

ESHB 1651 - S COMM AMD

By Committee on Human Services & Corrections

NOT CONSIDERED

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

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

4 (1) The primary goal of the Washington state juvenile justice
5 system is the rehabilitation and reintegration of former juvenile
6 offenders. The public has a compelling interest in the rehabilitation
7 of former juvenile offenders and their successful reintegration into
8 society as active, law-abiding, and contributing members of their
9 communities. When juvenile court records that do not result in
10 adjudication or conviction are publicly available, former juvenile
11 offenders face a substantial barrier to reintegration, as they are
12 denied housing, employment, and education opportunities on the basis of
13 these records.

14 (2) The Washington state Constitution establishes that the public
15 has the right to an open court system. However, the public's right of
16 access to court records is not absolute and may be limited to protect
17 other interests. The legislature intends that juvenile court
18 proceedings be openly administered but that the records of these
19 proceedings that do not result in an adjudication or conviction be
20 presumptively closed and not disseminated.

21 (3) Given the rehabilitative goals of the juvenile justice system,
22 the scientifically documented differences between the brain development
23 of juveniles and adults, and the differences between the structure and
24 goals of the juvenile justice system and the adult criminal justice
25 system, the legislature declares that it is the policy of the state of
26 Washington that the interest in juvenile rehabilitation and
27 reintegration constitutes compelling circumstances that outweigh the
28 public interest in continued availability of juvenile court records
29 that do not result in adjudication or conviction.

1 **Sec. 2.** RCW 13.50.050 and 2012 c 177 s 2 are each amended to read
2 as follows:

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

5 (2) Court records and public court indices containing
6 nonadjudication or nonconviction information relating to the commission
7 of juvenile offenses are restricted from public access.

8 (3) For the purposes of this section, nonadjudication or
9 nonconviction information means information contained in records
10 collected by the courts relating to:

11 (a) Arrest, probable cause hearings, citation, charge, and service
12 of warrant relating to an incident that did not lead to an adjudication
13 and proceedings are no longer actively pending. There shall be a
14 rebuttable presumption that proceedings are no longer actively pending
15 if more than one year has elapsed since arrest, citation, charge, or
16 service of warrant and no disposition has been entered;

17 (b) Charges resulting in a dismissal;

18 (c) Charges resulting in acquittal;

19 (d) Convictions after clemency has been granted;

20 (e) Charges dismissed under a stipulated order of continuance or
21 similar agreement;

22 (f) Charges dismissed pursuant to a diversion or deferred sentence;

23 (g) Charges dismissed on forfeiture of bail other than in traffic,
24 hunting, and fishing cases.

25 (4) Except as provided in subsection (2) of this section, the
26 official juvenile court file of any alleged or proven juvenile offender
27 shall be open to public inspection, unless sealed pursuant to
28 subsection ((+12+)) (14) of this section.

29 ((+3+)) (5) All records ((other than)) retained or produced, which
30 are not part of the official juvenile court file, are confidential and
31 may be released only as provided in this section, RCW 13.50.010,
32 13.40.215, and 4.24.550.

33 ((+4+)) (6) Except as otherwise provided in this section and RCW
34 13.50.010, records retained or produced by any juvenile justice or care
35 agency may be released to other participants in the juvenile justice or
36 care system only when an investigation or case involving the juvenile
37 in question is being pursued by the other participant or when that

1 other participant is assigned the responsibility for supervising the
2 juvenile.

3 ((+5+)) (7) Except as provided in RCW 4.24.550, information not in
4 an official juvenile court file concerning a juvenile or a juvenile's
5 family may be released to the public only when that information could
6 not reasonably be expected to identify the juvenile or the juvenile's
7 family.

8 ((+6+)) (8) Notwithstanding any other provision of this chapter,
9 the release, to the juvenile or his or her attorney, of law enforcement
10 and prosecuting attorneys' records pertaining to investigation,
11 diversion, and prosecution of juvenile offenses shall be governed by
12 the rules of discovery and other rules of law applicable in adult
13 criminal investigations and prosecutions.

