

HOUSE BILL REPORT

HB 2542

As Reported by House Committee On:
Early Learning & Human Services

Title: An act relating to access to juvenile records.

Brief Description: Making juvenile records confidential.

Sponsors: Representatives Darneille, Jinkins, Fitzgibbon, Appleton, Kagi and Roberts.

Brief History:

Committee Activity:

Early Learning & Human Services: 1/24/12, 1/27/12 [DPS].

Brief Summary of Substitute Bill

- Provides that juvenile offender records are confidential, unless the juvenile has been charged with a serious violent offense or the court, after a hearing, has ordered that the records be open to public inspection.
- Provides that confidential juvenile records may not be published or distributed.
- Provides that the provisions of the act apply prospectively and retroactively.

HOUSE COMMITTEE ON EARLY LEARNING & HUMAN SERVICES

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 5 members: Representatives Kagi, Chair; Roberts, Vice Chair; Dickerson, Goodman and Orwall.

Minority Report: Do not pass. Signed by 3 members: Representatives Walsh, Ranking Minority Member; Johnson and Overstreet.

Staff: Linda Merelle (786-7092).

Background:

Juvenile Offender Records.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Since 1977 juvenile offender records have been public unless sealed in accordance with statutory requirements. Non-offender juvenile records, such as records in a dependency matter or adoption, are not open to public inspection.

The requirements for sealing juvenile records have changed since the records became public. The most stringent requirements were imposed in 1997 when class A felonies and sex offenses could not be sealed, and a person seeking to seal a juvenile class B felony was required to remain in the community without any further offenses for 10 years, along with the payment of any restitution ordered. A person seeking to seal a juvenile class C felony was required to wait five years, in addition to any restitution.

In 2011 and 2010 the Legislature amended the sealing statutes to allow the records for class A felonies and sex offenses to be sealed. Before any juvenile offender record may be sealed, the person who is the subject of the record must not have any pending diversions or criminal charges. He or she must have been relieved of the duty to register as a sex offender and must have paid in full any restitution ordered by the court. Depending upon the offense, the person seeking to seal his or records must have spent a minimum period of time in the community after being released from confinement without any new offenses, as follows:

<i>Offense Type</i>	<i>Years in Community without a New Offense</i>
Class A Felony	Five years.
Sex Offense May only be sealed if a court has relieved the juvenile of the duty to register as a sex offender. (Juvenile convictions for Rape in the first degree, Rape in the second degree, or Indecent Liberties with Forcible Compulsion may not be sealed.)	For class A juvenile sex offenses, committed when the juvenile was 15 years or older, the individual must be in the community five years without conviction of additional sex or kidnapping offenses before he or she may petition to be relieved of the duty to register. For all other offenses, the person must be in the community two years without conviction of additional sex or kidnapping offenses before petitioning the court to be relieved of the duty to register.
Class B Felony	Two years.
Class C Felony	Two years.
Gross Misdemeanors	Two years.
Misdemeanors	Two years.
Diversions	Two years.

Serious Violent Offenses.

A "serious violent offense" is a subcategory of violent offenses, and includes the following offenses, as well as an attempt, solicitation, or conspiracy to commit such offense:

- Murder in the first degree;

- Homicide by Abuse;
 - Murder in the second degree;
 - Manslaughter in the first degree;
 - Assault in the first degree;
 - Kidnapping in the first degree;
 - Rape in the first degree; or
 - Assault of a Child in the first degree.
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Summary of Substitute Bill:

Juvenile Records Classified as Confidential.

Juvenile offender records are confidential unless the juvenile has been charged with a serious violent offense or the court, after a hearing, has ordered that a confidential record be opened for public inspection. Access to confidential juvenile offender records is limited to the court, the prosecuting attorney, the parties and their attorneys, and juvenile justice or care agencies. The juvenile justice or care agencies, such as law enforcement, diversion units, or the Department of Social and Health Services and its contractors, may have access only when an investigation or case is being pursued by such agency or the agency is responsible for supervising the juvenile who is the subject of the records.

If a juvenile has been charged with a serious violent offense but enters a plea to or is found guilty of a lesser offense, is found not guilty, or has the case dismissed, the offender record becomes confidential. If a charge is amended to a serious violent offense from a lesser original offense, the juvenile record becomes public. A juvenile court file containing multiple offenses, and includes a serious violent offense, must be open for public inspection in its entirety.

Hearing to Open Records to Public.

