

E2SSB 6561 - H COMM AMD

By Committee on Human Services

ADOPTED AND ENGROSSED 03/03/2010

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

3 "Sec. 1. RCW 13.04.240 and 1961 c 302 s 16 are each amended to
4 read as follows:

5 An order of court adjudging a child (~~delinquent~~) a juvenile
6 offender or dependent under the provisions of this chapter shall in no
7 case be deemed a conviction of crime.

8 **Sec. 2.** RCW 13.50.050 and 2008 c 221 s 1 are each amended to read
9 as follows:

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

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

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

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

25 (5) Except as provided in RCW 4.24.550, information not in an
26 official juvenile court file concerning a juvenile or a juvenile's
27 family may be released to the public only when that information could
28 not reasonably be expected to identify the juvenile or the juvenile's
29 family.

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

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

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

29 (9) Upon request of the victim of a crime or the victim's immediate
30 family, the identity of an alleged or proven juvenile offender alleged
31 or found to have committed a crime against the victim and the identity
32 of the alleged or proven juvenile offender's parent, guardian, or
33 custodian and the circumstance of the alleged or proven crime shall be
34 released to the victim of the crime or the victim's immediate family.

35 (10) Subject to the rules of discovery applicable in adult criminal
36 prosecutions, the juvenile offense records of an adult criminal
37 defendant or witness in an adult criminal proceeding shall be released
38 upon request to prosecution and defense counsel after a charge has

1 actually been filed. The juvenile offense records of any adult
2 convicted of a crime and placed under the supervision of the adult
3 corrections system shall be released upon request to the adult
4 corrections system.

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

13 (12)(a) The court shall not grant any motion to seal records for
14 class A offenses made pursuant to subsection (11) of this section that
15 is filed on or after July 1, 1997, unless ~~((it finds that))~~:

16 ~~((a) For class B offenses other than sex offenses,))~~ (i) Since the
17 last date of release from confinement, including full-time residential
18 treatment, if any, or entry of disposition, the person has spent five
19 consecutive years in the community without committing any offense or
20 crime that subsequently results in an adjudication or conviction~~((~~
21 ~~For class C offenses other than sex offenses, since the last date of~~
22 ~~release from confinement, including full-time residential treatment, if~~
23 ~~any, or entry of disposition, the person has spent two consecutive~~
24 ~~years in the community without committing any offense or crime that~~
25 ~~subsequently results in conviction. For gross misdemeanors and~~
26 ~~misdemeanors, since the last date of release from confinement,~~
27 ~~including full-time residential treatment, if any, or entry of~~
28 ~~disposition, the person has spent two consecutive years in the~~
29 ~~community without committing any offense or crime that subsequently~~
30 ~~results in conviction. For diversions, since completion of the~~
31 ~~diversion agreement, the person has spent two consecutive years in the~~
32 ~~community without committing any offense or crime that subsequently~~
33 ~~results in conviction or diversion))~~;

34 ~~((b))~~ (ii) No proceeding is pending against the moving party
35 seeking the conviction of a juvenile offense or a criminal offense;

36 ~~((c))~~ (iii) No proceeding is pending seeking the formation of a
37 diversion agreement with that person;

1 ~~((d))~~ (iv) The person has not been convicted of a ~~((class A or))~~
2 sex offense; and

3 ~~((e))~~ (v) Full restitution has been paid.

4 (b) The court shall not grant any motion to seal records for class
5 B, C, gross misdemeanor and misdemeanor offenses and diversions made
6 under subsection (11) of this section unless:

7 (i) Since the date of last release from confinement, including
8 full-time residential treatment, if any, entry of disposition, or
9 completion of the diversion agreement, the person has spent two
10 consecutive years in the community without being convicted of any
11 offense or crime;

12 (ii) No proceeding is pending against the moving party seeking the
13 conviction of a juvenile offense or a criminal offense;

14 (iii) No proceeding is pending seeking the formation of a diversion
15 agreement with that person;

16 (iv) The person has not been convicted of a sex offense; and

17 (v) Full restitution has been paid.

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

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

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

37 (16) Any adjudication of a juvenile offense or a crime subsequent
38 to sealing has the effect of nullifying the sealing order. Any

1 charging of an adult felony subsequent to the sealing has the effect of
2 nullifying the sealing order for the purposes of chapter 9.94A RCW.
3 The administrative office of the courts shall ensure that the superior
4 court judicial information system provides prosecutors access to
5 information on the existence of sealed juvenile records.

