
HOUSE BILL 2510

State of Washington

55th Legislature

1998 Regular Session

By Representative Wolfe

Read first time . Referred to Committee on .

1 AN ACT Relating to diversion; amending RCW 13.40.020, 13.40.070,
2 13.40.080, and 13.50.050; prescribing penalties; and providing an
3 effective date.

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

5 **Sec. 1.** RCW 13.40.020 and 1997 c 338 s 10 are each amended to read
6 as follows:

7 For the purposes of this chapter:

8 (1) "Community-based rehabilitation" means one or more of the
9 following: Employment; attendance of information classes; literacy
10 classes; counseling, outpatient substance abuse treatment programs,
11 outpatient mental health programs, anger management classes, education
12 or outpatient treatment programs to prevent animal cruelty, or other
13 services; or attendance at school or other educational programs
14 appropriate for the juvenile as determined by the school district.
15 Placement in community-based rehabilitation programs is subject to
16 available funds;

17 (2) Community-based sanctions may include one or more of the
18 following:

19 (a) A fine, not to exceed five hundred dollars;

1 (b) Community service not to exceed one hundred fifty hours of
2 service;

3 (3) "Community service" means compulsory service, without
4 compensation, performed for the benefit of the community by the
5 offender as punishment for committing an offense. Community service
6 may be performed through public or private organizations or through
7 work crews;

8 (4) "Community supervision" means an order of disposition by the
9 court of an adjudicated youth not committed to the department or an
10 order granting a deferred disposition. A community supervision order
11 for a single offense may be for a period of up to two years for a sex
12 offense as defined by RCW 9.94A.030 and up to one year for other
13 offenses. As a mandatory condition of any term of community
14 supervision, the court shall order the juvenile to refrain from
15 committing new offenses. As a mandatory condition of community
16 supervision, the court shall order the juvenile to comply with the
17 mandatory school attendance provisions of chapter 28A.225 RCW and to
18 inform the school of the existence of this requirement. Community
19 supervision is an individualized program comprised of one or more of
20 the following:

21 (a) Community-based sanctions;

22 (b) Community-based rehabilitation;

23 (c) Monitoring and reporting requirements;

24 (d) Posting of a probation bond;

25 (5) "Confinement" means physical custody by the department of
26 social and health services in a facility operated by or pursuant to a
27 contract with the state, or physical custody in a detention facility
28 operated by or pursuant to a contract with any county. The county may
29 operate or contract with vendors to operate county detention
30 facilities. The department may operate or contract to operate
31 detention facilities for juveniles committed to the department.
32 Pretrial confinement or confinement of less than thirty-one days
33 imposed as part of a disposition or modification order may be served
34 consecutively or intermittently, in the discretion of the court;

35 (6) "Court," when used without further qualification, means the
36 juvenile court judge(s) or commissioner(s);

37 (7) "Criminal history" includes all criminal complaints against the
38 respondent for which, prior to the commission of a current offense:

1 (a) The allegations were found correct by a court. If a respondent
2 is convicted of two or more charges arising out of the same course of
3 conduct, only the highest charge from among these shall count as an
4 offense for the purposes of this chapter; or

5 (b) The criminal complaint was diverted by a prosecutor pursuant to
6 the provisions of this chapter on agreement of the respondent and after
7 an advisement to the respondent that the criminal complaint would be
8 considered as part of the respondent's criminal history. A
9 successfully completed first-time diversion entered into for an offense
10 committed on or after July 1, 1998, shall not be considered part of the
11 respondent's criminal history. A successfully completed deferred
12 adjudication that was entered before July 1, 1998, or a deferred
13 disposition shall not be considered part of the respondent's criminal
14 history;

15 (8) "Department" means the department of social and health
16 services;

17 (9) "Detention facility" means a county facility, paid for by the
18 county, for the physical confinement of a juvenile alleged to have
19 committed an offense or an adjudicated offender subject to a
20 disposition or modification order. "Detention facility" includes
21 county group homes, inpatient substance abuse programs, juvenile basic
22 training camps, and electronic monitoring;

