
HOUSE BILL 2542

State of Washington

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By Representatives Darneille, Jinkins, Fitzgibbon, Appleton, Kagi, and Roberts

Read first time 01/17/12. Referred to Committee on Early Learning & Human Services.

1 AN ACT Relating to access to juvenile records; amending RCW
2 10.97.050; reenacting and amending RCW 13.50.050; creating a new
3 section; and providing an effective date.

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

5 **Sec. 1.** RCW 13.50.050 and 2011 c 338 s 4 and 2011 c 333 s 4 are
6 each reenacted and amended to read as follows:

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

9 (2) The official juvenile court file of any alleged or proven
10 juvenile offender shall be (~~open to public inspection, unless sealed~~
11 ~~pursuant to subsection (12) of this section~~) confidential, except as
12 provided by RCW 13.50.010(8), unless:

13 (a) The juvenile has been charged by information with a serious
14 violent offense, as defined in RCW 9.94A.030, in which case, the
15 official juvenile court file shall be open to the public; or

16 (b) The juvenile court has ordered that the official juvenile court
17 file be open to public inspection, either in its entirety, or in part,
18 as provided in subsection (6) of this section.

1 (3) Access to the confidential official juvenile court file of any
2 alleged or proven juvenile offender shall be limited to the court,
3 prosecuting attorney, the parties and their attorneys, and only as
4 provided in subsection (4) of this section, juvenile justice or care
5 agencies.

6 (4) A juvenile justice or care agency shall have access to the
7 confidential official juvenile court file only when an investigation or
8 case involving the juvenile in question is being pursued by the
9 juvenile justice or care agency or when the juvenile justice or care
10 agency is responsible for supervising the juvenile.

11 (5) The official juvenile court file of any alleged or proven
12 juvenile offender which is initially open to public inspection pursuant
13 to subsection (2)(a) of this section is confidential if the charge is
14 a finding of not guilty is entered, the charge is dismissed, or if the
15 charge is amended to an offense that is not a serious violent offense.
16 The official juvenile court file of any alleged or proven juvenile
17 offender shall become open to public inspection if amended upward to a
18 serious violent offense, as defined in RCW 9.94A.030, from a lesser
19 offense that previously required it to be confidential. The official
20 juvenile court file of any alleged or proven juvenile offender,
21 containing multiple charges, one of which is a serious violent offense,
22 shall be open to public inspection in its entirety.

23 (6) Upon application of any interested party, after a hearing with
24 notice to all parties, the juvenile court may order that the
25 confidential official juvenile court file of any alleged or proven
26 juvenile offender shall be opened to the public in part or in its
27 entirety upon making written findings that:

28 (a) The proponent of opening the court file to public inspection
29 has made a showing that there are not identified compelling
30 circumstances which establish a need for continued confidentiality of
31 the juvenile court record;

32 (b) Anyone present when the motion is made had an opportunity to
33 address the motion to open the juvenile court file to public
34 inspection;

35 (c) The court has analyzed whether continued confidentiality would
36 be the least restrictive means available and effective in protecting
37 the interests of the juvenile which may be threatened by opening the
38 official juvenile court file to public inspection;

1 (d) The court has weighed the competing privacy interests of the
2 juvenile and the public's right to open court records, as they apply to
3 the specific court record; and

4 (e) The order of the court is no broader in its application or
5 duration than necessary to service its purpose.

6 (7) When weighing the competing privacy interests of the juvenile
7 and the public's right to open court records, the court shall consider,
8 but is not limited to considering, the following factors:

9 (a) The impact of the juvenile offense on any victim(s), any
10 victim(s)'s family, and to the community;

11 (b) Whether the current alleged or proven juvenile offense(s)
12 involved multiple victims or multiple incidents per victim;

13 (c) Whether the current alleged or proven juvenile offense involved
14 attempted or actual monetary loss greater than typical for the offense;

15 (d) Whether the current alleged or proven juvenile offense is a
16 violent offense, as defined in RCW 9.94A.030;

17 (e) Whether the current alleged or proven juvenile offense involved
18 the use of a deadly weapon;

19 (f) Any prior criminal history of juvenile offenses;

20 (g) The age of the alleged or proven juvenile offender.

