
ENGROSSED SECOND SUBSTITUTE SENATE BILL 6561

State of Washington

61st Legislature

2010 Regular Session

By Senate Ways & Means (originally sponsored by Senators Hargrove, McCaslin, Regala, and Stevens)

READ FIRST TIME 02/09/10.

1 AN ACT Relating to restricting access to juvenile offender records;
2 amending RCW 13.04.240, 13.50.050, 13.50.010, 13.04.011, and 13.40.127;
3 and creating a new section.

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

5 NEW SECTION. **Sec. 1.** It is the legislature's intent to eventually
6 automatically restrict access to juvenile offender records at age
7 eighteen provided the offender meets certain requirements. The
8 legislature recognizes that because of information technology
9 differences in the computer systems used by the various agencies that
10 would be involved in automatically restricting access to juvenile
11 offender records, this goal cannot be currently accomplished without a
12 significant fiscal impact. Nevertheless, the legislature intends that
13 the agencies involved begin to work together to achieve the goal of
14 automatically restricting juvenile offender records within the near
15 future.

16 **Sec. 2.** RCW 13.04.240 and 1961 c 302 s 16 are each amended to read
17 as follows:

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

4 **Sec. 3.** RCW 13.50.050 and 2008 c 221 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 restricted 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
19 participant is assigned the responsibility for supervising the
20 juvenile.

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

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

32 (7) Upon the decision to arrest or the arrest, law enforcement and
33 prosecuting attorneys may cooperate with schools in releasing
34 information to a school pertaining to the investigation, diversion, and
35 prosecution of a juvenile attending the school. Upon the decision to
36 arrest or the arrest, incident reports may be released unless releasing
37 the records would jeopardize the investigation or prosecution or

1 endanger witnesses. If release of incident reports would jeopardize
2 the investigation or prosecution or endanger witnesses, law enforcement
3 and prosecuting attorneys may release information to the maximum extent
4 possible to assist schools in protecting other students, staff, and
5 school property.

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

17 (9) Upon request of the victim of a crime or the victim's immediate
18 family, the identity of an alleged or proven juvenile offender alleged
19 or found to have committed a crime against the victim and the identity
20 of the alleged or proven juvenile offender's parent, guardian, or
21 custodian and the circumstance of the alleged or proven crime shall be
22 released to the victim of the crime or the victim's immediate family.

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

31 (11) In any case in which an information has been filed pursuant to
32 RCW 13.40.100 or a complaint has been filed with the prosecutor and
33 referred for diversion pursuant to RCW 13.40.070, the person the
34 subject of the information or complaint may file a motion with the
35 court to have the court vacate its order and findings, if any, and,
36 subject to subsection (23) of this section, order (~~the sealing of~~)
37 that access to the official juvenile court file, the social file, and
38 records of the court and of any other agency in the case be restricted.

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

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

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

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

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

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

30 **(b) The court shall not grant any motion to restrict access to**
31 **records for class B, C, gross misdemeanor and misdemeanor offenses and**
32 **diversions, other than sex offenses, made under subsection (11) of this**
33 **section unless:**

34 **(i) Since the date of last release from confinement, including**
35 **full-time residential treatment, if any, entry of disposition, or**
36 **completion of the diversion agreement, the person has spent two**
37 **consecutive years in the community without being convicted of any**
38 **offense or crime;**

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

3 (iii) No proceeding is pending seeking the formation of a diversion
4 agreement with that person; and

5 (iv) 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 restricted.

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

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

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

35 (17)(a)(i) Subject to subsection (23) of this section, all records
36 maintained by any court or law enforcement agency, including the
37 juvenile court, local law enforcement, the Washington state patrol, and

1 the prosecutor's office, shall be automatically destroyed within ninety
2 days of becoming eligible for destruction. Juvenile records are
3 eligible for destruction when:

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

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

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

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

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

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

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

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

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

1 (18) If the court grants the motion to destroy records made
2 pursuant to subsection (17)(b) or (c) of this section, it shall,
3 subject to subsection (23) of this section, order the official juvenile
4 court file, the social file, and any other records named in the order
5 to be destroyed.

