
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 and amending RCW 13.04.240, 13.50.050, 13.50.010, 13.04.011, and
3 13.40.127.

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

5 **Sec. 1.** RCW 13.04.240 and 1961 c 302 s 16 are each amended to read
6 as follows:

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

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

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

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

17 (3) All records other than the official juvenile court file are

1 confidential and may be released only as provided in this section, RCW
2 13.50.010, 13.40.215, and 4.24.550.

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

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

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

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

32 (8) The juvenile court and the prosecutor may set up and maintain
33 a central record-keeping system which may receive information on all
34 alleged juvenile offenders against whom a complaint has been filed
35 pursuant to RCW 13.40.070 whether or not their cases are currently
36 pending before the court. The central record-keeping system may be
37 computerized. If a complaint has been referred to a diversion unit,
38 the diversion unit shall promptly report to the juvenile court or the

1 prosecuting attorney when the juvenile has agreed to diversion. An
2 offense shall not be reported as criminal history in any central
3 record-keeping system without notification by the diversion unit of the
4 date on which the offender agreed to diversion.

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

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

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

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

31 ~~((a) For class B offenses other than sex offenses,))~~ (i) Since the
32 last date of release from confinement, including full-time residential
33 treatment, if any, or entry of disposition, the person has spent five
34 consecutive years in the community without committing any offense or
35 crime that subsequently results in an adjudication or conviction~~((~~
36 ~~For class C offenses other than sex offenses, since the last date of~~
37 ~~release from confinement, including full-time residential treatment, if~~
38 ~~any, or entry of disposition, the person has spent two consecutive~~

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

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

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

15 ((d)) (iv) The person has not been convicted of a ((class A or))
16 sex offense; and

17 ((e)) (v) Full restitution has been paid.

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

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

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

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

31 (iv) Full restitution has been paid.

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

36 (14) If the court grants the motion to ((seal)) restrict access to
37 records made pursuant to subsection (11) of this section, it shall,
38 subject to subsection (23) of this section, order ((sealed)) access be

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

35 (25) No juvenile offense records maintained by any court, law
36 enforcement agency or state agency, including the juvenile court, local
37 law enforcement, the Washington state patrol, and the prosecutor's
38 office may be sold or distributed to any private data base company.

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

3 (1) For purposes of this chapter:

4 (a) "Juvenile justice or care agency" means any of the following:
5 Police, diversion units, court, prosecuting attorney, defense attorney,
6 detention center, attorney general, the legislative children's
7 oversight committee, the office of the family and children's ombudsman,
8 the department of social and health services and its contracting
9 agencies, schools; persons or public or private agencies having
10 children committed to their custody; and any placement oversight
11 committee created under RCW 72.05.415;

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

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

18 (d) "Restricted," "restricting," or "access restricting" means
19 that, except as otherwise provided in this chapter, no person or entity
20 may obtain the records of a juvenile offender;

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

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

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

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

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

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

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

4 (5) Any person who has reasonable cause to believe information
5 concerning that person is included in the records of a juvenile justice
6 or care agency and who has been denied access to those records by the
7 agency may make a motion to the court for an order authorizing that
8 person to inspect the juvenile justice or care agency record concerning
9 that person. The court shall grant the motion to examine records
10 unless it finds that in the interests of justice or in the best
11 interests of the juvenile the records or parts of them should remain
12 confidential.

13 (6) A juvenile, or his or her parents, or any person who has
14 reasonable cause to believe information concerning that person is
15 included in the records of a juvenile justice or care agency may make
16 a motion to the court challenging the accuracy of any information
17 concerning the moving party in the record or challenging the continued
18 possession of the record by the agency. If the court grants the
19 motion, it shall order the record or information to be corrected or
20 destroyed.

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

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

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

33 The court shall release to the sentencing guidelines commission records
34 needed for its research and data-gathering functions under RCW
35 9.94A.850 and other statutes. Access to records or information for
36 research purposes shall be permitted only if the anonymity of all
37 persons mentioned in the records or information will be preserved.
38 Each person granted permission to inspect juvenile justice or care

1 agency records for research purposes shall present a notarized
2 statement to the court stating that the names of juveniles and parents
3 will remain confidential.