6 (17)(a)(i) Subject to subsection (23) of this section, all records
7 maintained by any court or law enforcement agency, including the
8 juvenile court, local law enforcement, the Washington state patrol, and
9 the prosecutor's office, shall be automatically destroyed within ninety
10 days of becoming eligible for destruction. Juvenile records are
11 eligible for destruction when:

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

14 (B) His or her criminal history consists entirely of one diversion
15 agreement or counsel and release entered on or after June 12, 2008;

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

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

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

21 (ii) No less than quarterly, the administrative office of the
22 courts shall provide a report to the juvenile courts of those
23 individuals whose records may be eligible for destruction. The
24 juvenile court shall verify eligibility and notify the Washington state
25 patrol and the appropriate local law enforcement agency and
26 prosecutor's office of the records to be destroyed. The requirement to
27 destroy records under this subsection is not dependent on a court
28 hearing or the issuance of a court order to destroy records.

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

32 (b) A person eighteen years of age or older whose criminal history
33 consists entirely of one diversion agreement or counsel and release
34 entered prior to June 12, 2008, may request that the court order the
35 records in his or her case destroyed. The request shall be granted,
36 subject to subsection (23) of this section, if the court finds that two
37 years have elapsed since completion of the agreement or counsel and
38 release.

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

8 (18) If the court grants the motion to destroy records made
9 pursuant to subsection (17)(b) or (c) of this section, it shall,
10 subject to subsection (23) of this section, order the official juvenile
11 court file, the social file, and any other records named in the order
12 to be destroyed.

13 (19) The person making the motion pursuant to subsection (17)(b) or
14 (c) of this section shall give reasonable notice of the motion to the
15 prosecuting attorney and to any agency whose records are sought to be
16 destroyed.

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

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

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

29 (a) Records may be routinely destroyed only when the person the
30 subject of the information or complaint has attained twenty-three years
31 of age or older or pursuant to subsection (17)(a) of this section.

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

34 (23) No identifying information held by the Washington state patrol
35 in accordance with chapter 43.43 RCW is subject to destruction or
36 sealing under this section. For the purposes of this subsection,
37 identifying information includes photographs, fingerprints, palmprints,
38 soleprints, toeprints and any other data that identifies a person by

1 physical characteristics, name, birthdate or address, but does not
2 include information regarding criminal activity, arrest, charging,
3 diversion, conviction or other information about a person's treatment
4 by the criminal justice system or about the person's behavior.

5 (24) Information identifying child victims under age eighteen who
6 are victims of sexual assaults by juvenile offenders is confidential
7 and not subject to release to the press or public without the
8 permission of the child victim or the child's legal guardian.
9 Identifying information includes the child victim's name, addresses,
10 location, photographs, and in cases in which the child victim is a
11 relative of the alleged perpetrator, identification of the relationship
12 between the child and the alleged perpetrator. Information identifying
13 a child victim of sexual assault may be released to law enforcement,
14 prosecutors, judges, defense attorneys, or private or governmental
15 agencies that provide services to the child victim of sexual assault.

16 **Sec. 3.** RCW 13.50.010 and 2009 c 440 s 1 are each amended to read
17 as follows:

18 (1) For purposes of this chapter:

19 (a) "Juvenile justice or care agency" means any of the following:
20 Police, diversion units, court, prosecuting attorney, defense attorney,
21 detention center, attorney general, the legislative children's
22 oversight committee, the office of the family and children's ombudsman,
23 the department of social and health services and its contracting
24 agencies, schools; persons or public or private agencies having
25 children committed to their custody; and any placement oversight
26 committee created under RCW 72.05.415;

27 (b) "Official juvenile court file" means the legal file of the
28 juvenile court containing the petition or information, motions,
29 memorandums, briefs, findings of the court, and court orders;

30 (c) "Records" means the official juvenile court file, the social
31 file, and records of any other juvenile justice or care agency in the
32 case;

33 (d) "Social file" means the juvenile court file containing the
34 records and reports of the probation counselor.

35 (2) Each petition or information filed with the court may include
36 only one juvenile and each petition or information shall be filed under

1 a separate docket number. The social file shall be filed separately
2 from the official juvenile court file.

3 (3) It is the duty of any juvenile justice or care agency to
4 maintain accurate records. To this end:

5 (a) The agency may never knowingly record inaccurate information.
6 Any information in records maintained by the department of social and
7 health services relating to a petition filed pursuant to chapter 13.34
8 RCW that is found by the court to be false or inaccurate shall be
9 corrected or expunged from such records by the agency;

10 (b) An agency shall take reasonable steps to assure the security of
11 its records and prevent tampering with them; and

12 (c) An agency shall make reasonable efforts to insure the
13 completeness of its records, including action taken by other agencies
14 with respect to matters in its files.

