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HOUSE BILL 1471

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State of Washington                      57th Legislature                      2001 Regular Session

By Representatives Darneille, Delvin, Dickerson and Armstrong

Read first time 01/26/2001. Referred to Committee on Juvenile Justice.

1            AN ACT Relating to diversion; and amending RCW 13.50.050,  
2 13.40.070, and 13.40.127.

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

4            **Sec. 1.** RCW 13.50.050 and 1999 c 198 s 4 are each amended to read  
5 as follows:

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

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

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

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

1 participant is assigned the responsibility for supervising the  
2 juvenile.

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

8 (6) Notwithstanding any other provision of this chapter, the  
9 release, to the juvenile or his or her attorney, of law enforcement and  
10 prosecuting attorneys' records pertaining to investigation, diversion,  
11 and prosecution of juvenile offenses shall be governed by the rules of  
12 discovery and other rules of law applicable in adult criminal  
13 investigations and prosecutions.

14 (7) Upon the decision to arrest or the arrest, law enforcement and  
15 prosecuting attorneys may cooperate with schools in releasing  
16 information to a school pertaining to the investigation, diversion, and  
17 prosecution of a juvenile attending the school. Upon the decision to  
18 arrest or the arrest, incident reports may be released unless releasing  
19 the records would jeopardize the investigation or prosecution or  
20 endanger witnesses. If release of incident reports would jeopardize  
21 the investigation or prosecution or endanger witnesses, law enforcement  
22 and prosecuting attorneys may release information to the maximum extent  
23 possible to assist schools in protecting other students, staff, and  
24 school property.

25 (8) The juvenile court and the prosecutor may set up and maintain  
26 a central record-keeping system which may receive information on all  
27 alleged juvenile offenders against whom a complaint has been filed  
28 pursuant to RCW 13.40.070 whether or not their cases are currently  
29 pending before the court. The central record-keeping system may be  
30 computerized. If a complaint has been referred to a diversion unit,  
31 the diversion unit shall promptly report to the juvenile court or the  
32 prosecuting attorney when the juvenile has agreed to diversion. An  
33 offense shall not be reported as criminal history in any central  
34 record-keeping system without notification by the diversion unit of the  
35 date on which the offender agreed to diversion.

36 (9) Upon request of the victim of a crime or the victim's immediate  
37 family, the identity of an alleged or proven juvenile offender alleged  
38 or found to have committed a crime against the victim and the identity  
39 of the alleged or proven juvenile offender's parent, guardian, or

1 custodian and the circumstance of the alleged or proven crime shall be  
2 released to the victim of the crime or the victim's immediate family.

3 (10) Subject to the rules of discovery applicable in adult criminal  
4 prosecutions, the juvenile offense records of an adult criminal  
5 defendant or witness in an adult criminal proceeding shall be released  
6 upon request to prosecution and defense counsel after a charge has  
7 actually been filed. The juvenile offense records of any adult  
8 convicted of a crime and placed under the supervision of the adult  
9 corrections system shall be released upon request to the adult  
10 corrections system.

11 (11) In any case in which an information has been filed pursuant to  
12 RCW 13.40.100 or a complaint has been filed with the prosecutor and  
13 referred for diversion pursuant to RCW 13.40.070, the person the  
14 subject of the information or complaint may file a motion with the  
15 court to have the court vacate its order and findings, if any, and,  
16 subject to subsection (23) of this section, order the sealing of the  
17 official juvenile court file, the social file, and records of the court  
18 and of any other agency in the case.

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

21 (a) For class B offenses other than sex offenses, since the last  
22 date of release from confinement, including full-time residential  
23 treatment, if any, or entry of disposition, the person has spent ten  
24 consecutive years in the community without committing any offense or  
25 crime that subsequently results in conviction. For class C offenses  
26 other than sex offenses, since the last date of release from  
27 confinement, including full-time residential treatment, if any, or  
28 entry of disposition, the person has spent five consecutive years in  
29 the community without committing any offense or crime that subsequently  
30 results in conviction. For diversions, the person has reached the age  
31 of eighteen, and the person has spent at least two years since  
32 completion of the diversion agreement, or three years since the  
33 diversion agreement was entered into, whichever is shorter, in the  
34 community without committing any offense or crime that subsequently  
35 results in diversion or conviction;

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

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

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

3 (e) Full restitution has been paid.

4 (13) The person making a motion pursuant to subsection (11) of this  
5 section shall give reasonable notice of the motion to the prosecution  
6 and to any person or agency whose files are sought to be sealed.

7 (14) If the court grants the motion to seal made pursuant to  
8 subsection (11) of this section, it shall, subject to subsection (23)  
9 of this section, order sealed the official juvenile court file, the  
10 social file, and other records relating to the case as are named in the  
11 order. Thereafter, the proceedings in the case shall be treated as if  
12 they never occurred, and the subject of the records may reply  
13 accordingly to any inquiry about the events, records of which are  
14 sealed. Any agency shall reply to any inquiry concerning confidential  
15 or sealed records that records are confidential, and no information can  
16 be given about the existence or nonexistence of records concerning an  
17 individual.

18 (15) Inspection of the files and records included in the order to  
19 seal may thereafter be permitted only by order of the court upon motion  
20 made by the person who is the subject of the information or complaint,  
21 except as otherwise provided in RCW 13.50.010(8) and subsection (23) of  
22 this section.

23 (16) Any adjudication of a juvenile offense or a crime subsequent  
24 to sealing has the effect of nullifying the sealing order. Any  
25 charging of an adult felony subsequent to the sealing has the effect of  
26 nullifying the sealing order for the purposes of chapter 9.94A RCW.