21 ~~((+3))~~ (8) All records ~~((other than))~~ retained or produced, which
22 are not part of the official juvenile court file, are confidential and
23 may be released only as provided in this section, RCW 13.50.010,
24 13.40.215, and 4.24.550.

25 ~~((+4))~~ (9) Except as otherwise provided in this section and RCW
26 13.50.010, records retained or produced by any juvenile justice or care
27 agency may be released to other participants in the juvenile justice or
28 care system only when an investigation or case involving the juvenile
29 in question is being pursued by the other participant or when that
30 other participant is assigned the responsibility for supervising the
31 juvenile.

32 ~~((+5))~~ (10) Except as provided in RCW 4.24.550, information not in
33 an official juvenile court file concerning a juvenile or a juvenile's
34 family may be released to the public only when that information could
35 not reasonably be expected to identify the juvenile or the juvenile's
36 family.

37 ~~((+6))~~ (11) Notwithstanding any other provision of this chapter,
38 the release, to the juvenile or his or her attorney, of law enforcement

1 and prosecuting attorneys' records pertaining to investigation,
2 diversion, and prosecution of juvenile offenses shall be governed by
3 the rules of discovery and other rules of law applicable in adult
4 criminal investigations and prosecutions.

5 ((+7)) (12) Upon the decision to arrest or the arrest, law
6 enforcement and prosecuting attorneys may cooperate with schools in
7 releasing information to a school pertaining to the investigation,
8 diversion, and prosecution of a juvenile attending the school. Upon
9 the decision to arrest or the arrest, incident reports may be released
10 unless releasing the records would jeopardize the investigation or
11 prosecution or endanger witnesses. If release of incident reports
12 would jeopardize the investigation or prosecution or endanger
13 witnesses, law enforcement and prosecuting attorneys may release
14 information to the maximum extent possible to assist schools in
15 protecting other students, staff, and school property.

16 ((+8)) (13) The juvenile court and the prosecutor may set up and
17 maintain a central recordkeeping system which may receive information
18 on all alleged juvenile offenders against whom a complaint has been
19 filed pursuant to RCW 13.40.070 whether or not their cases are
20 currently pending before the court. The central recordkeeping system
21 may be computerized. If a complaint has been referred to a diversion
22 unit, the diversion unit shall promptly report to the juvenile court or
23 the prosecuting attorney when the juvenile has agreed to diversion. An
24 offense shall not be reported as criminal history in any central
25 recordkeeping system without notification by the diversion unit of the
26 date on which the offender agreed to diversion.

27 ((+9)) (14) Upon request of the victim of a crime or the victim's
28 immediate family, the identity of an alleged or proven juvenile
29 offender alleged or found to have committed a crime against the victim
30 and the identity of the alleged or proven juvenile offender's parent,
31 guardian, or custodian and the circumstance of the alleged or proven
32 crime shall be released to the victim of the crime or the victim's
33 immediate family.

34 ((+10)) (15) Subject to the rules of discovery applicable in adult
35 criminal prosecutions, the juvenile offense records of an adult
36 criminal defendant or witness in an adult criminal proceeding shall be
37 released upon request to prosecution and defense counsel after a charge
38 has actually been filed. The juvenile offense records of any adult

1 convicted of a crime and placed under the supervision of the adult
2 corrections system shall be released upon request to the adult
3 corrections system.

4 ~~((+11+))~~ (16) In any case in which an information has been filed
5 pursuant to RCW 13.40.100 or a complaint has been filed with the
6 prosecutor and referred for diversion pursuant to RCW 13.40.070, the
7 person the subject of the information or complaint may file a motion
8 with the court to have the court vacate its order and findings, if any,
9 and, subject to subsection ~~((+23+))~~ (28) of this section, order the
10 sealing of the official juvenile court file, the social file, and
11 records of the court and of any other agency in the case.

