

2 **SB 5665** - S AMD - 002
3 By Senators Heavey and McCaslin

4 ADOPTED 2/1/00

5 Strike everything after the enacting clause and insert the
6 following:

7 "NEW SECTION. **Sec. 1.** A new section is added to chapter 9.96 RCW
8 to read as follows:

9 (1) Every person convicted of a misdemeanor or gross misdemeanor
10 offense who has completed all of the terms of the sentence for the
11 misdemeanor or gross misdemeanor offense may apply to the sentencing
12 court for a vacation of the applicant's record of conviction for the
13 offense. If the court finds the applicant meets the tests prescribed
14 in subsection (2) of this section, the court may in its discretion
15 clear the record of conviction by: (a) Permitting the applicant to
16 withdraw the applicant's plea of guilty and to enter a plea of not
17 guilty; or (b) if the applicant has been convicted after a plea of not
18 guilty, the court setting aside the verdict of guilty; and (c) the
19 court dismissing the information or indictment against the applicant.

20 (2) An applicant may not have the record of conviction for a
21 misdemeanor or gross misdemeanor offense cleared if any one of the
22 following is present: (a) There are any criminal charges against the
23 applicant pending in any court of this state or another state, or in
24 any federal court; (b) the offense was a violent offense as defined in
25 RCW 9.94A.030 or an attempt to commit a violent offense; (c) the
26 offense was a violation of RCW 46.61.502 (Driving while under the
27 influence), 46.61.504 (Actual physical control while under the
28 influence), or 9.91.020 (Operating a railroad, etc. while intoxicated);
29 (d) the offense was a domestic violence offense as defined in RCW
30 10.99.020; (e) the offense was any misdemeanor or gross misdemeanor
31 attempt to commit a sex offense as defined in RCW 9.94A.030; (f) the
32 offense was any misdemeanor or gross misdemeanor violation, including
33 attempt, of chapter 9.68 (Obscenity and pornography) or 9.68A (Sexual
34 exploitation of children) RCW; (g) the offense was a violation of any
35 of the following: RCW 9.12.010 (Barratry), 9.12.020 (Buying,
36 demanding, or promising reward by district judge or deputy), 9.16.030

1 (Counterfeiting trademark, brand, etc.), 9.18.140 (Bidding offenses,
2 false bidding), 9.24.010 (Fraud in stock subscriptions), 9.24.040
3 (Corporation doing business without license), 9.38.020 (False
4 representation concerning title), 9.41.040 (Unlawful possession of
5 firearms), 9.41.050 (Carrying firearms), 9.41.230 (Aiming or
6 discharging firearms), 9.41.250 (Dangerous weapons), 9.46.170
7 (Gambling: False or misleading entries or statements, refusal to
8 produce records), 9.46.190 (Gambling: Violations relating to fraud or
9 deceit), 9.46.196 (Gambling: Cheating), 9.46.222 (Professional
10 gambling 3), 9.51.010 (Misconduct of officer drawing jury), 9.51.030
11 (Misconduct of officer in charge of a jury), 9A.46.080 (Court order
12 restricting contact), 9A.60.040 (Criminal impersonation), 9A.60.050
13 (False swearing under oath), 9A.72.140 (Jury tampering), 9A.72.150
14 (Tampering with physical evidence), or 9A.88.010 (Indecent exposure);
15 (h) the applicant has been convicted of a new crime in this state,
16 another state, or federal court since the date the applicant completed
17 all of the terms of the sentence for the misdemeanor or gross
18 misdemeanor offense; or (i) less than five years have passed since the
19 date the applicant completed all of the terms of the sentence for the
20 misdemeanor or gross misdemeanor offense.

21 (3) Once the court vacates a record of conviction under subsection
22 (1) of this section, the person shall be released from all penalties
23 and disabilities resulting from the offense, except that the fact that
24 the person had been convicted of the offense may be used in any
25 subsequent criminal prosecution consistent with any other legal use and
26 may be included in the person's criminal history for purposes of
27 determining a sentence in any subsequent conviction. For all other
28 purposes, including responding to questions on employment applications,
29 a person whose conviction has been vacated may state that the person
30 has never been convicted of that crime.

31 (4) All costs incurred by the court and probation services shall be
32 paid by the person making the motion to vacate the record unless a
33 determination is made pursuant to chapter 10.101 RCW that the person
34 making the motion is indigent, at the time the motion is brought.

35 **Sec. 2.** RCW 9.94A.230 and 1987 c 486 s 7 are each amended to read
36 as follows:

37 (1) Every offender who has been discharged under RCW 9.94A.220 may
38 apply to the sentencing court for a vacation of the offender's record

1 of conviction. If the court finds the offender meets the tests
2 prescribed in subsection (2) of this section, the court may in its
3 discretion clear the record of conviction by: (a) Permitting the
4 offender to withdraw the offender's plea of guilty and to enter a plea
5 of not guilty; or (b) if the offender has been convicted after a plea
6 of not guilty, (~~by~~) the court setting aside the verdict of guilty;
7 and (c) (~~by~~) the court dismissing the information or indictment
8 against the offender.