23 (10) "Diversion unit" means any probation counselor who enters into
24 a diversion agreement with an alleged youthful offender, or any other
25 person, community accountability board, or other entity except a law
26 enforcement official or entity, with whom the juvenile court
27 administrator has contracted to arrange and supervise such agreements
28 pursuant to RCW 13.40.080, or any person, community accountability
29 board, or other entity specially funded by the legislature to arrange
30 and supervise diversion agreements in accordance with the requirements
31 of this chapter. For purposes of this subsection, "community
32 accountability board" means a board comprised of members of the local
33 community in which the juvenile offender resides. The superior court
34 shall appoint the members. The boards shall consist of at least three
35 and not more than seven members. If possible, the board should include
36 a variety of representatives from the community, such as a law
37 enforcement officer, teacher or school administrator, high school
38 student, parent, and business owner, and should represent the cultural
39 diversity of the local community;

1 (11) "Foster care" means temporary physical care in a foster family
2 home or group care facility as defined in RCW 74.15.020 and licensed by
3 the department, or other legally authorized care;

4 (12) "Institution" means a juvenile facility established pursuant
5 to chapters 72.05 and 72.16 through 72.20 RCW;

6 (13) "Intensive supervision program" means a parole program that
7 requires intensive supervision and monitoring, offers an array of
8 individualized treatment and transitional services, and emphasizes
9 community involvement and support in order to reduce the likelihood a
10 juvenile offender will commit further offenses;

11 (14) "Juvenile," "youth," and "child" mean any individual who is
12 under the chronological age of eighteen years and who has not been
13 previously transferred to adult court pursuant to RCW 13.40.110 or who
14 is otherwise under adult court jurisdiction;

15 (15) "Juvenile offender" means any juvenile who has been found by
16 the juvenile court to have committed an offense, including a person
17 eighteen years of age or older over whom jurisdiction has been extended
18 under RCW 13.40.300;

19 (16) "Local sanctions" means one or more of the following: (a)
20 0-30 days of confinement; (b) 0-12 months of community supervision; (c)
21 0-150 hours of community service; or (d) \$0-\$500 fine;

22 (17) "Manifest injustice" means a disposition that would either
23 impose an excessive penalty on the juvenile or would impose a serious,
24 and clear danger to society in light of the purposes of this chapter;

25 (18) "Monitoring and reporting requirements" means one or more of
26 the following: Curfews; requirements to remain at home, school, work,
27 or court-ordered treatment programs during specified hours;
28 restrictions from leaving or entering specified geographical areas;
29 requirements to report to the probation officer as directed and to
30 remain under the probation officer's supervision; and other conditions
31 or limitations as the court may require which may not include
32 confinement;

33 (19) "Offense" means an act designated a violation or a crime if
34 committed by an adult under the law of this state, under any ordinance
35 of any city or county of this state, under any federal law, or under
36 the law of another state if the act occurred in that state;

37 (20) "Probation bond" means a bond, posted with sufficient security
38 by a surety justified and approved by the court, to secure the
39 offender's appearance at required court proceedings and compliance with

1 court-ordered community supervision or conditions of release ordered
2 pursuant to RCW 13.40.040 or 13.40.050. It also means a deposit of
3 cash or posting of other collateral in lieu of a bond if approved by
4 the court;

5 (21) "Respondent" means a juvenile who is alleged or proven to have
6 committed an offense;

7 (22) "Restitution" means financial reimbursement by the offender to
8 the victim, and shall be limited to easily ascertainable damages for
9 injury to or loss of property, actual expenses incurred for medical
10 treatment for physical injury to persons, lost wages resulting from
11 physical injury, and costs of the victim's counseling reasonably
12 related to the offense if the offense is a sex offense. Restitution
13 shall not include reimbursement for damages for mental anguish, pain
14 and suffering, or other intangible losses. Nothing in this chapter
15 shall limit or replace civil remedies or defenses available to the
16 victim or offender;

17 (23) "Secretary" means the secretary of the department of social
18 and health services. "Assistant secretary" means the assistant
19 secretary for juvenile rehabilitation for the department;

20 (24) "Services" means services which provide alternatives to
21 incarceration for those juveniles who have pleaded or been adjudicated
22 guilty of an offense or have signed a diversion agreement pursuant to
23 this chapter;

24 (25) "Sex offense" means an offense defined as a sex offense in RCW
25 9.94A.030;

