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HOUSE BILL 2603

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State of Washington                      59th Legislature                      2006 Regular Session

By Representatives Roberts, Dickerson, Lovick, Pettigrew, Green, O'Brien, Ericks, McDonald, Tom, Appleton, Moeller and Kagi

Read first time 01/11/2006.            Referred to Committee on Juvenile Justice & Family Law.

1            AN ACT Relating to sealing diversion records; and amending RCW  
2 13.40.080 and 13.50.050.

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

4            **Sec. 1.** RCW 13.40.080 and 2004 c 120 s 3 are each amended to read  
5 as follows:

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

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

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

1 (b) Restitution limited to the amount of actual loss incurred by  
2 any victim;

3 (c) Attendance at up to ten hours of counseling and/or up to twenty  
4 hours of educational or informational sessions at a community agency.  
5 The educational or informational sessions may include sessions relating  
6 to respect for self, others, and authority; victim awareness;  
7 accountability; self-worth; responsibility; work ethics; good  
8 citizenship; literacy; and life skills. For purposes of this section,  
9 "community agency" may also mean a community-based nonprofit  
10 organization, if approved by the diversion unit. The state shall not  
11 be liable for costs resulting from the diversion unit exercising the  
12 option to permit diversion agreements to mandate attendance at up to  
13 ten hours of counseling and/or up to twenty hours of educational or  
14 informational sessions;

15 (d) A fine, not to exceed one hundred dollars;

16 (e) Requirements to remain during specified hours at home, school,  
17 or work, and restrictions on leaving or entering specified geographical  
18 areas; and

19 (f) Upon request of any victim or witness, requirements to refrain  
20 from any contact with victims or witnesses of offenses committed by the  
21 juvenile.

22 (3) Notwithstanding the provisions of subsection (2) of this  
23 section, youth courts are not limited to the conditions imposed by  
24 subsection (2) of this section in imposing sanctions on juveniles  
25 pursuant to RCW 13.40.630.

26 (4) In assessing periods of community restitution to be performed  
27 and restitution to be paid by a juvenile who has entered into a  
28 diversion agreement, the court officer to whom this task is assigned  
29 shall consult with the juvenile's custodial parent or parents or  
30 guardian. To the extent possible, the court officer shall advise the  
31 victims of the juvenile offender of the diversion process, offer victim  
32 impact letter forms and restitution claim forms, and involve members of  
33 the community. Such members of the community shall meet with the  
34 juvenile and advise the court officer as to the terms of the diversion  
35 agreement and shall supervise the juvenile in carrying out its terms.

36 (5)(a) A diversion agreement may not exceed a period of six months  
37 and may include a period extending beyond the eighteenth birthday of  
38 the divertee.

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

4 (c) If the juvenile has not paid the full amount of restitution by  
5 the end of the additional six-month period, then the juvenile shall be  
6 referred to the juvenile court for entry of an order establishing the  
7 amount of restitution still owed to the victim. In this order, the  
8 court shall also determine the terms and conditions of the restitution,  
9 including a payment plan extending up to ten years if the court  
10 determines that the juvenile does not have the means to make full  
11 restitution over a shorter period. For the purposes of this subsection  
12 (5)(c), the juvenile shall remain under the court's jurisdiction for a  
13 maximum term of ten years after the juvenile's eighteenth birthday.  
14 Prior to the expiration of the initial ten-year period, the juvenile  
15 court may extend the judgment for restitution an additional ten years.  
16 The court may relieve the juvenile of the requirement to pay full or  
17 partial restitution if the juvenile reasonably satisfies the court that  
18 he or she does not have the means to make full or partial restitution  
19 and could not reasonably acquire the means to pay the restitution over  
20 a ten-year period. If the court relieves the juvenile of the  
21 requirement to pay full or partial restitution, the court may order an  
22 amount of community restitution that the court deems appropriate. The  
23 county clerk shall make disbursements to victims named in the order.  
24 The restitution to victims named in the order shall be paid prior to  
25 any payment for other penalties or monetary assessments. A juvenile  
26 under obligation to pay restitution may petition the court for  
27 modification of the restitution order.

28 (6) The juvenile shall retain the right to be referred to the court  
29 at any time prior to the signing of the diversion agreement.

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

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

37 (b) Violation of the terms of the agreement shall be the only  
38 grounds for termination;

1 (c) No divertee may be terminated from a diversion program without  
2 being given a court hearing, which hearing shall be preceded by:

3 (i) Written notice of alleged violations of the conditions of the  
4 diversion program; and

5 (ii) Disclosure of all evidence to be offered against the divertee;

6 (d) The hearing shall be conducted by the juvenile court and shall  
7 include:

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

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

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

12 (iv) Demonstration by evidence that the divertee has substantially  
13 violated the terms of his or her diversion agreement.

