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SENATE BILL 5691

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State of Washington

57th Legislature

2001 Regular Session

By Senators Costa, Long, Hargrove and Kohl-Welles

Read first time 01/31/2001. Referred to Committee on Human Services & Corrections.

1 AN ACT Relating to limitations on sealing of juvenile offender  
2 records; amending RCW 13.50.050; and creating a new section.

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

4 NEW SECTION. **Sec. 1.** The legislature intends to change the  
5 results of the holding of *State v. T. K.*, 139 Wn. 2d 320 (1999), and  
6 have any motion made after July 1, 1997, to seal juvenile records be  
7 determined by the provisions of RCW 13.50.050 in effect after July 1,  
8 1997.

9 **Sec. 2.** RCW 13.50.050 and 1999 c 198 s 4 are each amended to read  
10 as follows:

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

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

16 (3) All records other than the official juvenile court file are  
17 confidential and may be released only as provided in this section, RCW  
18 13.50.010, 13.40.215, and 4.24.550.

1 (4) Except as otherwise provided in this section and RCW 13.50.010,  
2 records retained or produced by any juvenile justice or care agency may  
3 be released to other participants in the juvenile justice or care  
4 system only when an investigation or case involving the juvenile in  
5 question is being pursued by the other participant or when that other  
6 participant is assigned the responsibility for supervising the  
7 juvenile.

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

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

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

30 (8) The juvenile court and the prosecutor may set up and maintain  
31 a central record-keeping system which may receive information on all  
32 alleged juvenile offenders against whom a complaint has been filed  
33 pursuant to RCW 13.40.070 whether or not their cases are currently  
34 pending before the court. The central record-keeping system may be  
35 computerized. If a complaint has been referred to a diversion unit,  
36 the diversion unit shall promptly report to the juvenile court or the  
37 prosecuting attorney when the juvenile has agreed to diversion. An  
38 offense shall not be reported as criminal history in any central

1 record-keeping system without notification by the diversion unit of the  
2 date on which the offender agreed to diversion.

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

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

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

25 (12) The court shall not grant ~~((the))~~ any motion to seal records  
26 made pursuant to subsection (11) of this section ~~((if))~~ that is filed  
27 on or after July 1, 1997, unless it finds that:

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

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

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

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

5 (e) Full restitution has been paid.

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

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

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

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

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

35 (18) If the court grants the motion to destroy records made  
36 pursuant to subsection (17) of this section, it shall, subject to  
37 subsection (23) of this section, order the official juvenile court  
38 file, the social file, and any other records named in the order to be  
39 destroyed.

1 (19) The person making the motion pursuant to subsection (17) of  
2 this section shall give reasonable notice of the motion to the  
3 prosecuting attorney and to any agency whose records are sought to be  
4 destroyed.

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

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

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

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

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

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

33 (24) Information identifying child victims under age eighteen who  
34 are victims of sexual assaults by juvenile offenders is confidential  
35 and not subject to release to the press or public without the  
36 permission of the child victim or the child's legal guardian.  
37 Identifying information includes the child victim's name, addresses,  
38 location, photographs, and in cases in which the child victim is a  
39 relative of the alleged perpetrator, identification of the relationship

1 between the child and the alleged perpetrator. Information identifying  
2 a child victim of sexual assault may be released to law enforcement,  
3 prosecutors, judges, defense attorneys, or private or governmental  
4 agencies that provide services to the child victim of sexual assault.

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