

SENATE BILL REPORT

SB 6292

As of February 7, 2012

Title: An act relating to access to juvenile records.

Brief Description: Making juvenile records confidential.

Sponsors: Senators Harper and Carrell.

Brief History:

Committee Activity: Human Services & Corrections: 1/20/12, 2/02/12 [DPS-WM, w/oRec].
Ways & Means: 2/06/12.

SENATE COMMITTEE ON HUMAN SERVICES & CORRECTIONS

Majority Report: That Substitute Senate Bill No. 6292 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Hargrove, Chair; Regala, Vice Chair; Stevens, Ranking Minority Member; Harper and McAuliffe.

Minority Report: That it be referred without recommendation.

Signed by Senators Carrell and Padden.

Staff: Jennifer Strus (786-7316)

SENATE COMMITTEE ON WAYS & MEANS

Staff: Sherry McNamara (786-7402)

Background: The official juvenile court file of any alleged or proven juvenile offender is open to public inspection, unless it has been sealed by the court.

The court has the authority to seal records for class A offenses if, since the last date of release from confinement, full time residential treatment or entry of disposition, the person has spent five consecutive years in the community without committing any offense or crime that subsequently results in an adjudication or conviction; is not party to a pending proceeding seeking the person's conviction for a juvenile or criminal offense; is not a party to a proceeding seeking the formation of a diversion agreement; is no longer required to register

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as a sex offender or has been relieved of the duty to register as a sex offender; has not been convicted of rape in the first degree, rape in the second degree or indecent liberties committed with forcible compulsion; and has paid full restitution.

A person who turned 18 must petition the court to have their records for class B, C, gross misdemeanor, misdemeanor, or diversions sealed. Before the court orders records sealed, the person must show:

- proof of residence in the community for two consecutive years since the release date from confinement, entry of disposition, or completion of a diversion agreement without being convicted of any crime or offense;
- no proceeding is pending seeking conviction for a juvenile or adult crime against the person;
- no proceeding is pending for the formation of a diversion agreement against the person;
- no requirement to register as a sex offender or has been relieved of the duty to register as a sex offender; and
- full restitution has been paid.

Summary of Bill (Recommended Substitute): The official juvenile court file of any alleged or proven juvenile offender is confidential unless:

- the juvenile has been charged with a sex offense, a burglary, an offense committed with a firearm, or a serious violent offense;
- the juvenile has been adjudicated or convicted of his or her third offense; or
- the court has ordered that the official juvenile court file be open to public inspection either in its entirety or in part.

The court, prosecuting attorney, law enforcement, the parties, and their attorneys will have access to confidential juvenile court files. A juvenile justice or care agency will also have access to the confidential juvenile court file only when an investigation or case involving the juvenile in question is being pursued by the agency or when the agency is responsible for supervising the juvenile.

In the situation in which the court has ordered that the official juvenile court file be open to public inspection, the file can become confidential if the disposition of the charge is dismissal or amendment to a charge that is not a serious violent offense, a sex offense, a burglary, or an offense committed with a firearm. A juvenile court file that is initially confidential must be open to the public if the charge against the juvenile is later amended upward to a serious violent offense. If the juvenile is charged with multiple offenses, one of which is a serious violent offense, the entire official juvenile court file is to be open to the public.

Any interested party can move the court to open a confidential official juvenile court file to the public. Before the court can order the file to be opened, it must make written findings as follows:

- the party making the motion has shown that there are not identified compelling circumstances which establish a need for continued confidentiality of the juvenile court record;
- anyone present when the motion is heard had an opportunity to address the motion to open the file to the public;

- the court has analyzed whether continued confidentiality would be the least restrictive mean available and effective to protect the interests of the juvenile;
- the court has weighed the competing privacy interests of the juvenile and the public's right to open court records; and
- the court's order is no broader than needed to serve its purpose.