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

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

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

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

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

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

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

37 (24) Information identifying child victims under age eighteen who
38 are victims of sexual assaults by juvenile offenders is confidential

1 and not subject to release to the press or public without the
2 permission of the child victim or the child's legal guardian.
3 Identifying information includes the child victim's name, addresses,
4 location, photographs, and in cases in which the child victim is a
5 relative of the alleged perpetrator, identification of the relationship
6 between the child and the alleged perpetrator. Information identifying
7 a child victim of sexual assault may be released to law enforcement,
8 prosecutors, judges, defense attorneys, or private or governmental
9 agencies that provide services to the child victim of sexual assault.

10 (25) No juvenile offense records maintained by any court, law
11 enforcement agency or state agency, including the juvenile court, local
12 law enforcement, the Washington state patrol, and the prosecutor's
13 office may be sold or distributed to any private data base company.
14 This subsection does not apply to those records maintained or
15 disseminated under chapter 36.28A RCW.

16 **Sec. 4.** 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) "Restricted," "restricting," or "access restricting" means
34 that, except as otherwise provided in this chapter, no person or entity
35 may obtain the records of a juvenile offender;

36 (e) "Social file" means the juvenile court file containing the
37 records and reports of the probation counselor.

1 (2) Each petition or information filed with the court may include
2 only one juvenile and each petition or information shall be filed under
3 a separate docket number. The social file shall be filed separately
4 from the official juvenile court file.

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

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

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

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

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

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

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

37 (7) The person making a motion under subsection (5) or (6) of this

1 section shall give reasonable notice of the motion to all parties to
2 the original action and to any agency whose records will be affected by
3 the motion.

4 (8) The court may permit inspection of records by, or release of
5 information to, any clinic, hospital, or agency which has the subject
6 person under care or treatment. The court may also permit inspection
7 by or release to individuals or agencies, including juvenile justice
8 advisory committees of county law and justice councils, engaged in
9 legitimate research for educational, scientific, or public purposes.

10 ~~((The court may also permit inspection of, or release of information
11 from, records which have been sealed pursuant to RCW 13.50.050(12).))~~

12 The court shall release to the sentencing guidelines commission records
13 needed for its research and data-gathering functions under RCW
14 9.94A.850 and other statutes. Access to records or information for
15 research purposes shall be permitted only if the anonymity of all
16 persons mentioned in the records or information will be preserved.
17 Each person granted permission to inspect juvenile justice or care
18 agency records for research purposes shall present a notarized
19 statement to the court stating that the names of juveniles and parents
20 will remain confidential.

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

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

30 (11) For the purpose of research only, the administrative office of
31 the courts shall maintain an electronic research copy of all records in
32 the judicial information system related to juveniles. Access to the
33 research copy is restricted to the Washington state center for court
34 research. The Washington state center for court research shall
35 maintain the confidentiality of all confidential records and shall
36 preserve the anonymity of all persons identified in the research copy.
37 The research copy may not be subject to any records retention schedule

1 and must include records destroyed or removed from the judicial
2 information system pursuant to RCW 13.50.050 (17) and (18) and
3 13.50.100(3).

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

12 **Sec. 5.** RCW 13.04.011 and 1997 c 338 s 6 are each amended to read
13 as follows:

14 For purposes of this title:

15 (1) "Adjudication" has the same meaning as "conviction" in RCW
16 9.94A.030, (~~and the terms must be construed identically and used~~
17 ~~interchangeably~~) but only for the purposes of sentencing under chapter
18 9.94A RCW;

19 (2) Except as specifically provided in RCW 13.40.020 and chapter
20 13.24 RCW, "juvenile," "youth," and "child" mean any individual who is
21 under the chronological age of eighteen years;

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

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

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

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

33 **Sec. 6.** RCW 13.40.127 and 2009 c 236 s 1 are each amended to read
34 as follows:

35 (1) A juvenile is eligible for deferred disposition unless he or
36 she:

- 1 (a) Is charged with a sex or violent offense;
- 2 (b) Has a criminal history which includes any felony;
- 3 (c) Has a prior deferred disposition or deferred adjudication; or
- 4 (d) Has two or more adjudications.

