

CERTIFICATION OF ENROLLMENT

SENATE BILL 5691

57th Legislature
2001 Regular Session

Passed by the Senate March 10, 2001
YEAS 48 NAYS 0

President of the Senate

Passed by the House April 4, 2001
YEAS 95 NAYS 0

**Speaker of the
House of Representatives**

**Speaker of the
House of Representatives**

Approved

Governor of the State of Washington

CERTIFICATE

I, Tony M. Cook, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SENATE BILL 5691** as passed by the Senate and the House of Representatives on the dates hereon set forth.

Secretary

FILED

**Secretary of State
State of Washington**

SENATE BILL 5691

Passed Legislature - 2001 Regular Session

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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