9 (2) An offender may not have the record of conviction cleared if
10 any one of the following is present: (a) There are any criminal
11 charges against the offender pending in any court of this state or
12 another state, or in any federal court; (b) the offense was a violent
13 offense as defined in RCW 9.94A.030; (c) the offense was a domestic
14 violence offense as defined in RCW 10.99.020; (d) the offense was a
15 crime against persons as defined in RCW 43.43.830; (~~(d)~~) (e) the
16 offender has been convicted of a new crime in this state, another
17 state, or federal court since the date of the offender's discharge
18 under RCW 9.94A.220; (~~(e)~~) (f) the offense is a class B felony and
19 less than ten years have passed since the date the applicant was
20 discharged under RCW 9.94A.220; (~~and (f)~~) or (g) the offense was a
21 class C felony and less than five years have passed since the date the
22 applicant was discharged under RCW 9.94A.220.

23 (3) Once the court vacates a record of conviction under subsection
24 (1) of this section, the fact that the offender has been convicted of
25 the offense shall not be included in the offender's criminal history
26 for purposes of determining a sentence in any subsequent conviction,
27 and the offender shall be released from all penalties and disabilities
28 resulting from the offense. For all purposes, including responding to
29 questions on employment applications, an offender whose conviction has
30 been vacated may state that the offender has never been convicted of
31 that crime. Nothing in this section affects or prevents the use of an
32 offender's prior conviction in a later criminal prosecution.

33 (4) All costs incurred by the court and probation services shall be
34 paid by the person making the motion to vacate the record unless a
35 determination is made pursuant to chapter 10.101 RCW that the person
36 making the motion is indigent, at the time the motion is brought.

37 **Sec. 3.** RCW 13.50.050 and 1999 c 198 s 4 are each amended to read
38 as follows:

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

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

6 (3) All records other than the official juvenile court file are
7 confidential and may be released only as provided in this section, RCW
8 13.50.010, 13.40.215, and 4.24.550.

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

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

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

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

38 (8) The juvenile court and the prosecutor may set up and maintain
39 a central record-keeping system which may receive information on all

1 alleged juvenile offenders against whom a complaint has been filed
2 pursuant to RCW 13.40.070 whether or not their cases are currently
3 pending before the court. The central record-keeping system may be
4 computerized. If a complaint has been referred to a diversion unit,
5 the diversion unit shall promptly report to the juvenile court or the
6 prosecuting attorney when the juvenile has agreed to diversion. An
7 offense shall not be reported as criminal history in any central
8 record-keeping system without notification by the diversion unit of the
9 date on which the offender agreed to diversion.

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

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

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

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

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

1 the last date of release from confinement, including full-time
2 residential treatment, if any, or entry of disposition, the person has
3 spent five consecutive years in the community without committing any
4 offense or crime 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 (13) The person making a motion pursuant to subsection (11) 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 (14) If the court grants the motion to seal made pursuant to
16 subsection (11) of this section, it shall, subject to subsection (23)
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 (15) 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 (23) of
30 this section.

31 (16) 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 (17) A person eighteen years of age or older whose criminal history
36 consists of only one referral for diversion may request that the court
37 order the records in that case destroyed. The request shall be
38 granted, subject to subsection (23) of this section, if the court finds

1 that two years have elapsed since completion of the diversion
2 agreement.

3 (18) If the court grants the motion to destroy records made
4 pursuant to subsection (17) of this section, it shall, subject to
5 subsection (23) of this section, order the official juvenile court
6 file, the social file, and any other records named in the order to be
7 destroyed.

8 (19) The person making the motion pursuant to subsection (17) of
9 this section shall give reasonable notice of the motion to the
10 prosecuting attorney and to any agency whose records are sought to be
11 destroyed.

12 (20) Any juvenile to whom the provisions of this section may apply
13 shall be given written notice of his or her rights under this section
14 at the time of his or her disposition hearing or during the diversion
15 process.

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

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

24 (a) Records may be routinely destroyed only when the person the
25 subject of the information or complaint has attained twenty-three years
26 of age or older, or is eighteen years of age or older and his or her
27 criminal history consists entirely of one diversion agreement and two
28 years have passed since completion of the agreement.

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

31 (23) No identifying information held by the Washington state patrol
32 in accordance with chapter 43.43 RCW is subject to destruction or
33 sealing under this section. For the purposes of this subsection,
34 identifying information includes photographs, fingerprints, palmprints,
35 soleprints, toeprints and any other data that identifies a person by
36 physical characteristics, name, birthdate or address, but does not
37 include information regarding criminal activity, arrest, charging,
38 diversion, conviction or other information about a person's treatment
39 by the criminal justice system or about the person's behavior.

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

12 (25) All costs incurred by the court and probation services shall
13 be paid by the person making the motion unless a determination is made
14 pursuant to chapter 10.101 RCW that the person making the motion is
15 indigent, at the time the motion is brought."

16 **SB 5665** - S AMD - 002
17 By Senators Heavey and McCaslin

18 ADOPTED 2/1/00

19 On page 1, line 1 of the title, after "conviction;" strike the
20 remainder of the title and insert "amending RCW 9.94A.230 and
21 13.50.050; and adding a new section to chapter 9.96 RCW."

--- END ---