14 (e) The prosecutor may file an information on the offense for which  
15 the divertee was diverted:

16 (i) In juvenile court if the divertee is under eighteen years of  
17 age; or

18 (ii) In superior court or the appropriate court of limited  
19 jurisdiction if the divertee is eighteen years of age or older.

20 (8) The diversion unit shall, subject to available funds, be  
21 responsible for providing interpreters when juveniles need interpreters  
22 to effectively communicate during diversion unit hearings or  
23 negotiations.

24 (9) The diversion unit shall be responsible for advising a divertee  
25 of his or her rights as provided in this chapter.

26 (10) The diversion unit may refer a juvenile to community-based  
27 counseling or treatment programs.

28 (11) The right to counsel shall inure prior to the initial  
29 interview for purposes of advising the juvenile as to whether he or she  
30 desires to participate in the diversion process or to appear in the  
31 juvenile court. The juvenile may be represented by counsel at any  
32 critical stage of the diversion process, including intake interviews  
33 and termination hearings. The juvenile shall be fully advised at the  
34 intake of his or her right to an attorney and of the relevant services  
35 an attorney can provide. For the purpose of this section, intake  
36 interviews mean all interviews regarding the diversion agreement  
37 process.

1 The juvenile shall be advised that a diversion agreement shall  
2 constitute a part of the juvenile's criminal history as defined by RCW  
3 13.40.020(7). A signed acknowledgment of such advisement shall be  
4 obtained from the juvenile, and the document shall be maintained by the  
5 diversion unit together with the diversion agreement, and a copy of  
6 both documents shall be delivered to the prosecutor if requested by the  
7 prosecutor. The supreme court shall promulgate rules setting forth the  
8 content of such advisement in simple language.

9 (12) When a juvenile enters into a diversion agreement, the  
10 juvenile court may receive only the following information for  
11 dispositional purposes:

12 (a) The fact that a charge or charges were made;

13 (b) The fact that a diversion agreement was entered into;

14 (c) The juvenile's obligations under such agreement;

15 (d) Whether the alleged offender performed his or her obligations  
16 under such agreement; and

17 (e) The facts of the alleged offense.

18 (13) A diversion unit may refuse to enter into a diversion  
19 agreement with a juvenile. When a diversion unit refuses to enter a  
20 diversion agreement with a juvenile, it shall immediately refer such  
21 juvenile to the court for action and shall forward to the court the  
22 criminal complaint and a detailed statement of its reasons for refusing  
23 to enter into a diversion agreement. The diversion unit shall also  
24 immediately refer the case to the prosecuting attorney for action if  
25 such juvenile violates the terms of the diversion agreement.

26 (14) A diversion unit may, in instances where it determines that  
27 the act or omission of an act for which a juvenile has been referred to  
28 it involved no victim, or where it determines that the juvenile  
29 referred to it has no prior criminal history and is alleged to have  
30 committed an illegal act involving no threat of or instance of actual  
31 physical harm and involving not more than fifty dollars in property  
32 loss or damage and that there is no loss outstanding to the person or  
33 firm suffering such damage or loss, counsel and release or release such  
34 a juvenile without entering into a diversion agreement. A diversion  
35 unit's authority to counsel and release a juvenile under this  
36 subsection includes the authority to refer the juvenile to community-  
37 based counseling or treatment programs. Any juvenile released under  
38 this subsection shall be advised that the act or omission of any act

1 for which he or she had been referred shall constitute a part of the  
2 juvenile's criminal history as defined by RCW 13.40.020(7). A signed  
3 acknowledgment of such advisement shall be obtained from the juvenile,  
4 and the document shall be maintained by the unit, and a copy of the  
5 document shall be delivered to the prosecutor if requested by the  
6 prosecutor. The supreme court shall promulgate rules setting forth the  
7 content of such advisement in simple language. A juvenile determined  
8 to be eligible by a diversion unit for release as provided in this  
9 subsection shall retain the same right to counsel and right to have his  
10 or her case referred to the court for formal action as any other  
11 juvenile referred to the unit.

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

16 (16) If a fine required by a diversion agreement cannot reasonably  
17 be paid due to a change of circumstance, the diversion agreement may be  
18 modified at the request of the diverttee and with the concurrence of the  
19 diversion unit to convert an unpaid fine into community restitution.  
20 The modification of the diversion agreement shall be in writing and  
21 signed by the diverttee and the diversion unit. The number of hours of  
22 community restitution in lieu of a monetary penalty shall be converted  
23 at the rate of the prevailing state minimum wage per hour.