26 (26) "Sexual motivation" means that one of the purposes for which
27 the respondent committed the offense was for the purpose of his or her
28 sexual gratification;

29 (27) "Successful completion," or any derivative thereof, when used
30 with reference to diversion, means the diversion unit has made a
31 finding that the respondent has satisfied all terms of the diversion
32 agreement;

33 (28) "Surety" means an entity licensed under state insurance laws
34 or by the state department of licensing, to write corporate, property,
35 or probation bonds within the state, and justified and approved by the
36 superior court of the county having jurisdiction of the case;

37 ~~((28))~~ (29) "Violation" means an act or omission, which if
38 committed by an adult, must be proven beyond a reasonable doubt, and is
39 punishable by sanctions which do not include incarceration;

1 (~~(29)~~) (30) "Violent offense" means a violent offense as defined
2 in RCW 9.94A.030.

3 **Sec. 2.** RCW 13.40.070 and 1997 c 338 s 17 are each amended to read
4 as follows:

5 (1) Complaints referred to the juvenile court alleging the
6 commission of an offense shall be referred directly to the prosecutor.
7 The prosecutor, upon receipt of a complaint, shall screen the complaint
8 to determine whether:

9 (a) The alleged facts bring the case within the jurisdiction of the
10 court; and

11 (b) On a basis of available evidence there is probable cause to
12 believe that the juvenile did commit the offense.

13 (2) If the identical alleged acts constitute an offense under both
14 the law of this state and an ordinance of any city or county of this
15 state, state law shall govern the prosecutor's screening and charging
16 decision for both filed and diverted cases.

17 (3) If the requirements of subsections (1)(a) and (b) of this
18 section are met, the prosecutor shall either file an information in
19 juvenile court or divert the case, as set forth in subsections (5),
20 (6), and (7) of this section. If the prosecutor finds that the
21 requirements of subsection (1)(a) and (b) of this section are not met,
22 the prosecutor shall maintain a record, for one year, of such decision
23 and the reasons therefor. In lieu of filing an information or
24 diverting an offense a prosecutor may file a motion to modify community
25 supervision where such offense constitutes a violation of community
26 supervision.

27 (4) An information shall be a plain, concise, and definite written
28 statement of the essential facts constituting the offense charged. It
29 shall be signed by the prosecuting attorney and conform to chapter
30 10.37 RCW.

31 (5) Where a case is legally sufficient, the prosecutor shall file
32 an information with the juvenile court if:

33 (a) An alleged offender is accused of a class A felony, a class B
34 felony, an attempt to commit a class B felony, a class C felony listed
35 in RCW 9.94A.440(2) as a crime against persons or listed in RCW
36 9A.46.060 as a crime of harassment, or a class C felony that is a
37 violation of RCW 9.41.080 or 9.41.040(1)(b)(iii); or

1 (b) An alleged offender is accused of a felony and has a criminal
2 history of any felony, or at least two gross misdemeanors, or at least
3 two misdemeanors, or at least one misdemeanor and one gross
4 misdemeanor; or

5 (c) An alleged offender has previously been committed to the
6 department; or

7 (d) An alleged offender has been referred by a diversion unit for
8 prosecution or desires prosecution instead of diversion; or

9 (e) An alleged offender has two or more diversion contracts on the
10 alleged offender's criminal history; or

11 (f) A special allegation has been filed that the offender or an
12 accomplice was armed with a firearm when the offense was committed.

13 (6) Where a case is legally sufficient the prosecutor shall divert
14 the case if the alleged offense is a misdemeanor or gross misdemeanor
15 or violation and the alleged offense is the offender's first
16 ~~((offense))~~ or second misdemeanor, gross misdemeanor, or violation. If
17 the alleged offender is charged with a related offense that must or may
18 be filed under subsections (5) and (7) of this section, a case under
19 this subsection may also be filed.

20 (7) Where a case is legally sufficient and falls into neither
21 subsection (5) nor (6) of this section, it may be filed or diverted.
22 In deciding whether to file or divert an offense under this section the
23 prosecutor shall be guided only by the length, seriousness, and recency
24 of the alleged offender's criminal history and the circumstances
25 surrounding the commission of the alleged offense.

