
HOUSE BILL 1793

State of Washington

62nd Legislature

2011 Regular Session

By Representatives Darneille, Roberts, and Kagi

Read first time 02/02/11. Referred to Committee on Early Learning & Human Services.

1 AN ACT Relating to restricting access to juvenile records; amending
2 RCW 13.50.010 and 13.50.050; adding new sections to chapter 13.50 RCW;
3 and creating a new section.

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

5 NEW SECTION. **Sec. 1.** The legislature finds that:

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

10 (2) The unrestricted dissemination of juvenile records can hinder
11 social reintegration when inaccurate, outdated, or personal information
12 regarding the juvenile remains in the public realm.

13 (3) Limiting the number of mechanisms for accessing juvenile
14 records and the number of places where they may be housed can increase
15 overall public record accuracy while promoting rehabilitation and
16 integration.

17 (4) The public has an interest in accessing information relating to
18 juvenile records for public safety and research purposes.

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

6 (6) It is the intent of the legislature to balance the
7 rehabilitative and reintegration needs of an effective juvenile justice
8 system with the public's need to access personal information for public
9 safety and research purposes.

10 **Sec. 2.** RCW 13.50.010 and 2010 c 150 s 3 are each amended to read
11 as follows:

12 (1) For purposes of this chapter:

13 (a) "Consumer reporting agency" means a person, or corporation who,
14 for monetary fees, dues, or on a cooperative nonprofit basis, regularly
15 engages in whole or in part in the business of assembling, aggregating,
16 or evaluating information on consumers for the purpose of furnishing
17 consumer reports to third parties, and who uses any means or facility
18 of commerce for the purpose of preparing or furnishing consumer
19 reports. For purposes of this chapter, offices, programs, or
20 facilities run by the state of Washington or employees therein are not
21 consumer reporting agencies;

22 (b) "Deidentified record" means any record in which the name,
23 address, and personalized identifying markers are removed;

24 (c) "Disseminate" means to disclose information contained in
25 juvenile records or the fact of the absence of such information to any
26 person;

27 (d) "Juvenile justice or care agency" means any of the following:
28 Police, diversion units, court, prosecuting attorney, defense attorney,
29 detention center, attorney general, the legislative children's
30 oversight committee, the office of the family and children's ombudsman,
31 the department of social and health services and its contracting
32 agencies, schools; persons or public or private agencies having
33 children committed to their custody; and any placement oversight
34 committee created under RCW 72.05.415;

35 ((+b)) (e) "Official juvenile court file" means the legal file of
36 the juvenile court containing the petition or information, motions,
37 memorandums, briefs, findings of the court, and court orders;

1 (~~(e)~~) (f) "Records" or "juvenile records" means the official
2 juvenile court file, the social file, and records of any other juvenile
3 justice or care agency in the case;

4 (~~(d)~~) (g) "Social file" means the juvenile court file containing
5 the records and reports of the probation counselor.

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

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

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

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

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

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

25 (5) Any person who has reasonable cause to believe information
26 concerning that person is included in the records of a juvenile justice
27 or care agency and who has been denied access to those records by the
28 agency may make a motion to the court for an order authorizing that
29 person to inspect the juvenile justice or care agency record concerning
30 that person. The court shall grant the motion to examine records
31 unless it finds that in the interests of justice or in the best
32 interests of the juvenile the records or parts of them should remain
33 confidential.

34 (6) A juvenile, or his or her parents, or any person who has
35 reasonable cause to believe information concerning that person is
36 included in the records of a juvenile justice or care agency may make
37 a motion to the court challenging the accuracy of any information
38 concerning the moving party in the record or challenging the continued

1 possession of the record by the agency. If the court grants the
2 motion, it shall order the record or information to be corrected or
3 destroyed.

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

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

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

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

32 (11) For the purpose of research only, the administrative office of
33 the courts shall maintain an electronic research copy of all records in
34 the judicial information system related to juveniles. Access to the
35 research copy is restricted to the Washington state center for court
36 research. The Washington state center for court research shall
37 maintain the confidentiality of all confidential records and shall
38 preserve the anonymity of all persons identified in the research copy.