24 (17) Fines imposed under this section shall be collected and paid  
25 into the county general fund in accordance with procedures established  
26 by the juvenile court administrator under RCW 13.04.040 and may be used  
27 only for juvenile services. In the expenditure of funds for juvenile  
28 services, there shall be a maintenance of effort whereby counties  
29 exhaust existing resources before using amounts collected under this  
30 section.

31 (18) Upon completion of a diversion agreement or counsel and  
32 release, the records of the diversion shall be sealed.

33 **Sec. 2.** RCW 13.50.050 and 2004 c 42 s 1 are each amended to read  
34 as follows:

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

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

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

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

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

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

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

36 (8) The juvenile court and the prosecutor may set up and maintain  
37 a central record-keeping system which may receive information on all  
38 alleged juvenile offenders against whom a complaint has been filed

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

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

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

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

31 (12) The court shall not grant any motion to seal records made  
32 pursuant to subsection (11) of this section that is filed on or after  
33 July 1, 1997, unless 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 five  
37 consecutive years in the community without committing any offense or  
38 crime that subsequently results in conviction. For class C offenses



1 other than sex offenses, since the last date of release from  
2 confinement, including full-time residential treatment, if any, or  
3 entry of disposition, the person has spent two consecutive years in the  
4 community without committing any offense or crime that subsequently  
5 results in conviction. For gross misdemeanors and misdemeanors, since  
6 the last date of release from confinement, including full-time  
7 residential treatment, if any, or entry of disposition, the person has  
8 spent two consecutive years in the community without committing any  
9 offense or crime that subsequently results in conviction. For  
10 diversions, (~~since completion of the diversion agreement, the person~~  
11 ~~has spent two consecutive years in the community without committing any~~  
12 ~~offense or crime that subsequently results in conviction or diversion~~)  
13 the person has completed the diversion agreement or was counseled and  
14 released;

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

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

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

21 (e) Full restitution has been paid.

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

25 (14) If the court grants the motion to seal made pursuant to  
26 subsection (11) of this section, it shall, subject to subsection (23)  
27 of this section, order sealed the official juvenile court file, the  
28 social file, and other records relating to the case as are named in the  
29 order. Thereafter, the proceedings in the case shall be treated as if  
30 they never occurred, and the subject of the records may reply  
31 accordingly to any inquiry about the events, records of which are  
32 sealed. Any agency shall reply to any inquiry concerning confidential  
33 or sealed records that records are confidential, and no information can  
34 be given about the existence or nonexistence of records concerning an  
35 individual.

36 (15) Inspection of the files and records included in the order to  
37 seal may thereafter be permitted only by order of the court upon motion

1 made by the person who is the subject of the information or complaint,  
2 except as otherwise provided in RCW 13.50.010(8) and subsection (23) of  
3 this section.

4 (16) Any adjudication of a juvenile offense or a crime subsequent  
5 to sealing has the effect of nullifying the sealing order. Any  
6 charging of an adult felony subsequent to the sealing has the effect of  
7 nullifying the sealing order for the purposes of chapter 9.94A RCW.  
8 The administrative office of the courts shall ensure that the superior  
9 court judicial information system provides prosecutors access to  
10 information on the existence of sealed juvenile records.

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

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

24 (18) If the court grants the motion to destroy records made  
25 pursuant to subsection (17) of this section, it shall, subject to  
26 subsection (23) of this section, order the official juvenile court  
27 file, the social file, and any other records named in the order to be  
28 destroyed.

29 (19) The person making the motion pursuant to subsection (17) of  
30 this section shall give reasonable notice of the motion to the  
31 prosecuting attorney and to any agency whose records are sought to be  
32 destroyed.

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

37 (21) Nothing in this section may be construed to prevent a crime

1 victim or a member of the victim's family from divulging the identity  
2 of the alleged or proven juvenile offender or his or her family when  
3 necessary in a civil proceeding.

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

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

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

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

24 (24) Information identifying child victims under age eighteen who  
25 are victims of sexual assaults by juvenile offenders is confidential  
26 and not subject to release to the press or public without the  
27 permission of the child victim or the child's legal guardian.  
28 Identifying information includes the child victim's name, addresses,  
29 location, photographs, and in cases in which the child victim is a  
30 relative of the alleged perpetrator, identification of the relationship  
31 between the child and the alleged perpetrator. Information identifying  
32 a child victim of sexual assault may be released to law enforcement,  
33 prosecutors, judges, defense attorneys, or private or governmental  
34 agencies that provide services to the child victim of sexual assault.

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