12 ~~((+12+))~~ (17)(a) The court shall not grant any motion to seal
13 records for class A offenses made pursuant to subsection ~~((+11+))~~ (16)
14 of this section that is filed on or after July 1, 1997, unless:

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

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

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

24 (iv) The person is no longer required to register as a sex offender
25 under RCW 9A.44.130 or has been relieved of the duty to register under
26 RCW 9A.44.143 if the person was convicted of a sex offense;

27 (v) The person has not been convicted of rape in the first degree,
28 rape in the second degree, or indecent liberties that was actually
29 committed with forcible compulsion; and

30 (vi) Full restitution has been paid.

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

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

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

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

5 (iv) The person is no longer required to register as a sex offender
6 under RCW 9A.44.130 or has been relieved of the duty to register under
7 RCW 9A.44.143 if the person was convicted of a sex offense; and

8 (v) Full restitution has been paid.

9 ~~((+13+))~~ (18) The person making a motion pursuant to subsection
10 ~~((+11+))~~ (16) of this section shall give reasonable notice of the
11 motion to the prosecution and to any person or agency whose files are
12 sought to be sealed.

13 ~~((+14+))~~ (19)(a) If the court grants the motion to seal made
14 pursuant to subsection ~~((+11+))~~ (16) of this section, it shall, subject
15 to subsection ~~((+23+))~~ (28) of this section, order sealed the official
16 juvenile court file, the social file, and other records relating to the
17 case as are named in the order. Thereafter, the proceedings in the
18 case shall be treated as if they never occurred, and the subject of the
19 records may reply accordingly to any inquiry about the events, records
20 of which are sealed. Any agency shall reply to any inquiry concerning
21 confidential or sealed records that records are confidential, and no
22 information can be given about the existence or nonexistence of records
23 concerning an individual.

24 (b) In the event the subject of the juvenile records receives a
25 full and unconditional pardon, the proceedings in the matter upon which
26 the pardon has been granted shall be treated as if they never occurred,
27 and the subject of the records may reply accordingly to any inquiry
28 about the events upon which the pardon was received. Any agency shall
29 reply to any inquiry concerning the records pertaining to the events
30 for which the subject received a pardon that records are confidential,
31 and no information can be given about the existence or nonexistence of
32 records concerning an individual.

33 ~~((+15+))~~ (20) Inspection of the files and records included in the
34 order to seal may thereafter be permitted only by order of the court
35 upon motion made by the person who is the subject of the information or
36 complaint, except as otherwise provided in RCW 13.50.010(8) and
37 subsection ~~((+23+))~~ (28) of this section.

1 (~~(+16+)~~) (21) Any adjudication of a juvenile offense or a crime
2 subsequent to sealing has the effect of nullifying the sealing order.
3 Any charging of an adult felony subsequent to the sealing has the
4 effect of nullifying the sealing order for the purposes of chapter
5 9.94A RCW. The administrative office of the courts shall ensure that
6 the superior court judicial information system provides prosecutors
7 access to information on the existence of sealed juvenile records.

8 (~~(+17+)~~) (22)(a)(i) Subject to subsection (~~(+23+)~~) (28) of this
9 section, all records maintained by any court or law enforcement agency,
10 including the juvenile court, local law enforcement, the Washington
11 state patrol, and the prosecutor's office, shall be automatically
12 destroyed within ninety days of becoming eligible for destruction.
13 Juvenile records are eligible for destruction when:

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

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

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

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

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

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

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

34 (b) All records maintained by any court or law enforcement agency,
35 including the juvenile court, local law enforcement, the Washington
36 state patrol, and the prosecutor's office, shall be automatically
37 destroyed within thirty days of being notified by the governor's office

1 that the subject of those records received a full and unconditional
2 pardon by the governor.

3 (c) A person eighteen years of age or older whose criminal history
4 consists entirely of one diversion agreement or counsel and release
5 entered prior to June 12, 2008, may request that the court order the
6 records in his or her case destroyed. The request shall be granted,
7 subject to subsection ~~((+23+))~~ (28) of this section, if the court finds
8 that two years have elapsed since completion of the agreement or
9 counsel and release.