1 The research copy may not be subject to any records retention schedule
2 and must include records destroyed or removed from the judicial
3 information system pursuant to RCW 13.50.050 (~~((+17+))~~) (16) and (~~((+18+))~~)
4 (17) and 13.50.100(3).

5 (12) The court shall release to the Washington state office of
6 public defense records needed to implement the agency's oversight,
7 technical assistance, and other functions as required by RCW 2.70.020.
8 Access to the records used as a basis for oversight, technical
9 assistance, or other agency functions is restricted to the Washington
10 state office of public defense. The Washington state office of public
11 defense shall maintain the confidentiality of all confidential
12 information included in the records.

13 NEW SECTION. **Sec. 3.** A new section is added to chapter 13.50 RCW
14 to read as follows:

15 (1) A consumer reporting agency that collects personally
16 identifiable information pertaining to, or including, juvenile records
17 about an individual residing in Washington may not disseminate the
18 information contained within the record, including the existence or
19 nonexistence of such record, to any third party.

20 (2) A consumer reporting agency that collects personally
21 identifiable information pertaining to, or including, juvenile records
22 about an individual residing in Washington may disseminate deidentified
23 records for purposes of social science research, trend data, and
24 generalized aggregation.

25 NEW SECTION. **Sec. 4.** A new section is added to chapter 13.50 RCW
26 to read as follows:

27 The legislature finds that the practices covered by section 3 of
28 this act are matters vitally affecting the public interest for the
29 purpose of applying the consumer protection act, chapter 19.86 RCW. A
30 violation of section 3 of this act is not reasonable in relation to the
31 development and preservation of business and is an unfair or deceptive
32 act in trade or commerce and an unfair method of competition for the
33 purpose of applying the consumer protection act, chapter 19.86 RCW.

34 **Sec. 5.** RCW 13.50.050 and 2010 c 150 s 2 are each amended to read
35 as follows:

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

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

6 (3) All records other than the official juvenile court file are
7 confidential and may be released only as provided in this section, RCW
8 13.50.010, 13.40.215, and 4.24.550.

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

16 (5) Except as provided in RCW 4.24.550, information not in an
17 official juvenile court file concerning a juvenile or a juvenile's
18 family may be released to the public only when that information could
19 not reasonably be expected to identify the juvenile or the juvenile's
20 family.

21 (6) Notwithstanding any other provision of this chapter, the
22 release, to the juvenile or his or her attorney, of law enforcement and
23 prosecuting attorneys' records pertaining to investigation, diversion,
24 and prosecution of juvenile offenses shall be governed by the rules of
25 discovery and other rules of law applicable in adult criminal
26 investigations and prosecutions.

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

1 (8) The juvenile court and the prosecutor may set up and maintain
2 a central recordkeeping system which may receive information on all
3 alleged juvenile offenders against whom a complaint has been filed
4 pursuant to RCW 13.40.070 whether or not their cases are currently
5 pending before the court. The central recordkeeping system may be
6 computerized. If a complaint has been referred to a diversion unit,
7 the diversion unit shall promptly report to the juvenile court or the
8 prosecuting attorney when the juvenile has agreed to diversion. An
9 offense shall not be reported as criminal history in any central
10 recordkeeping system without notification by the diversion unit of the
11 date on which the offender agreed to diversion.

12 (9) Upon request of the victim of a crime or the victim's immediate
13 family, the identity of an alleged or proven juvenile offender alleged
14 or found to have committed a crime against the victim and the identity
15 of the alleged or proven juvenile offender's parent, guardian, or
16 custodian and the circumstance of the alleged or proven crime shall be
17 released to the victim of the crime or the victim's immediate family.