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

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

13 (11) For the purpose of research only, the administrative office of
14 the courts shall maintain an electronic research copy of all records in
15 the judicial information system related to juveniles. Access to the
16 research copy is restricted to the Washington state center for court
17 research. The Washington state center for court research shall
18 maintain the confidentiality of all confidential records and shall
19 preserve the anonymity of all persons identified in the research copy.
20 The research copy may not be subject to any records retention schedule
21 and must include records destroyed or removed from the judicial
22 information system pursuant to RCW 13.50.050 (17) and (18) and
23 13.50.100(3).

24 (12) The court shall release to the Washington state office of
25 public defense records needed to implement the agency's oversight,
26 technical assistance, and other functions as required by RCW 2.70.020.
27 Access to the records used as a basis for oversight, technical
28 assistance, or other agency functions is restricted to the Washington
29 state office of public defense. The Washington state office of public
30 defense shall maintain the confidentiality of all confidential
31 information included in the records.

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

34 For purposes of this title:

35 (1) "Adjudication" has the same meaning as "conviction" in RCW
36 9.94A.030, (~~and the terms must be construed identically and used~~

1 ~~interchangeably~~) but only for the purposes of sentencing under chapter
2 9.94A RCW;

3 (2) Except as specifically provided in RCW 13.40.020 and chapter
4 13.24 RCW, "juvenile," "youth," and "child" mean any individual who is
5 under the chronological age of eighteen years;

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

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

10 (5) "Parent" or "parents," except as used in chapter 13.34 RCW,
11 means that parent or parents who have the right of legal custody of the
12 child. "Parent" or "parents" as used in chapter 13.34 RCW, means the
13 biological or adoptive parents of a child unless the legal rights of
14 that person have been terminated by judicial proceedings;

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

17 **Sec. 5.** RCW 13.40.127 and 2009 c 236 s 1 are each amended to read
18 as follows:

19 (1) A juvenile is eligible for deferred disposition unless he or
20 she:

21 (a) Is charged with a sex or violent offense;

22 (b) Has a criminal history which includes any felony;

23 (c) Has a prior deferred disposition or deferred adjudication; or

24 (d) Has two or more adjudications.

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

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

33 (a) Stipulate to the admissibility of the facts contained in the
34 written police report;

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

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

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

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

8 (5) Any juvenile granted a deferral of disposition under this
9 section shall be placed under community supervision. The court may
10 impose any conditions of supervision that it deems appropriate
11 including posting a probation bond. Payment of restitution under RCW
12 13.40.190 shall be a condition of community supervision under this
13 section.

14 The court may require a juvenile offender convicted of animal
15 cruelty in the first degree to submit to a mental health evaluation to
16 determine if the offender would benefit from treatment and such
17 intervention would promote the safety of the community. After
18 consideration of the results of the evaluation, as a condition of
19 community supervision, the court may order the offender to attend
20 treatment to address issues pertinent to the offense.

21 (6) A parent who signed for a probation bond has the right to
22 notify the counselor if the juvenile fails to comply with the bond or
23 conditions of supervision. The counselor shall notify the court and
24 surety of any failure to comply. A surety shall notify the court of
25 the juvenile's failure to comply with the probation bond. The state
26 shall bear the burden to prove, by a preponderance of the evidence,
27 that the juvenile has failed to comply with the terms of community
28 supervision.

29 (7) A juvenile's lack of compliance shall be determined by the
30 judge upon written motion by the prosecutor or the juvenile's juvenile
31 court community supervision counselor. If a juvenile fails to comply
32 with terms of supervision, the court shall enter an order of
33 disposition.

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

37 (9) At the conclusion of the period set forth in the order of
38 deferral and upon a finding by the court of full compliance with

1 conditions of supervision and payment of full restitution, the
2 respondent's conviction shall be vacated and the court shall dismiss
3 the case with prejudice, except that a conviction under RCW 16.52.205
4 shall not be vacated.

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

17 (b) Records (~~sealed~~) restricted under this (~~provision shall~~)
18 subsection have the same legal status as records (~~sealed~~) restricted
19 under RCW 13.50.050.

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