

SHB 1793 - CONF REPT
By Conference Committee

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

3 "NEW SECTION. **Sec. 1.** The legislature finds that:

4 (1) One of the goals of the juvenile justice system is to
5 rehabilitate juvenile offenders and promote their successful
6 reintegration into society. Without opportunities to reintegrate,
7 juveniles suffer increased recidivism and decreased economic function.

8 (2) The public has an interest in accessing information relating to
9 juvenile records for public safety and research purposes.

10 (3) The public's legitimate interest in accessing personal
11 information must be balanced with the rehabilitative goals of the
12 juvenile justice system. All benefit when former juvenile offenders,
13 after paying their debt to society, reintegrate and contribute to their
14 local communities as productive citizens.

15 (4) It is the intent of the legislature to balance the
16 rehabilitative and reintegration needs of an effective juvenile justice
17 system with the public's need to access personal information for public
18 safety and research purposes.

19 **Sec. 2.** RCW 19.182.040 and 1993 c 476 s 6 are each amended to read
20 as follows:

21 (1) Except as authorized under subsection (2) of this section, no
22 consumer reporting agency may make a consumer report containing any of
23 the following items of information:

24 (a) Bankruptcies that, from date of adjudication of the most recent
25 bankruptcy, antedate the report by more than ten years;

26 (b) Suits and judgments that, from date of entry, antedate the
27 report by more than seven years or until the governing statute of
28 limitations has expired, whichever is the longer period;

1 (c) Paid tax liens that, from date of payment, antedate the report
2 by more than seven years;

3 (d) Accounts placed for collection or charged to profit and loss
4 that antedate the report by more than seven years;

5 (e) Records of arrest, indictment, or conviction of an adult for a
6 crime that, from date of disposition, release, or parole, antedate the
7 report by more than seven years;

8 (f) Juvenile records, as defined in RCW 13.50.010(1)(c), when the
9 subject of the records is twenty-one years of age or older at the time
10 of the report; and

11 (g) Any other adverse item of information that antedates the report
12 by more than seven years.

13 (2) Subsection (1)(a) through (e) and (g) of this section is not
14 applicable in the case of a consumer report to be used in connection
15 with:

16 (a) A credit transaction involving, or that may reasonably be
17 expected to involve, a principal amount of fifty thousand dollars or
18 more;

19 (b) The underwriting of life insurance involving, or that may
20 reasonably be expected to involve, a face amount of fifty thousand
21 dollars or more; or

22 (c) The employment of an individual at an annual salary that
23 equals, or that may reasonably be expected to equal, twenty thousand
24 dollars or more.

25 NEW SECTION. Sec. 3. (1)(a) A joint legislative task force on
26 juvenile record sealing is established, with members as provided in
27 this subsection.

28 (i) The president of the senate shall appoint two members from each
29 of the two largest caucuses of the senate;

30 (ii) The speaker of the house of representatives shall appoint two
31 members from each of the two largest caucuses of the house of
32 representatives;

33 (iii) A representative of the administrative office of the courts;

34 (iv) A representative of the judicial information systems data
35 dissemination committee;

36 (v) A representative of the association of counties, specifically
37 county clerks;

1 (vi) A representative of the Washington association of prosecuting
2 attorneys;

3 (vii) A representative of the Washington state patrol;

4 (viii) A representative from the juvenile law section of the
5 Washington state bar association;

6 (ix) A representative of the Washington defenders' association;

7 (x) A representative of the juvenile rehabilitation administration
8 within the department of social and health services; and

9 (xi) A representative of the juvenile court administrator's
10 association.

11 (b) The task force shall choose one of the legislative members from
12 the senate and one of the legislative members from the house of
13 representatives to cochair the task force. The legislative members
14 shall convene the first meeting of the task force.

15 (2) The task force shall determine how to cost-effectively restrict
16 public access to juvenile records when an individual has met the
17 statutory requirements of RCW 13.50.050(12) and without requiring
18 individuals who are the subject of the records to file a motion to seal
19 the records in juvenile court; whether and how to restrict access to
20 diversion records; and other juvenile criminal record access issues
21 that may arise during the work of the task force.

22 (3) Staff support for the task force must be provided by the senate
23 committee services and the house of representatives office of program
24 research.

25 (4) The task force shall report its findings and recommendations to
26 the governor and the appropriate committees of the legislature by
27 December 15, 2011.

28 (5) This section expires January 1, 2012.

29 **Sec. 4.** RCW 13.50.050 and 2010 c 150 s 2 are each amended to read
30 as follows:

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

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

36 (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 recordkeeping 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 recordkeeping 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 recordkeeping 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 the
25 official juvenile court file, the social file, and records of the court
26 and of any other agency in the case.

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

30 (i) Since the last date of release from confinement, including
31 full-time residential treatment, if any, or entry of disposition, the
32 person has spent five consecutive years in the community without
33 committing any offense or crime that subsequently results in an
34 adjudication or conviction;

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

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

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

2 (v) Full restitution has been paid.

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

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

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

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

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

16 (v) Full restitution has been paid.

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

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

31 (b) In the event the subject of the juvenile records receives a
32 full and unconditional pardon, the proceedings in the matter upon which
33 the pardon has been granted shall be treated as if they never occurred,
34 and the subject of the records may reply accordingly to any inquiry
35 about the events upon which the pardon was received. Any agency shall
36 reply to any inquiry concerning the records pertaining to the events
37 for which the subject received a pardon that records are confidential,

1 and no information can be given about the existence or nonexistence of
2 records concerning an individual.

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

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

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

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

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

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

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

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

30 (ii) No less than quarterly, the administrative office of the
31 courts shall provide a report to the juvenile courts of those
32 individuals whose records may be eligible for destruction. The
33 juvenile court shall verify eligibility and notify the Washington state
34 patrol and the appropriate local law enforcement agency and
35 prosecutor's office of the records to be destroyed. The requirement to
36 destroy records under this subsection is not dependent on a court
37 hearing or the issuance of a court order to destroy records.

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

4 (b) All records maintained by any court or law enforcement agency,
5 including the juvenile court, local law enforcement, the Washington
6 state patrol, and the prosecutor's office, shall be automatically
7 destroyed within thirty days of being notified by the governor's office
8 that the subject of those records received a full and unconditional
9 pardon by the governor.

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

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

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

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

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

37 (21) Nothing in this section may be construed to prevent a crime

1 victim or a member of the victim's family from divulging the identity
2 of the alleged or proven juvenile offender or his or her family when
3 necessary in a civil proceeding.

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

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

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

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

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

34 NEW SECTION. **Sec. 5.** RCW 13.50.050 (14)(b) and (17)(b) apply to
35 all records of a full and unconditional pardon and should be applied
36 retroactively as well as prospectively.

1 NEW_SECTION. **Sec. 6.** If any provision of this act or its
2 application to any person or circumstance is held invalid, the
3 remainder of the act or the application of the provision to other
4 persons or circumstances is not affected."

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5 On page 1, line 1 of the title, after "records;" strike the
6 remainder of the title and insert "amending RCW 19.182.040 and
7 13.50.050; creating new sections; and providing an expiration date."

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