18 (10) Subject to the rules of discovery applicable in adult criminal
19 prosecutions, the juvenile offense records of an adult criminal
20 defendant or witness in an adult criminal proceeding shall be released
21 upon request to prosecution and defense counsel after a charge has
22 actually been filed. The juvenile offense records of any adult
23 convicted of a crime and placed under the supervision of the adult
24 corrections system shall be released upon request to the adult
25 corrections system.

26 (11) In any case in which an information has been filed pursuant to
27 RCW 13.40.100 or a complaint has been filed with the prosecutor and
28 referred for diversion pursuant to RCW 13.40.070, the ~~((person—the~~
29 ~~subject of the information or complaint may file a motion with the~~
30 ~~court to have the court vacate its order and findings, if any, and,~~
31 ~~subject to subsection (23) of this section, order the sealing of the~~
32 ~~official juvenile court file, the social file, and records of the court~~
33 ~~and of any other agency in the case)) official juvenile court file, the~~
34 ~~social file, and records of the court and any other agency in the case,~~
35 ~~subject to subsection (22) of this section, shall be sealed~~
36 ~~automatically within one hundred twenty days of becoming eligible for~~
37 ~~sealing pursuant to subsection (12) of this section.~~

1 (12)(a) (~~The court shall not grant any motion to seal~~) Records
2 for class A offenses (~~made pursuant to subsection (11) of this section~~
3 ~~that is filed on or after July 1, 1997, unless~~) shall automatically be
4 sealed by the clerk if the following requirements are met:

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

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

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

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

15 (v) Full restitution has been paid.

16 (b) (~~The court shall not grant any motion to seal~~) Records for
17 class B, C, gross misdemeanor and misdemeanor offenses and diversions
18 (~~made under subsection (11) of this section unless~~) shall be sealed
19 by the clerk automatically if the following requirements are met:

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

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

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

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

30 (v) Full restitution has been paid.

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

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

4 (e) A person who meets the criteria for the automatic sealing of
5 juvenile records under this subsection may request that the court issue
6 an order sealing the official juvenile court file, the social file, and
7 records of the court, and of any other agency in the case. The request
8 shall be granted, subject to subsection (22) of this section.

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

13 ~~(14) If the court grants the motion to seal made))~~ Once records
14 have been sealed pursuant to subsection ((+11)) (12) of this section,
15 ((it shall,)) and subject to subsection ((+23)) (22) of this section,
16 ((order sealed the official juvenile court file, the social file, and
17 other records relating to the case as are named in the order.
18 Thereafter,)) the proceedings in the case shall be treated as if they
19 never occurred, and the subject of the records may reply accordingly to
20 any inquiry about the events, records of which are sealed. Any agency
21 shall reply to any inquiry concerning confidential or sealed records
22 that records are confidential, and no information can be given about
23 the existence or nonexistence of records concerning an individual.

24 ~~((+15)) (14) Inspection of the files and records ((included in the~~
25 ~~order to seal))~~ that have been sealed pursuant to subsection (12) of
26 this section may thereafter be permitted only by order of the court
27 upon motion made by the person who is the subject of the information or
28 complaint, except as otherwise provided in RCW 13.50.010(8) and
29 subsection ~~((+23)) (22)~~ of this section.

30 ~~((+16)) (15) Any adjudication of a juvenile offense or a crime~~
31 ~~subsequent to sealing has the effect of nullifying the ((sealing~~
32 ~~order))~~ sealed status of the record. Any charging of an adult felony
33 subsequent to the sealing has the effect of nullifying the ~~((sealing~~
34 ~~order))~~ sealed status of the record for the purposes of chapter 9.94A
35 RCW. The administrative office of the courts shall ensure that the
36 superior court judicial information system provides prosecutors access
37 to information on the existence of sealed juvenile records.

