.40.070, the person who is the
17 subject of the information or complaint may file a motion with the
18 court to have the court vacate its order and findings, if any, and,
19 subject to subsection (24) of this section, order the destruction of
20 the official juvenile court file, the social file, and records of the
21 court and of any other agency in the case.

22 (17) The court may grant the motion to destroy records made
23 pursuant to subsection (16) of this section if it finds:

24 (a) The person making the motion is at least twenty-three years of
25 age;

26 (b) The person has not subsequently been convicted of a felony;

27 (c) No proceeding is pending against that person seeking the
28 conviction of a criminal offense; and

29 (d) The person has never been found guilty of a serious offense.

1 (18) A person eighteen years of age or older whose criminal history
2 consists of only one referral for diversion may request that the court
3 order the records in that case destroyed. The request shall be
4 granted, subject to subsection (24) of this section, if the court finds
5 that two years have elapsed since completion of the diversion
6 agreement.

7 (19) If the court grants the motion to destroy records made
8 pursuant to subsection (16) or (18) of this section, it shall, subject
9 to subsection (24) of this section, order the official juvenile court
10 file, the social file, and any other records named in the order to be
11 destroyed.

12 (20) The person making the motion pursuant to subsection (16) or
13 (18) of this section shall give reasonable notice of the motion to the
14 prosecuting attorney and to any agency whose records are sought to be
15 destroyed.

16 (21) Any juvenile to whom the provisions of this section may apply
17 shall be given written notice of his or her rights under this section
18 at the time of his or her disposition hearing or during the diversion
19 process.

20 (22) Nothing in this section may be construed to prevent a crime
21 victim or a member of the victim's family from divulging the identity
22 of the alleged or proven juvenile offender or his or her family when
23 necessary in a civil proceeding.

24 (23) Any juvenile justice or care agency may, subject to the
25 limitations in subsection (24) of this section and subparagraphs (a)
26 and (b) of this subsection, develop procedures for the routine
27 destruction of records relating to juvenile offenses and diversions.

28 (a) Records may be routinely destroyed only when the person the
29 subject of the information or complaint has attained twenty-three years
30 of age or older, or is eighteen years of age or older and his or her

1 criminal history consists entirely of one diversion agreement and two
2 years have passed since completion of the agreement.

3 (b) The court may not routinely destroy the official juvenile court
4 file or recordings or transcripts of any proceedings.

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

14 NEW SECTION. **Sec. 11.** If specific funding for the purposes of
15 this act, referencing this act by bill number, is not provided by June
16 30, 1991, in the omnibus appropriations act, this act shall be null and
17 void.

18 NEW SECTION. **Sec. 12.** Sections 1 through 9 of this act shall
19 constitute a new chapter in Title 13 RCW.