

SHB 1141 - S COMM AMD

By Committee on Human Services & Corrections

ADOPTED 03/07/2008

1 Strike everything after the enacting clause and insert the  
2 following:

3 "Sec. 1. RCW 13.50.050 and 2004 c 42 s 1 are each amended to read  
4 as follows:

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

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

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

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

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

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

1 (7) Upon the decision to arrest or the arrest, law enforcement and  
2 prosecuting attorneys may cooperate with schools in releasing  
3 information to a school pertaining to the investigation, diversion, and  
4 prosecution of a juvenile attending the school. Upon the decision to  
5 arrest or the arrest, incident reports may be released unless releasing  
6 the records would jeopardize the investigation or prosecution or  
7 endanger witnesses. If release of incident reports would jeopardize  
8 the investigation or prosecution or endanger witnesses, law enforcement  
9 and prosecuting attorneys may release information to the maximum extent  
10 possible to assist schools in protecting other students, staff, and  
11 school property.

12 (8) The juvenile court and the prosecutor may set up and maintain  
13 a central record-keeping system which may receive information on all  
14 alleged juvenile offenders against whom a complaint has been filed  
15 pursuant to RCW 13.40.070 whether or not their cases are currently  
16 pending before the court. The central record-keeping system may be  
17 computerized. If a complaint has been referred to a diversion unit,  
18 the diversion unit shall promptly report to the juvenile court or the  
19 prosecuting attorney when the juvenile has agreed to diversion. An  
20 offense shall not be reported as criminal history in any central  
21 record-keeping system without notification by the diversion unit of the  
22 date on which the offender agreed to diversion.

23 (9) Upon request of the victim of a crime or the victim's immediate  
24 family, the identity of an alleged or proven juvenile offender alleged  
25 or found to have committed a crime against the victim and the identity  
26 of the alleged or proven juvenile offender's parent, guardian, or  
27 custodian and the circumstance of the alleged or proven crime shall be  
28 released to the victim of the crime or the victim's immediate family.

29 (10) Subject to the rules of discovery applicable in adult criminal  
30 prosecutions, the juvenile offense records of an adult criminal  
31 defendant or witness in an adult criminal proceeding shall be released  
32 upon request to prosecution and defense counsel after a charge has  
33 actually been filed. The juvenile offense records of any adult  
34 convicted of a crime and placed under the supervision of the adult  
35 corrections system shall be released upon request to the adult  
36 corrections system.

37 (11) In any case in which an information has been filed pursuant to  
38 RCW 13.40.100 or a complaint has been filed with the prosecutor and

1 referred for diversion pursuant to RCW 13.40.070, the person the  
2 subject of the information or complaint may file a motion with the  
3 court to have the court vacate its order and findings, if any, and,  
4 subject to subsection (23) of this section, order the sealing of the  
5 official juvenile court file, the social file, and records of the court  
6 and of any other agency in the case.

7 (12) The court shall not grant any motion to seal records made  
8 pursuant to subsection (11) of this section that is filed on or after  
9 July 1, 1997, unless it finds that:

10 (a) For class B offenses other than sex offenses, since the last  
11 date of release from confinement, including full-time residential  
12 treatment, if any, or entry of disposition, the person has spent five  
13 consecutive years in the community without committing any offense or  
14 crime that subsequently results in conviction. For class C offenses  
15 other than sex offenses, since the last date of release from  
16 confinement, including full-time residential treatment, if any, or  
17 entry of disposition, the person has spent two consecutive years in the  
18 community without committing any offense or crime that subsequently  
19 results in conviction. For gross misdemeanors and misdemeanors, since  
20 the last date of release from confinement, including full-time  
21 residential treatment, if any, or entry of disposition, the person has  
22 spent two consecutive years in the community without committing any  
23 offense or crime that subsequently results in conviction. For  
24 diversions, since completion of the diversion agreement, the person has  
25 spent two consecutive years in the community without committing any  
26 offense or crime that subsequently results in conviction or diversion;

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

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

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

33 (e) Full restitution has been paid.