When weighing the competing privacy interests of the juvenile and the public's right to open court records, the court must consider the following factors:

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

No confidential official juvenile offense court records maintained by the court, law enforcement, or state agency may be published or distributed. Confidential juvenile court records can be used in subsequent juvenile or adult court proceedings.

EFFECT OF CHANGES MADE BY HUMAN SERVICES & CORRECTIONS COMMITTEE (Recommended Substitute): Adds to the list of juvenile court records that would be open to the public those juvenile offenders charged with:

- a sex offense;
- a burglary; or
- any offense committed with a firearm.

The record of any offender adjudicated or convicted of his or her third offense would also be open to the public.

Adds law enforcement to the list of agencies that have access to confidential juvenile court records. Provides that a record that was initially open to the public can become confidential if the disposition of the charge is dismissal or amendment to a crime that is not considered a serious violent offense.

Language is added to clarify that the use of confidential juvenile court records in later juvenile court or adult criminal proceedings is permitted.

Appropriation: None.

Fiscal Note: Requested on February 4, 2012.

Committee/Commission/Task Force Created: No.

Effective Date: The bill takes effect April 1, 2013.

Staff Summary of Public Testimony on Original Bill (Human Services & Corrections):

PRO: Has provided legal representation for many juveniles whose criminal record has kept them from productive lives. This bill will allow juveniles who have been rehabilitated to not have to live lives of poverty and unemployment and be able to find housing. The bill is a smart compromise – it allows courts to open the records in certain situations. This bill will increase public safety. Every month there are people in their 20s and 30s who show up at the clinic for help in sealing their juvenile records. Many of these people have been crime free for a good amount of the time since their juvenile crime. Their juvenile record impacts their lives – they find out when they try to get a job or housing. It is also really hard to seal a case. The court process is daunting especially for persons unrepresented by an attorney – and they usually cannot afford to hire an attorney because they can't get a job. Even after the case is sealed, it takes about two or three months for the information to be deleted from the consumer reporting data. In some cases, the information continues to show up even after that time period. This bill addresses access to information issue equally and removes the provision added last year that amended the consumer reporting statute, which is a positive amendment.

CON: If juvenile court files are confidential, one cannot ask that the records be made un-confidential because no one knows that the record exists. This bill would not allow the public to hold the system accountable. A juvenile could commit a number of property crimes and that information would not be available to the public. If the terms of the conviction have not been satisfied when the juvenile turns 18, then the file should be open to the public. Article I, section 10 provides that courts and their records must be open to the public. The juvenile offender system is not just about law enforcement, courts, etc. – it's also about the community and they should know how the players exercise discretion in the courts. There is a process for sealing records and that should be the process. It is not a solution to sweep the fact of a crime under the rug; rather, that fact should be faced and dealt with. Do not agree that most juvenile offenses are holding people back.

Persons Testifying (Human Services & Corrections): **PRO:** Casey Trupin, Columbia Legal Services; Angelissa Savino, Record Sealing Clinic; Cliff Webster, Consumer Data Industry Assn.

CON: Tom McBride, WAPA; Rowland Thompson, Allied Daily Newspapers.

Staff Summary of Public Testimony on Substitute (Ways & Means): **PRO:** This bill provides an opportunity to save costs. It will result in savings of over \$100,000 to the state and over \$2.5 million to counties. It will decrease the approximately 2000 hearings required to seal juvenile records and add less than 200 hearings to open records. This bill makes our state similar to most states who have confidentiality laws that govern juvenile records, similar to dependency records and adoption records. The majority of juvenile offenders do not recidivate. Having a juvenile record can affect someone into their adult life; so it is important to help those juveniles who made bad decisions early in their lives to grow get their lives back on track.

Persons Testifying (Ways & Means): PRO: Senator Harper, prime sponsor; Casey Trupin, Columbia Legal Services; Bob Cooper, WA Defenders Assn.; Dominique Davis, citizen.