27 (17)(a) A person eighteen years of age or older whose criminal  
28 history consists of only one referral for diversion may request that  
29 the court order the records in that case destroyed. The request shall  
30 be granted, subject to subsection (23) of this section, if the court  
31 finds that two years have elapsed since completion of the diversion  
32 agreement.

33 (b) A person twenty-three years of age or older whose criminal  
34 history consists of only referrals for diversion may request that the  
35 court order the records in those cases destroyed. The request shall be  
36 granted, subject to subsection (23) of this section, if the court finds  
37 that all diversion agreements have been successfully completed and no  
38 proceeding is pending against the person seeking the conviction of a  
39 criminal offense.

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

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

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

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

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

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

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

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

38 (24) Information identifying child victims under age eighteen who  
39 are victims of sexual assaults by juvenile offenders is confidential

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

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

12 (1) Complaints referred to the juvenile court alleging the  
13 commission of an offense shall be referred directly to the prosecutor.  
14 The prosecutor, upon receipt of a complaint, shall screen the complaint  
15 to determine whether:

16 (a) The alleged facts bring the case within the jurisdiction of the  
17 court; and

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

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

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

34 (4) An information shall be a plain, concise, and definite written  
35 statement of the essential facts constituting the offense charged. It  
36 shall be signed by the prosecuting attorney and conform to chapter  
37 10.37 RCW.

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

3 (a) An alleged offender is accused of a class A felony, a class B  
4 felony, an attempt to commit a class B felony, a class C felony listed  
5 in RCW 9.94A.440(2) as a crime against persons or listed in RCW  
6 9A.46.060 as a crime of harassment, or a class C felony that is a  
7 violation of RCW 9.41.080 or 9.41.040(1)(b)(iii); or

8 (b) An alleged offender is accused of a felony and has a criminal  
9 history of any felony, or at least two gross misdemeanors, or at least  
10 two misdemeanors; or

11 (c) An alleged offender has previously been committed to the  
12 department; or

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

15 (e) An alleged offender has ~~((two))~~ three or more diversion  
16 contracts on the alleged offender's criminal history; or

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

19 (6) Where a case is legally sufficient the prosecutor shall divert  
20 the case if the alleged offense is a misdemeanor or gross misdemeanor  
21 or violation and the alleged offense is the offender's first offense or  
22 violation. If the alleged offender is charged with a related offense  
23 that must or may be filed under subsections (5) and (7) of this  
24 section, a case under this subsection may also be filed.

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

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

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

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

12 **Sec. 3.** RCW 13.40.127 and 1997 c 338 s 21 are each amended to read  
13 as follows:

14 (1) A juvenile is eligible for deferred disposition unless he or  
15 she:

- 16 (a) Is charged with a sex or violent offense;
- 17 (b) Has a criminal history which includes any felony;
- 18 (c) Has a prior deferred disposition or deferred adjudication; or
- 19 (d) Has two or more (~~diversions~~) adjudications.

20 (2) The juvenile court may, upon motion at least fourteen days  
21 before commencement of trial and, after consulting the juvenile's  
22 custodial parent or parents or guardian and with the consent of the  
23 juvenile, continue the case for disposition for a period not to exceed  
24 one year from the date the juvenile is found guilty. The court shall  
25 consider whether the offender and the community will benefit from a  
26 deferred disposition before deferring the disposition.

27 (3) Any juvenile who agrees to a deferral of disposition shall:

28 (a) Stipulate to the admissibility of the facts contained in the  
29 written police report;

30 (b) Acknowledge that the report will be entered and used to support  
31 a finding of guilt and to impose a disposition if the juvenile fails to  
32 comply with terms of supervision; and

33 (c) Waive the following rights to: (i) A speedy disposition; and  
34 (ii) call and confront witnesses.

35 The adjudicatory hearing shall be limited to a reading of the  
36 court's record.

1 (4) Following the stipulation, acknowledgment, waiver, and entry of  
2 a finding or plea of guilt, the court shall defer entry of an order of  
3 disposition of the juvenile.

4 (5) Any juvenile granted a deferral of disposition under this  
5 section shall be placed under community supervision. The court may  
6 impose any conditions of supervision that it deems appropriate  
7 including posting a probation bond. Payment of restitution under RCW  
8 13.40.190 shall be a condition of community supervision under this  
9 section.

10 (6) A parent who signed for a probation bond has the right to  
11 notify the counselor if the juvenile fails to comply with the bond or  
12 conditions of supervision. The counselor shall notify the court and  
13 surety of any failure to comply. A surety shall notify the court of  
14 the juvenile's failure to comply with the probation bond. The state  
15 shall bear the burden to prove, by a preponderance of the evidence,  
16 that the juvenile has failed to comply with the terms of community  
17 supervision.

18 (7) A juvenile's lack of compliance shall be determined by the  
19 judge upon written motion by the prosecutor or the juvenile's juvenile  
20 court community supervision counselor. If a juvenile fails to comply  
21 with terms of supervision, the court shall enter an order of  
22 disposition.

23 (8) At any time following deferral of disposition the court may,  
24 following a hearing, continue the case for an additional one-year  
25 period for good cause.

26 (9) At the conclusion of the period set forth in the order of  
27 deferral and upon a finding by the court of full compliance with  
28 conditions of supervision and payment of full restitution, the  
29 respondent's conviction shall be vacated and the court shall dismiss  
30 the case with prejudice.

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