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

37 (14) If the court grants the motion to seal made pursuant to  
38 subsection (11) of this section, it shall, subject to subsection (23)

1 of this section, order sealed the official juvenile court file, the  
2 social file, and other records relating to the case as are named in the  
3 order. Thereafter, the proceedings in the case shall be treated as if  
4 they never occurred, and the subject of the records may reply  
5 accordingly to any inquiry about the events, records of which are  
6 sealed. Any agency shall reply to any inquiry concerning confidential  
7 or sealed records that records are confidential, and no information can  
8 be given about the existence or nonexistence of records concerning an  
9 individual.

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

15 (16) Any adjudication of a juvenile offense or a crime subsequent  
16 to sealing has the effect of nullifying the sealing order. Any  
17 charging of an adult felony subsequent to the sealing has the effect of  
18 nullifying the sealing order for the purposes of chapter 9.94A RCW.  
19 The administrative office of the courts shall ensure that the superior  
20 court judicial information system provides prosecutors access to  
21 information on the existence of sealed juvenile records.

22 (17)(a) (~~(A person eighteen years of age or older whose criminal~~  
23 ~~history consists of only one referral for diversion may request that~~  
24 ~~the court order the records in that case destroyed. The request shall~~  
25 ~~be granted, subject to subsection (23) of this section, if the court~~  
26 ~~finds that two years have elapsed since completion of the diversion~~  
27 ~~agreement.)) (i) Subject to subsection (23) of this section, all  
28 records maintained by any court or law enforcement agency, including  
29 the juvenile court, local law enforcement, the Washington state patrol,  
30 and the prosecutor's office, shall be automatically destroyed within  
31 ninety days of becoming eligible for destruction. Juvenile records are  
32 eligible for destruction when:~~

33 (A) The person who is the subject of the information or complaint  
34 is at least eighteen years of age;

35 (B) His or her criminal history consists entirely of one diversion  
36 agreement or counsel and release entered on or after the effective date  
37 of this act;

1 (C) Two years have elapsed since completion of the agreement or  
2 counsel and release;

3 (D) No proceeding is pending against the person seeking the  
4 conviction of a criminal offense; and

5 (E) There is no restitution owing in the case.

6 (ii) No less than quarterly, the administrative office of the  
7 courts shall provide a report to the juvenile courts of those  
8 individuals whose records may be eligible for destruction. The  
9 juvenile court shall verify eligibility and notify the Washington state  
10 patrol and the appropriate local law enforcement agency and  
11 prosecutor's office of the records to be destroyed. The requirement to  
12 destroy records under this subsection is not dependent on a court  
13 hearing or the issuance of a court order to destroy records.

14 (iii) The state and local governments and their officers and  
15 employees are not liable for civil damages for the failure to destroy  
16 records pursuant to this section.

17 (b) A person eighteen years of age or older whose criminal history  
18 consists entirely of one diversion agreement or counsel and release  
19 entered prior to the effective date of this act, may request that the  
20 court order the records in his or her case destroyed. The request  
21 shall be granted, subject to subsection (23) of this section, if the  
22 court finds that two years have elapsed since completion of the  
23 agreement or counsel and release.

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

31 (18) If the court grants the motion to destroy records made  
32 pursuant to subsection (17)(b) or (c) of this section, it shall,  
33 subject to subsection (23) of this section, order the official juvenile  
34 court file, the social file, and any other records named in the order  
35 to be destroyed.

36 (19) The person making the motion pursuant to subsection (17)(b) or  
37 (c) of this section shall give reasonable notice of the motion to the

1 prosecuting attorney and to any agency whose records are sought to be  
2 destroyed.

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

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

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

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

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

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

32 (24) Information identifying child victims under age eighteen who  
33 are victims of sexual assaults by juvenile offenders is confidential  
34 and not subject to release to the press or public without the  
35 permission of the child victim or the child's legal guardian.  
36 Identifying information includes the child victim's name, addresses,  
37 location, photographs, and in cases in which the child victim is a  
38 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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5 On page 1, line 1 of the title, after "records;" strike the  
6 remainder of the title and insert "and amending RCW 13.50.050."

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