10 (d) A person twenty-three years of age or older whose criminal
11 history consists of only referrals for diversion may request that the
12 court order the records in those cases destroyed. The request shall be
13 granted, subject to subsection ~~((+23+))~~ (28) of this section, if the
14 court finds that all diversion agreements have been successfully
15 completed and no proceeding is pending against the person seeking the
16 conviction of a criminal offense.

17 ~~((+18+))~~ (23) If the court grants the motion to destroy records
18 made pursuant to subsection ~~((+17+))~~ (22)(c) or (d) of this section, it
19 shall, subject to subsection ~~((+23+))~~ (28) of this section, order the
20 official juvenile court file, the social file, and any other records
21 named in the order to be destroyed.

22 ~~((+19+))~~ (24) The person making the motion pursuant to subsection
23 ~~((+17+))~~ (22)(c) or (d) of this section shall give reasonable notice of
24 the motion to the prosecuting attorney and to any agency whose records
25 are sought to be destroyed.

26 ~~((+20+))~~ (25) Any juvenile to whom the provisions of this section
27 may apply shall be given written notice of his or her rights under this
28 section at the time of his or her disposition hearing or during the
29 diversion process.

30 ~~((+21+))~~ (26) Nothing in this section may be construed to prevent
31 a crime victim or a member of the victim's family from divulging the
32 identity of the alleged or proven juvenile offender or his or her
33 family when necessary in a civil proceeding.

34 ~~((+22+))~~ (27) Any juvenile justice or care agency may, subject to
35 the limitations in subsection ~~((+23+))~~ (28) of this section and (a) and
36 (b) of this subsection, develop procedures for the routine destruction
37 of records relating to juvenile offenses and diversions.

1 (a) Records may be routinely destroyed only when the person the
2 subject of the information or complaint has attained twenty-three years
3 of age or older or pursuant to subsection (~~(17)~~) (22)(a) of this
4 section.

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

7 (~~(23)~~) (28) Except for subsection (~~(17)~~) (22)(b) of this
8 section, no identifying information held by the Washington state patrol
9 in accordance with chapter 43.43 RCW is subject to destruction or
10 sealing under this section. For the purposes of this subsection,
11 identifying information includes photographs, fingerprints, palmprints,
12 soleprints, toeprints, and any other data that identifies a person by
13 physical characteristics, name, birthdate or address, but does not
14 include information regarding criminal activity, arrest, charging,
15 diversion, conviction or other information about a person's treatment
16 by the criminal justice system or about the person's behavior.

17 (~~(24)~~) (29) Information identifying child victims under age
18 eighteen who are victims of sexual assaults by juvenile offenders is
19 confidential and not subject to release to the press or public without
20 the permission of the child victim or the child's legal guardian.
21 Identifying information includes the child victim's name, addresses,
22 location, photographs, and in cases in which the child victim is a
23 relative of the alleged perpetrator, identification of the relationship
24 between the child and the alleged perpetrator. Information identifying
25 a child victim of sexual assault may be released to law enforcement,
26 prosecutors, judges, defense attorneys, or private or governmental
27 agencies that provide services to the child victim of sexual assault.

28 (30) No confidential juvenile offense records maintained by any
29 court, law enforcement agency, or state agency, including the juvenile
30 court, local law enforcement, the Washington state patrol, and the
31 county prosecutor's offices, may be published or distributed.

32 **Sec. 2.** RCW 10.97.050 and 2005 c 421 s 9 are each amended to read
33 as follows:

34 (1) Adult conviction records may be disseminated without
35 restriction.

36 (2) No confidential juvenile offense records may be published or
37 distributed.