5 (2) The juvenile court may, upon motion at least fourteen days
6 before commencement of trial and, after consulting the juvenile's
7 custodial parent or parents or guardian and with the consent of the
8 juvenile, continue the case for disposition for a period not to exceed
9 one year from the date the juvenile is found guilty. The court shall
10 consider whether the offender and the community will benefit from a
11 deferred disposition before deferring the disposition.

12 (3) Any juvenile who agrees to a deferral of disposition shall:

13 (a) Stipulate to the admissibility of the facts contained in the
14 written police report;

15 (b) Acknowledge that the report will be entered and used to support
16 a finding of guilt and to impose a disposition if the juvenile fails to
17 comply with terms of supervision; and

18 (c) Waive the following rights to: (i) A speedy disposition; and
19 (ii) call and confront witnesses.

20 The adjudicatory hearing shall be limited to a reading of the
21 court's record.

22 (4) Following the stipulation, acknowledgment, waiver, and entry of
23 a finding or plea of guilt, the court shall defer entry of an order of
24 disposition of the juvenile.

25 (5) Any juvenile granted a deferral of disposition under this
26 section shall be placed under community supervision. The court may
27 impose any conditions of supervision that it deems appropriate
28 including posting a probation bond. Payment of restitution under RCW
29 13.40.190 shall be a condition of community supervision under this
30 section.

31 The court may require a juvenile offender convicted of animal
32 cruelty in the first degree to submit to a mental health evaluation to
33 determine if the offender would benefit from treatment and such
34 intervention would promote the safety of the community. After
35 consideration of the results of the evaluation, as a condition of
36 community supervision, the court may order the offender to attend
37 treatment to address issues pertinent to the offense.

1 (6) A parent who signed for a probation bond has the right to
2 notify the counselor if the juvenile fails to comply with the bond or
3 conditions of supervision. The counselor shall notify the court and
4 surety of any failure to comply. A surety shall notify the court of
5 the juvenile's failure to comply with the probation bond. The state
6 shall bear the burden to prove, by a preponderance of the evidence,
7 that the juvenile has failed to comply with the terms of community
8 supervision.

9 (7) A juvenile's lack of compliance shall be determined by the
10 judge upon written motion by the prosecutor or the juvenile's juvenile
11 court community supervision counselor. If a juvenile fails to comply
12 with terms of supervision, the court shall enter an order of
13 disposition.

14 (8) At any time following deferral of disposition the court may,
15 following a hearing, continue the case for an additional one-year
16 period for good cause.

17 (9) At the conclusion of the period set forth in the order of
18 deferral and upon a finding by the court of full compliance with
19 conditions of supervision and payment of full restitution, the
20 respondent's conviction shall be vacated and the court shall dismiss
21 the case with prejudice, except that a conviction under RCW 16.52.205
22 shall not be vacated.

23 (10)(a) The access to records of deferred disposition cases vacated
24 under subsection (9) of this section shall be (~~sealed~~) restricted no
25 later than thirty days after the juvenile's eighteenth birthday
26 provided that the juvenile does not have any charges pending at that
27 time. If a juvenile has already reached his or her eighteenth birthday
28 before July 26, 2009, and does not have any charges pending, he or she
29 may request that the court issue an order (~~sealing~~) restricting
30 access to the records of his or her deferred disposition cases vacated
31 under subsection (9) of this section, and this request shall be
32 granted. Nothing in this subsection shall preclude a juvenile from
33 petitioning the court to have the records of his or her deferred
34 dispositions (~~sealed~~) restricted under RCW 13.50.050 (11) and (12).

35 (b) Records (~~sealed~~) restricted under this (~~provision shall~~)
36 subsection have the same legal status as records (~~sealed~~) restricted

1 under RCW 13.50.050.

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