15 (4) Each juvenile justice or care agency shall implement procedures
16 consistent with the provisions of this chapter to facilitate inquiries
17 concerning records.

18 (5) Any person who has reasonable cause to believe information
19 concerning that person is included in the records of a juvenile justice
20 or care agency and who has been denied access to those records by the
21 agency may make a motion to the court for an order authorizing that
22 person to inspect the juvenile justice or care agency record concerning
23 that person. The court shall grant the motion to examine records
24 unless it finds that in the interests of justice or in the best
25 interests of the juvenile the records or parts of them should remain
26 confidential.

27 (6) A juvenile, or his or her parents, or any person who has
28 reasonable cause to believe information concerning that person is
29 included in the records of a juvenile justice or care agency may make
30 a motion to the court challenging the accuracy of any information
31 concerning the moving party in the record or challenging the continued
32 possession of the record by the agency. If the court grants the
33 motion, it shall order the record or information to be corrected or
34 destroyed.

35 (7) The person making a motion under subsection (5) or (6) of this
36 section shall give reasonable notice of the motion to all parties to
37 the original action and to any agency whose records will be affected by
38 the motion.

1 (8) The court may permit inspection of records by, or release of
2 information to, any clinic, hospital, or agency which has the subject
3 person under care or treatment. The court may also permit inspection
4 by or release to individuals or agencies, including juvenile justice
5 advisory committees of county law and justice councils, engaged in
6 legitimate research for educational, scientific, or public purposes.
7 (~~The court may also permit inspection of, or release of information~~
8 ~~from, records which have been sealed pursuant to RCW 13.50.050(12).~~)
9 The court shall release to the sentencing guidelines commission records
10 needed for its research and data-gathering functions under RCW
11 9.94A.850 and other statutes. Access to records or information for
12 research purposes shall be permitted only if the anonymity of all
13 persons mentioned in the records or information will be preserved.
14 Each person granted permission to inspect juvenile justice or care
15 agency records for research purposes shall present a notarized
16 statement to the court stating that the names of juveniles and parents
17 will remain confidential.

18 (9) Juvenile detention facilities shall release records to the
19 sentencing guidelines commission under RCW 9.94A.850 upon request. The
20 commission shall not disclose the names of any juveniles or parents
21 mentioned in the records without the named individual's written
22 permission.

23 (10) Requirements in this chapter relating to the court's authority
24 to compel disclosure shall not apply to the legislative children's
25 oversight committee or the office of the family and children's
26 ombudsman.

27 (11) For the purpose of research only, the administrative office of
28 the courts shall maintain an electronic research copy of all records in
29 the judicial information system related to juveniles. Access to the
30 research copy is restricted to the Washington state center for court
31 research. The Washington state center for court research shall
32 maintain the confidentiality of all confidential records and shall
33 preserve the anonymity of all persons identified in the research copy.
34 The research copy may not be subject to any records retention schedule
35 and must include records destroyed or removed from the judicial
36 information system pursuant to RCW 13.50.050 (17) and (18) and
37 13.50.100(3).

1 (12) The court shall release to the Washington state office of
2 public defense records needed to implement the agency's oversight,
3 technical assistance, and other functions as required by RCW 2.70.020.
4 Access to the records used as a basis for oversight, technical
5 assistance, or other agency functions is restricted to the Washington
6 state office of public defense. The Washington state office of public
7 defense shall maintain the confidentiality of all confidential
8 information included in the records.

9 **Sec. 4.** RCW 13.04.011 and 1997 c 338 s 6 are each amended to read
10 as follows:

11 For purposes of this title:

12 (1) "Adjudication" has the same meaning as "conviction" in RCW
13 9.94A.030, (~~and the terms must be construed identically and used~~
14 ~~interchangeably~~) but only for the purposes of sentencing under chapter
15 9.94A RCW;

16 (2) Except as specifically provided in RCW 13.40.020 and chapter
17 13.24 RCW, "juvenile," "youth," and "child" mean any individual who is
18 under the chronological age of eighteen years;

19 (3) "Juvenile offender" and "juvenile offense" have the meaning
20 ascribed in RCW 13.40.020;

21 (4) "Court" when used without further qualification means the
22 juvenile court judge(s) or commissioner(s);

23 (5) "Parent" or "parents," except as used in chapter 13.34 RCW,
24 means that parent or parents who have the right of legal custody of the
25 child. "Parent" or "parents" as used in chapter 13.34 RCW, means the
26 biological or adoptive parents of a child unless the legal rights of
27 that person have been terminated by judicial proceedings;

28 (6) "Custodian" means that person who has the legal right to
29 custody of the child."

30 Correct the title.

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