26 (8) Whenever a juvenile is placed in custody or, where not placed
27 in custody, referred to a diversion interview, the parent or legal
28 guardian of the juvenile shall be notified as soon as possible
29 concerning the allegation made against the juvenile and the current
30 status of the juvenile. Where a case involves victims of crimes
31 against persons or victims whose property has not been recovered at the
32 time a juvenile is referred to a diversion unit, the victim shall be
33 notified of the referral and informed how to contact the unit.

34 (9) The responsibilities of the prosecutor under subsections (1)
35 through (8) of this section may be performed by a juvenile court
36 probation counselor for any complaint referred to the court alleging
37 the commission of an offense which would not be a felony if committed
38 by an adult, if the prosecutor has given sufficient written notice to
39 the juvenile court that the prosecutor will not review such complaints.

1 (10) The prosecutor, juvenile court probation counselor, or
2 diversion unit may, in exercising their authority under this section or
3 RCW 13.40.080, refer juveniles to mediation or victim offender
4 reconciliation programs. Such mediation or victim offender
5 reconciliation programs shall be voluntary for victims.

6 **Sec. 3.** RCW 13.40.080 and 1997 c 338 s 70 are each amended to read
7 as follows:

8 (1) A diversion agreement shall be a contract between a juvenile
9 accused of an offense and a ((diversionary)) diversion unit whereby the
10 juvenile agrees to fulfill certain conditions in lieu of prosecution.
11 Such agreements may be entered into only after the prosecutor, or
12 probation counselor pursuant to this chapter, has determined that
13 probable cause exists to believe that a crime has been committed and
14 that the juvenile committed it. Such agreements shall be entered into
15 as expeditiously as possible.

16 (2) A diversion agreement shall be limited to one or more of the
17 following:

18 (a) Community service not to exceed one hundred fifty hours, not to
19 be performed during school hours if the juvenile is attending school;

20 (b) Restitution limited to the amount of actual loss incurred by
21 the victim;

22 (c) Attendance at up to ten hours of counseling and/or up to twenty
23 hours of educational or informational sessions at a community agency.
24 The educational or informational sessions may include sessions relating
25 to respect for self, others, and authority; victim awareness;
26 accountability; self-worth; responsibility; work ethics; good
27 citizenship; literacy; and life skills. For purposes of this section,
28 "community agency" may also mean a community-based nonprofit
29 organization, if approved by the diversion unit. The state shall not
30 be liable for costs resulting from the ((diversionary)) diversion unit
31 exercising the option to permit diversion agreements to mandate
32 attendance at up to ten hours of counseling and/or up to twenty hours
33 of educational or informational sessions;

34 (d) A fine, not to exceed one hundred dollars. In determining the
35 amount of the fine, the diversion unit shall consider only the
36 juvenile's financial resources and whether the juvenile has the means
37 to pay the fine. The diversion unit shall not consider the financial

1 resources of the juvenile's parents, guardian, or custodian in
2 determining the fine to be imposed; and

3 (e) Requirements to remain during specified hours at home, school,
4 or work, and restrictions on leaving or entering specified geographical
5 areas.

6 (3) In assessing periods of community service to be performed and
7 restitution to be paid by a juvenile who has entered into a diversion
8 agreement, the court officer to whom this task is assigned shall
9 consult with the juvenile's custodial parent or parents or guardian and
10 victims who have contacted the ((~~diversionary~~)) diversion unit and, to
11 the extent possible, involve members of the community. Such members of
12 the community shall meet with the juvenile and advise the court officer
13 as to the terms of the diversion agreement and shall supervise the
14 juvenile in carrying out its terms.

15 (4)(a) A diversion agreement may not exceed a period of six months
16 and may include a period extending beyond the eighteenth birthday of
17 the divertee.

18 (b) If additional time is necessary for the juvenile to complete
19 restitution to the victim, the time period limitations of this
20 subsection may be extended by an additional six months.