Upon the application of an interested party, the court may order confidential juvenile records to be opened to the public in part or their entirety if, after a hearing with notice to all parties, the court makes written findings that:

- the person or entity seeking to open the file has made a showing that compelling circumstances for continued confidentiality have not been identified;
- persons present when the motion to open the juvenile records was made has had an opportunity to address the motion;
- the court has analyzed whether continued confidentiality would be the least restrictive means available and effective in protecting the interests of the juvenile which may be threatened by opening the official juvenile court file;
- the court has weighed the competing privacy interests of the juvenile and the public's right to open court records; and
- the order of the court is not broader in application or duration than necessary.

When weighing the competing privacy interest of the juvenile and the public's right to open court records, the court must consider, but is not limited to, the following factors:

- the impact of the juvenile offense on victims, victims' families, or the community;
- whether the offense involved multiple victims or multiple incidents per victim;
- whether the offense involved an attempted or actual monetary loss greater than typical for the offense;
- whether the offense is a violent offense;
- whether the offense involved the use of a deadly weapon;
- any prior criminal history; and
- the age of the juvenile offender.

Access to Confidential Juvenile Offender Records.

Confidential juvenile offense records that are maintained by the court, law enforcement, state agencies, or the prosecutor's office may not be published or distributed. The prohibition against publication or distribution of juvenile offense records does not preclude the use of juvenile adjudications in subsequent juvenile or adult criminal proceedings.

Except for juvenile court files that have already been sealed, any existing juvenile offender record containing a serious violent offense charged prior to April 1, 2013, is public upon the effective date of the act.

Substitute Bill Compared to Original Bill:

The substitute bill clarifies that the prohibition against the publication or distribution of juvenile offender records does not preclude the use of juvenile adjudications in subsequent juvenile or adult criminal proceedings.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Substitute Bill: This bill takes effect 90 days after adjournment of the session in which the bill is passed, except for section 1, relating to making juvenile offender records confidential, which takes effect on April 1, 2013, and shall apply prospectively and retroactively to juvenile offender files, and section 2, relating to the publication and distribution of juvenile offender records, which takes effect on April 1, 2013.

Staff Summary of Public Testimony:

(In support) Initially, the issue was whether records could be sold or not sold. Making the records confidential, however, has the effect of not making the records available for sale or public scrutiny unless the court determines that a particular record is not confidential. If the records were categorized as confidential, the concern about sales would become moot. This bill makes juvenile records like adoption and dependency records. The number one reason that persons with a juvenile criminal history are unable to get a job or are homeless results from the fact that they have a public juvenile record. There is only one juvenile record sealing clinic in the state. This bill will promote public safety and restore the juvenile

rehabilitation process to its goal. The record sealing process is completely broken. Having records open to the public is destroying the lives of adults with juvenile convictions. The current process to get a record sealed is difficult and expensive. Twelve or 13-year-olds cannot comprehend the effects of having a juvenile record which will haunt them for the rest of their lives. Once juvenile records are dispersed, they cannot be corralled back in. The process of getting a juvenile record sealed is overwhelming. Restitution must be paid, but it is difficult to pay restitution when there are so many road blocks to employment. The law affects the families as well as the youths. They have served their time; let them serve their community.

(Opposed) The state Constitution says that court business should be done out in the open. For prosecutors, there are many reasons to have an open record in court. The court rooms need to be open, and the records that reflect those proceedings should be open. Records should not be confidential. The intent of the bill is understandable, but trying to rewrite what has already happened is not the way to proceed. It may be a better use of time to convince employers not to penalize adults for their juvenile convictions. The bill is broad and goes too far. It hinders prosecutors, law enforcement, and courts the most. Before a person could request a hearing to make a juvenile record accessible to the public, that person would need to know the existence of the case and be able to find it. Confidentiality of records raises issues about the accountability of the juvenile justice system. There are people who are habitual criminals before they reach age 18. They would have to commit a serious violent crime before the records of their offenses could be made public. Precluding the publishing and distribution of information is unconstitutional.

Persons Testifying: (In support) Representative Darneille, prime sponsor; Casey Trupin, Columbia Legal Services; Angelissa Savino, King County Juvenile Record Sealing Clinic; Katherine Hurley, Washington State Bar Association Juvenile Law Section; and Susan Steinman.

(Opposed) Tom McBride, Washington Association of Prosecuting Attorneys; Lana Weinmann, Office of the Attorney General; and Rowland Thompson, Allied Daily Newspapers.

Persons Signed In To Testify But Not Testifying: None.