1 (~~(17)~~) (16)(a)(i) Subject to subsection (~~(23)~~) (22) of this
2 section, all records maintained by any court or law enforcement agency,
3 including the juvenile court, local law enforcement, the Washington
4 state patrol, and the prosecutor's office, shall be automatically
5 destroyed within ninety days of becoming eligible for destruction.
6 Juvenile records are eligible for destruction when:

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

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

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

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

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

16 (ii) No less than quarterly, the administrative office of the
17 courts shall provide a report to the juvenile courts of those
18 individuals whose records may be eligible for destruction. The
19 juvenile court shall verify eligibility and notify the Washington state
20 patrol and the appropriate local law enforcement agency and
21 prosecutor's office of the records to be destroyed. The requirement to
22 destroy records under this subsection is not dependent on a court
23 hearing or the issuance of a court order to destroy records.

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

27 (b) A person eighteen years of age or older whose criminal history
28 consists entirely of one diversion agreement or counsel and release
29 entered prior to June 12, 2008, may request that the court order the
30 records in his or her case destroyed. The request shall be granted,
31 subject to subsection (~~(23)~~) (22) of this section, if the court finds
32 that two years have elapsed since completion of the agreement or
33 counsel and release.

34 (c) A person twenty-three years of age or older whose criminal
35 history consists of only referrals for diversion may request that the
36 court order the records in those cases destroyed. The request shall be
37 granted, subject to subsection (~~(23)~~) (22) of this section, if the

1 court finds that all diversion agreements have been successfully
2 completed and no proceeding is pending against the person seeking the
3 conviction of a criminal offense.

4 ~~((+18+))~~ (17) If the court grants the motion to destroy records
5 made pursuant to subsection ~~((+17+))~~ (16)(b) or (c) of this section, it
6 shall, subject to subsection ~~((+23+))~~ (22) of this section, order the
7 official juvenile court file, the social file, and any other records
8 named in the order to be destroyed.

9 ~~((+19+))~~ (18) The person making the motion pursuant to subsection
10 ~~((+17+))~~ (16)(b) or (c) of this section shall give reasonable notice of
11 the motion to the prosecuting attorney and to any agency whose records
12 are sought to be destroyed.

13 ~~((+20+))~~ (19) Any juvenile to whom the provisions of this section
14 may apply shall be given written notice of his or her rights under this
15 section at the time of his or her disposition hearing or during the
16 diversion process.

17 ~~((+21+))~~ (20) Nothing in this section may be construed to prevent
18 a crime victim or a member of the victim's family from divulging the
19 identity of the alleged or proven juvenile offender or his or her
20 family when necessary in a civil proceeding.

21 ~~((+22+))~~ (21) Any juvenile justice or care agency may, subject to
22 the limitations in subsection ~~((+23+))~~ (22) of this section and (a) and
23 (b) of this subsection, develop procedures for the routine destruction
24 of records relating to juvenile offenses and diversions.

25 (a) Records may be routinely destroyed only when the person the
26 subject of the information or complaint has attained twenty-three years
27 of age or older or pursuant to subsection ~~((+17+))~~ (16)(a) of this
28 section.

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

31 ~~((+23+))~~ (22) No identifying information held by the Washington
32 state patrol in accordance with chapter 43.43 RCW is subject to
33 destruction or sealing under this section. For the purposes of this
34 subsection, identifying information includes photographs, fingerprints,
35 palmprints, soleprints, toeprints and any other data that identifies a
36 person by physical characteristics, name, birthdate or address, but
37 does not include information regarding criminal activity, arrest,

1 charging, diversion, conviction or other information about a person's
2 treatment by the criminal justice system or about the person's
3 behavior.

4 ~~((+24))~~ (23) Information identifying child victims under age
5 eighteen who are victims of sexual assaults by juvenile offenders is
6 confidential and not subject to release to the press or public without
7 the permission of the child victim or the child's legal guardian.
8 Identifying information includes the child victim's name, addresses,
9 location, photographs, and in cases in which the child victim is a
10 relative of the alleged perpetrator, identification of the relationship
11 between the child and the alleged perpetrator. Information identifying
12 a child victim of sexual assault may be released to law enforcement,
13 prosecutors, judges, defense attorneys, or private or governmental
14 agencies that provide services to the child victim of sexual assault.

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