1 (3) Any criminal history record information which pertains to an
2 incident that occurred within the last twelve months for which a person
3 is currently being processed by the criminal justice system, including
4 the entire period of correctional supervision extending through final
5 discharge from parole, when applicable, may be disseminated without
6 restriction with the exception of a record being disseminated in
7 response to a request for a conviction record under RCW 43.43.832. A
8 request for a conviction record under RCW 43.43.832 shall not contain
9 information for a person who, within the last twelve months, is
10 currently being processed by the criminal justice system unless it
11 pertains to information relating to a crime against a person as defined
12 in RCW 9.94A.411.

13 ~~((3))~~ (4) Criminal history record information which includes
14 nonconviction data may be disseminated by a criminal justice agency to
15 another criminal justice agency for any purpose associated with the
16 administration of criminal justice, or in connection with the
17 employment of the subject of the record by a criminal justice or
18 juvenile justice agency. A criminal justice agency may respond to any
19 inquiry from another criminal justice agency without any obligation to
20 ascertain the purpose for which the information is to be used by the
21 agency making the inquiry.

22 ~~((4))~~ (5) Criminal history record information which includes
23 nonconviction data may be disseminated by a criminal justice agency to
24 implement a statute, ordinance, executive order, or a court rule,
25 decision, or order which expressly refers to records of arrest,
26 charges, or allegations of criminal conduct or other nonconviction data
27 and authorizes or directs that it be available or accessible for a
28 specific purpose.

29 ~~((5))~~ (6) Criminal history record information which includes
30 nonconviction data may be disseminated to individuals and agencies
31 pursuant to a contract with a criminal justice agency to provide
32 services related to the administration of criminal justice. Such
33 contract must specifically authorize access to criminal history record
34 information, but need not specifically state that access to
35 nonconviction data is included. The agreement must limit the use of
36 the criminal history record information to stated purposes and insure
37 the confidentiality and security of the information consistent with
38 state law and any applicable federal statutes and regulations.

1 ~~((6))~~ (7) Criminal history record information which includes
2 nonconviction data may be disseminated to individuals and agencies for
3 the express purpose of research, evaluative, or statistical activities
4 pursuant to an agreement with a criminal justice agency. Such
5 agreement must authorize the access to nonconviction data, limit the
6 use of that information which identifies specific individuals to
7 research, evaluative, or statistical purposes, and contain provisions
8 giving notice to the person or organization to which the records are
9 disseminated that the use of information obtained therefrom and further
10 dissemination of such information are subject to the provisions of this
11 chapter and applicable federal statutes and regulations, which shall be
12 cited with express reference to the penalties provided for a violation
13 thereof.

14 ~~((7))~~ (8) Every criminal justice agency that maintains and
15 disseminates criminal history record information must maintain
16 information pertaining to every dissemination of criminal history
17 record information except a dissemination to the effect that the agency
18 has no record concerning an individual. Information pertaining to
19 disseminations shall include:

20 (a) An indication of to whom (agency or person) criminal history
21 record information was disseminated;

22 (b) The date on which the information was disseminated;

23 (c) The individual to whom the information relates; and

24 (d) A brief description of the information disseminated.

25 The information pertaining to dissemination required to be
26 maintained shall be retained for a period of not less than one year.

27 ~~((8))~~ (9) In addition to the other provisions in this section
28 allowing dissemination of criminal history record information, RCW
29 4.24.550 governs dissemination of information concerning offenders who
30 commit sex offenses as defined by RCW 9.94A.030. Criminal justice
31 agencies, their employees, and officials shall be immune from civil
32 liability for dissemination on criminal history record information
33 concerning sex offenders as provided in RCW 4.24.550.

34 NEW SECTION. **Sec. 3.** (1) The provisions of section 1 of this act
35 on April 1, 2013, shall apply prospectively and shall also apply
36 retroactively to all existing official juvenile court files of any
37 alleged or proven juvenile offender.

1 (2) Except for juvenile court files that have been sealed pursuant
2 to RCW 13.50.050, any existing official juvenile court file containing
3 a serious violent offense, as defined in RCW 9.94A.030, charged prior
4 to April 1, 2013, shall, upon April 1, 2013, be public.

5 NEW SECTION. **Sec. 4.** Sections 1 and 2 of this act take effect
6 April 1, 2013.

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