21 (c) If the juvenile has not paid the full amount of restitution by
22 the end of the additional six-month period, then the juvenile shall be
23 referred to the juvenile court for entry of an order establishing the
24 amount of restitution still owed to the victim. In this order, the
25 court shall also determine the terms and conditions of the restitution,
26 including a payment plan extending up to ten years if the court
27 determines that the juvenile does not have the means to make full
28 restitution over a shorter period. For the purposes of this subsection
29 (4)(c), the juvenile shall remain under the court's jurisdiction for a
30 maximum term of ten years after the juvenile's eighteenth birthday.
31 Prior to the expiration of the initial ten-year period, the juvenile
32 court may extend the judgment for restitution an additional ten years.
33 The court may not require the juvenile to pay full or partial
34 restitution if the juvenile reasonably satisfies the court that he or
35 she does not have the means to make full or partial restitution and
36 could not reasonably acquire the means to pay the restitution over a
37 ten-year period. The county clerk shall make disbursements to victims
38 named in the order. The restitution to victims named in the order
39 shall be paid prior to any payment for other penalties or monetary

1 assessments. A juvenile under obligation to pay restitution may
2 petition the court for modification of the restitution order.

3 (5) The juvenile shall retain the right to be referred to the court
4 at any time prior to the signing of the diversion agreement.

5 (6) Divertees and potential divertees shall be afforded due process
6 in all contacts with a ((diversionary)) diversion unit regardless of
7 whether the juveniles are accepted for diversion or whether the
8 diversion program is successfully completed. Such due process shall
9 include, but not be limited to, the following:

10 (a) A written diversion agreement shall be executed stating all
11 conditions in clearly understandable language;

12 (b) Violation of the terms of the agreement shall be the only
13 grounds for termination;

14 (c) No diverttee may be terminated from a diversion program without
15 being given a court hearing, which hearing shall be preceded by:

16 (i) Written notice of alleged violations of the conditions of the
17 diversion program; and

18 (ii) Disclosure of all evidence to be offered against the diverttee;

19 (d) The hearing shall be conducted by the juvenile court and shall
20 include:

21 (i) Opportunity to be heard in person and to present evidence;

22 (ii) The right to confront and cross-examine all adverse witnesses;

23 (iii) A written statement by the court as to the evidence relied on
24 and the reasons for termination, should that be the decision; and

25 (iv) Demonstration by evidence that the diverttee has substantially
26 violated the terms of his or her diversion agreement.

27 (e) The prosecutor may file an information on the offense for which
28 the diverttee was diverted:

29 (i) In juvenile court if the diverttee is under eighteen years of
30 age; or

31 (ii) In superior court or the appropriate court of limited
32 jurisdiction if the diverttee is eighteen years of age or older.

33 (7) The diversion unit shall, subject to available funds, be
34 responsible for providing interpreters when juveniles need interpreters
35 to effectively communicate during diversion unit hearings or
36 negotiations.

37 (8) The diversion unit shall be responsible for advising a diverttee
38 of his or her rights as provided in this chapter.

1 (9) The diversion unit may refer a juvenile to community-based
2 counseling or treatment programs.

3 (10) The right to counsel shall inure prior to the initial
4 interview for purposes of advising the juvenile as to whether he or she
5 desires to participate in the diversion process or to appear in the
6 juvenile court. The juvenile may be represented by counsel at any
7 critical stage of the diversion process, including intake interviews
8 and termination hearings. The juvenile shall be fully advised at the
9 intake of his or her right to an attorney and of the relevant services
10 an attorney can provide. For the purpose of this section, intake
11 interviews mean all interviews regarding the diversion agreement
12 process.

13 The juvenile shall be advised that a diversion agreement shall
14 constitute a part of the juvenile's criminal history as defined by RCW
15 13.40.020(~~(+9)~~) (7). A signed acknowledgment of such advisement shall
16 be obtained from the juvenile, and the document shall be maintained by
17 the diversionary unit together with the diversion agreement, and a copy
18 of both documents shall be delivered to the prosecutor if requested by
19 the prosecutor. The supreme court shall promulgate rules setting forth
20 the content of such advisement in simple language.

21 (11) When a juvenile enters into a diversion agreement, the
22 juvenile court may receive only the following information for
23 dispositional purposes:

- 24 (a) The fact that a charge or charges were made;
- 25 (b) The fact that a diversion agreement was entered into;
- 26 (c) The juvenile's obligations under such agreement;
- 27 (d) Whether the alleged offender performed his or her obligations
28 under such agreement; and
- 29 (e) The facts of the alleged offense.

