

CERTIFICATION OF ENROLLMENT  
ENGROSSED SECOND SUBSTITUTE SENATE BILL 6561

61st Legislature  
2010 Regular Session

Passed by the Senate March 9, 2010  
YEAS 31 NAYS 14

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**President of the Senate**

Passed by the House March 2, 2010  
YEAS 59 NAYS 38

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**Speaker of the House of Representatives**

Approved

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**Governor of the State of Washington**

CERTIFICATE

I, Thomas Hoemann, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **ENGROSSED SECOND SUBSTITUTE SENATE BILL 6561** as passed by the Senate and the House of Representatives on the dates hereon set forth.

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**Secretary**

FILED

**Secretary of State  
State of Washington**

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ENGROSSED SECOND SUBSTITUTE SENATE BILL 6561

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AS AMENDED BY THE HOUSE

Passed Legislature - 2010 Regular Session

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, and 13.04.011.

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

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

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

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

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

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

16            (3) All records other than the official juvenile court file are  
17 confidential and may be released only as provided in this section, RCW  
18 13.50.010, 13.40.215, and 4.24.550.

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

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

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

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

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

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

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

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

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

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

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

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

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

11 ((+e)) (iii) No proceeding is pending seeking the formation of a  
12 diversion agreement with that person;

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

15 ((+e)) (v) Full restitution has been paid.

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

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

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

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

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

29 (v) Full restitution has been paid.

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

33 (14) If the court grants the motion to seal made pursuant to  
34 subsection (11) of this section, it shall, subject to subsection (23)  
35 of this section, order sealed the official juvenile court file, the  
36 social file, and other records relating to the case as are named in the  
37 order. Thereafter, the proceedings in the case shall be treated as if  
38 they never occurred, and the subject of the records may reply

1 accordingly to any inquiry about the events, records of which are  
2 sealed. Any agency shall reply to any inquiry concerning confidential  
3 or sealed records that records are confidential, and no information can  
4 be given about the existence or nonexistence of records concerning an  
5 individual.

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

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

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

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

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

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

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

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

33 (ii) No less than quarterly, the administrative office of the  
34 courts shall provide a report to the juvenile courts of those  
35 individuals whose records may be eligible for destruction. The  
36 juvenile court shall verify eligibility and notify the Washington state  
37 patrol and the appropriate local law enforcement agency and

1 prosecutor's office of the records to be destroyed. The requirement to  
2 destroy records under this subsection is not dependent on a court  
3 hearing or the issuance of a court order to destroy records.

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

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

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

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

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

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

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

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

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

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

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

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

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

32 (1) For purposes of this chapter:

33 (a) "Juvenile justice or care agency" means any of the following:  
34 Police, diversion units, court, prosecuting attorney, defense attorney,  
35 detention center, attorney general, the legislative children's  
36 oversight committee, the office of the family and children's ombudsman,  
37 the department of social and health services and its contracting



1 agencies, schools; persons or public or private agencies having  
2 children committed to their custody; and any placement oversight  
3 committee created under RCW 72.05.415;

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

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

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

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

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

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

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

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

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

31 (5) Any person who has reasonable cause to believe information  
32 concerning that person is included in the records of a juvenile justice  
33 or care agency and who has been denied access to those records by the  
34 agency may make a motion to the court for an order authorizing that  
35 person to inspect the juvenile justice or care agency record concerning  
36 that person. The court shall grant the motion to examine records  
37 unless it finds that in the interests of justice or in the best

1 interests of the juvenile the records or parts of them should remain  
2 confidential.

3 (6) A juvenile, or his or her parents, or any person who has  
4 reasonable cause to believe information concerning that person is  
5 included in the records of a juvenile justice or care agency may make  
6 a motion to the court challenging the accuracy of any information  
7 concerning the moving party in the record or challenging the continued  
8 possession of the record by the agency. If the court grants the  
9 motion, it shall order the record or information to be corrected or  
10 destroyed.

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

15 (8) The court may permit inspection of records by, or release of  
16 information to, any clinic, hospital, or agency which has the subject  
17 person under care or treatment. The court may also permit inspection  
18 by or release to individuals or agencies, including juvenile justice  
19 advisory committees of county law and justice councils, engaged in  
20 legitimate research for educational, scientific, or public purposes.  
21 ~~((The court may also permit inspection of, or release of information  
22 from, records which have been sealed pursuant to RCW 13.50.050(12).))~~  
23 The court shall release to the sentencing guidelines commission records  
24 needed for its research and data-gathering functions under RCW  
25 9.94A.850 and other statutes. Access to records or information for  
26 research purposes shall be permitted only if the anonymity of all  
27 persons mentioned in the records or information will be preserved.  
28 Each person granted permission to inspect juvenile justice or care  
29 agency records for research purposes shall present a notarized  
30 statement to the court stating that the names of juveniles and parents  
31 will remain confidential.

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

37 (10) Requirements in this chapter relating to the court's authority

1 to compel disclosure shall not apply to the legislative children's  
2 oversight committee or the office of the family and children's  
3 ombudsman.

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

15 (12) The court shall release to the Washington state office of  
16 public defense records needed to implement the agency's oversight,  
17 technical assistance, and other functions as required by RCW 2.70.020.  
18 Access to the records used as a basis for oversight, technical  
19 assistance, or other agency functions is restricted to the Washington  
20 state office of public defense. The Washington state office of public  
21 defense shall maintain the confidentiality of all confidential  
22 information included in the records.

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

25 For purposes of this title:

26 (1) "Adjudication" has the same meaning as "conviction" in RCW  
27 9.94A.030, (~~and the terms must be construed identically and used~~  
28 ~~interchangeably~~) but only for the purposes of sentencing under chapter  
29 9.94A RCW;

30 (2) Except as specifically provided in RCW 13.40.020 and chapter  
31 13.24 RCW, "juvenile," "youth," and "child" mean any individual who is  
32 under the chronological age of eighteen years;

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

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

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

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

--- END ---