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HOUSE BILL 1141

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State of Washington                      60th Legislature                      2007 Regular Session

By Representatives Roberts, Haler, O'Brien, Green, Goodman, Kagi, Appleton, Walsh, Williams, Dickerson, Darneille, Flannigan, McCoy, Hinkle, Pettigrew and Hasegawa

Read first time 01/11/2007. Referred to Committee on Human Services.

1            AN ACT Relating to destruction of diversion records; and amending  
2 RCW 13.50.050.

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

4            **Sec. 1.** RCW 13.50.050 and 2004 c 42 s 1 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

1 of the alleged or proven juvenile offender's parent, guardian, or  
2 custodian and the circumstance of the alleged or proven crime shall be  
3 released to the victim of the crime or the victim's immediate family.

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

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

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

23 (a) For class B offenses other than sex offenses, since the last  
24 date of release from confinement, including full-time residential  
25 treatment, if any, or entry of disposition, the person has spent five  
26 consecutive years in the community without committing any offense or  
27 crime that subsequently results in conviction. For class C offenses  
28 other than sex offenses, since the last date of release from  
29 confinement, including full-time residential treatment, if any, or  
30 entry of disposition, the person has spent two consecutive years in the  
31 community without committing any offense or crime that subsequently  
32 results in conviction. For gross misdemeanors and misdemeanors, since  
33 the last date of release from confinement, including full-time  
34 residential treatment, if any, or entry of disposition, the person has  
35 spent two consecutive years in the community without committing any  
36 offense or crime that subsequently results in conviction. For  
37 diversions, since completion of the diversion agreement, the person has

1 spent two consecutive years in the community without committing any  
2 offense or crime that subsequently results in conviction or diversion;

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

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

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

9 (e) Full restitution has been paid.

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

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

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

29 (16) Any adjudication of a juvenile offense or a crime subsequent  
30 to sealing has the effect of nullifying the sealing order. Any  
31 charging of an adult felony subsequent to the sealing has the effect of  
32 nullifying the sealing order for the purposes of chapter 9.94A RCW.  
33 The administrative office of the courts shall ensure that the superior  
34 court judicial information system provides prosecutors access to  
35 information on the existence of sealed juvenile records.

36 ~~(17)(a) ((A person eighteen years of age or older whose criminal  
37 history consists of only one referral for diversion may request that  
38 the court order the records in that case destroyed. The request shall~~

1 ~~be granted, subject to subsection (23) of this section, if the court~~  
2 ~~finds that two years have elapsed since completion of the diversion~~  
3 ~~agreement.)) Records shall be automatically destroyed when a person who  
4 is the subject of the information or complaint turns eighteen years of  
5 age and his or her criminal history consists entirely of the one  
6 diversion agreement which has been successfully completed and there is  
7 no restitution owing in the case.~~

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

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

20 (19) The person making the motion pursuant to subsection (17) of  
21 this section shall give reasonable notice of the motion to the  
22 prosecuting attorney and to any agency whose records are sought to be  
23 destroyed.

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

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

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

36 (a) Records may be routinely destroyed only when the person the  
37 subject of the information or complaint has attained twenty-three years  
38 of age or older(~~, or is eighteen years of age or older and his or her~~

1 ~~criminal history consists entirely of one diversion agreement))~~ and two  
2 years have passed since completion of the agreement, or pursuant to  
3 subsection (17)(a) of this section.

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

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

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

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