30 (12) A (~~diversionary~~) diversion unit may refuse to enter into a
31 diversion agreement with a juvenile. When a (~~diversionary~~) diversion
32 unit refuses to enter a diversion agreement with a juvenile, it shall
33 immediately refer such juvenile to the court for action and shall
34 forward to the court the criminal complaint and a detailed statement of
35 its reasons for refusing to enter into a diversion agreement. The
36 (~~diversionary~~) diversion unit shall also immediately refer the case
37 to the prosecuting attorney for action if such juvenile violates the
38 terms of the diversion agreement.

1 (13) A (~~diversionary~~) diversion unit may, in instances where it
2 determines that the act or omission of an act for which a juvenile has
3 been referred to it involved no victim, or where it determines that the
4 juvenile referred to it has no prior criminal history and is alleged to
5 have committed an illegal act involving no threat of or instance of
6 actual physical harm and involving not more than fifty dollars in
7 property loss or damage and that there is no loss outstanding to the
8 person or firm suffering such damage or loss, counsel and release or
9 release such a juvenile without entering into a diversion agreement.
10 A diversion unit's authority to counsel and release a juvenile under
11 this subsection shall include the authority to refer the juvenile to
12 community-based counseling or treatment programs. Any juvenile
13 released under this subsection shall be advised that the act or
14 omission of any act for which he or she had been referred shall
15 constitute a part of the juvenile's criminal history as defined by RCW
16 13.40.020(~~(+9)~~) (7). A signed acknowledgment of such advisement shall
17 be obtained from the juvenile, and the document shall be maintained by
18 the unit, and a copy of the document shall be delivered to the
19 prosecutor if requested by the prosecutor. The supreme court shall
20 promulgate rules setting forth the content of such advisement in simple
21 language. A juvenile determined to be eligible by a (~~diversionary~~)
22 diversion unit for release as provided in this subsection shall retain
23 the same right to counsel and right to have his or her case referred to
24 the court for formal action as any other juvenile referred to the unit.

25 (14) A diversion unit may supervise the fulfillment of a diversion
26 agreement entered into before the juvenile's eighteenth birthday and
27 which includes a period extending beyond the diverttee's eighteenth
28 birthday.

29 (15) If a fine required by a diversion agreement cannot reasonably
30 be paid due to a change of circumstance, the diversion agreement may be
31 modified at the request of the diverttee and with the concurrence of the
32 diversion unit to convert an unpaid fine into community service. The
33 modification of the diversion agreement shall be in writing and signed
34 by the diverttee and the diversion unit. The number of hours of
35 community service in lieu of a monetary penalty shall be converted at
36 the rate of the prevailing state minimum wage per hour.

37 (16) Fines imposed under this section shall be collected and paid
38 into the county general fund in accordance with procedures established
39 by the juvenile court administrator under RCW 13.04.040 and may be used

1 only for juvenile services. In the expenditure of funds for juvenile
2 services, there shall be a maintenance of effort whereby counties
3 exhaust existing resources before using amounts collected under this
4 section.

5 **Sec. 4.** RCW 13.50.050 and 1997 c 338 s 40 are each amended to read
6 as follows:

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

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

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

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

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

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

33 (7) The juvenile court and the prosecutor may set up and maintain
34 a central record-keeping system which may receive information on all
35 alleged juvenile offenders against whom a complaint has been filed
36 pursuant to RCW 13.40.070 whether or not their cases are currently
37 pending before the court. The central record-keeping system may be
38 computerized. If a complaint has been referred to a diversion unit,

1 the diversion unit shall promptly report to the juvenile court or the
2 prosecuting attorney when the juvenile has agreed to diversion and
3 again when the juvenile successfully completes the diversion. An
4 offense shall not be reported as criminal history in any central
5 record-keeping system without notification by the diversion unit of the
6 date on which the offender agreed to diversion.

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

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

21 (10) In any case in which an information has been filed pursuant to
22 RCW 13.40.100 or a complaint has been filed with the prosecutor and
23 referred for diversion pursuant to RCW 13.40.070, the person the
24 subject of the information or complaint may file a motion with the
25 court to have the court vacate its order and findings, if any, and,
26 subject to subsection (22) of this section, order the sealing of the
27 official juvenile court file, the social file, and records of the court
28 and of any other agency in the case.

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

31 (a) For class B offenses other than sex offenses, since the last
32 date of release from confinement, including full-time residential
33 treatment, if any, or entry of disposition, the person has spent ten
34 consecutive years in the community without committing any offense or
35 crime that subsequently results in conviction. For class C offenses
36 other than sex offenses, since the last date of release from
37 confinement, including full-time residential treatment, if any, or
38 entry of disposition, the person has spent five consecutive years in
39 the community without committing any offense or crime that subsequently

1 results in conviction. For offenses that were diverted and constitute
2 criminal history as defined in RCW 13.40.020(7), the person has spent
3 two consecutive years in the community without committing any offense
4 that subsequently results in conviction;

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

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

9 (d) The person has not been convicted of a class A or sex offense;
10 and

11 (e) Full restitution has been paid.

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

15 (13) If the court grants the motion to seal made pursuant to
16 subsection (10) of this section, it shall, subject to subsection (22)
17 of this section, order sealed the official juvenile court file, the
18 social file, and other records relating to the case as are named in the
19 order. Thereafter, the proceedings in the case shall be treated as if
20 they never occurred, and the subject of the records may reply
21 accordingly to any inquiry about the events, records of which are
22 sealed. Any agency shall reply to any inquiry concerning confidential
23 or sealed records that records are confidential, and no information can
24 be given about the existence or nonexistence of records concerning an
25 individual.

26 (14) Inspection of the files and records included in the order to
27 seal may thereafter be permitted only by order of the court upon motion
28 made by the person who is the subject of the information or complaint,
29 except as otherwise provided in RCW 13.50.010(8) and subsection (22) of
30 this section.

31 (15) Any adjudication of a juvenile offense or a crime subsequent
32 to sealing has the effect of nullifying the sealing order. Any
33 charging of an adult felony subsequent to the sealing has the effect of
34 nullifying the sealing order for the purposes of chapter 9.94A RCW.

35 (16) The record of a successfully completed first-time diversion
36 that was entered into for an offense committed on or after July 1,
37 1998, shall be destroyed, subject to subsections (21) and (22) of this
38 section, upon notification from the diversion unit of successful
39 completion of the diversion. A person eighteen years of age or older

1 whose criminal history consists of only one referral for diversion may
2 request that the court order the records in that case destroyed. The
3 request shall be granted, subject to subsections (21) and (22) of this
4 section, if the court finds that two years have elapsed since
5 successful completion of the diversion agreement.

6 (17) If the court grants the motion to destroy records made
7 pursuant to subsection (16) of this section or receives notice of a
8 successfully completed diversion under subsection (7) of this section,
9 it shall, subject to subsection (22) of this section, order the
10 official juvenile court file, the social file, and any other records
11 named in the order to be destroyed.

12 (18) The person making the motion pursuant to subsection (16) of
13 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 (19) 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 (20) 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 (21) Any juvenile justice or care agency (~~(may)~~) shall, subject to
25 the limitations in subsection (22) of this section and (a) and (b) of
26 this subsection, develop procedures for the routine destruction of
27 records relating to juvenile offenses and diversions.

28 (a) Records (~~(may)~~) shall be routinely destroyed only when the
29 person the subject of the information or complaint has attained twenty-
30 three years of age or older, or is eighteen years of age or older and
31 his or her criminal history consists entirely of one diversion
32 agreement and two years have passed since successful completion of the
33 agreement.

34 (b) The court (~~(may)~~) shall not routinely destroy the official
35 juvenile court file or recordings or transcripts of any proceedings.

36 (22) No identifying information held by the Washington state patrol
37 in accordance with chapter 43.43 RCW is subject to destruction or
38 sealing under this section. For the purposes of this subsection,
39 identifying information includes photographs, fingerprints, palmprints,

1 soleprints, toeprints and any other data that identifies a person by
2 physical characteristics, name, birthdate or address, but does not
3 include information regarding criminal activity, arrest, charging,
4 diversion, conviction or other information about a person's treatment
5 by the criminal justice system or about the person's behavior.

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

17 NEW SECTION. **Sec. 5.** This act takes effect July 1, 1998.

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