14 ((+7+)) (9) Upon the decision to arrest or the arrest, law
15 enforcement and prosecuting attorneys may cooperate with schools in
16 releasing information to a school pertaining to the investigation,
17 diversion, and prosecution of a juvenile attending the school. Upon
18 the decision to arrest or the arrest, incident reports may be released
19 unless releasing the records would jeopardize the investigation or
20 prosecution or endanger witnesses. If release of incident reports
21 would jeopardize the investigation or prosecution or endanger
22 witnesses, law enforcement and prosecuting attorneys may release
23 information to the maximum extent possible to assist schools in
24 protecting other students, staff, and school property.

25 ((+8+)) (10) The juvenile court and the prosecutor may set up and
26 maintain a central recordkeeping system which may receive information
27 on all alleged juvenile offenders against whom a complaint has been
28 filed pursuant to RCW 13.40.070 whether or not their cases are
29 currently pending before the court. The central recordkeeping system
30 may be computerized. If a complaint has been referred to a diversion
31 unit, the diversion unit shall promptly report to the juvenile court or
32 the prosecuting attorney when the juvenile has agreed to diversion. An
33 offense shall not be reported as criminal history in any central
34 recordkeeping system without notification by the diversion unit of the
35 date on which the offender agreed to diversion.

36 ((+9+)) (11) Upon request of the victim of a crime or the victim's
37 immediate family, the identity of an alleged or proven juvenile
38 offender alleged or found to have committed a crime against the victim

1 and the identity of the alleged or proven juvenile offender's parent,
2 guardian, or custodian and the circumstance of the alleged or proven
3 crime shall be released to the victim of the crime or the victim's
4 immediate family.

5 ~~((+10+))~~ (12) Subject to the rules of discovery applicable in adult
6 criminal prosecutions, the juvenile offense records of an adult
7 criminal defendant or witness in an adult criminal proceeding shall be
8 released upon request to prosecution and defense counsel after a charge
9 has actually been filed. The juvenile offense records of any adult
10 convicted of a crime and placed under the supervision of the adult
11 corrections system shall be released upon request to the adult
12 corrections system.

13 ~~((+11+))~~ (13) In any case in which an information has been filed
14 pursuant to RCW 13.40.100 or a complaint has been filed with the
15 prosecutor and referred for diversion pursuant to RCW 13.40.070, the
16 person the subject of the information or complaint may file a motion
17 with the court to have the court vacate its order and findings, if any,
18 and, subject to subsection ~~((+23+))~~ (26) of this section, order the
19 sealing of the official juvenile court file, the social file, and
20 records of the court and of any other agency in the case.

21 ~~((+12+))~~ (14)(a) The court shall not grant any motion to seal
22 records for class A offenses made pursuant to subsection ~~((+11+))~~ (13)
23 of this section that is filed on or after July 1, 1997, unless:

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

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

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

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

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

1 (vi) Full restitution has been paid.

2 (b) The court shall not grant any motion to seal records for class
3 B, C, gross misdemeanor and misdemeanor offenses and diversions made
4 under subsection (~~(11)~~) (13) of this section unless:

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

10 (ii) No proceeding is pending against the moving party seeking the
11 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 is no longer required to register as a sex offender
15 under RCW 9A.44.130 or has been relieved of the duty to register under
16 RCW 9A.44.143 if the person was convicted of a sex offense; and

17 (v) Full restitution has been paid.

18 (c) Notwithstanding the requirements in (a) or (b) of this
19 subsection, the court shall grant any motion to seal records of any
20 deferred disposition vacated under RCW 13.40.127(9) prior to June 7,
21 2012, if restitution has been paid and the person is eighteen years of
22 age or older at the time of the motion.

23 (~~(13)~~) (15) The person making a motion pursuant to subsection
24 (~~(11)~~) (13) of this section shall give reasonable notice of the
25 motion to the prosecution and to any person or agency whose files are
26 sought to be sealed.

27 (~~(14)~~) (16)(a) If the court grants the motion to seal made
28 pursuant to subsection (~~(11)~~) (13) of this section, it shall, subject
29 to subsection (~~(23)~~) (26) of this section, order sealed the official
30 juvenile court file, the social file, and other records relating to the
31 case as are named in the order. Thereafter, the proceedings in the
32 case shall be treated as if they never occurred, and the subject of the
33 records may reply accordingly to any inquiry about the events, records
34 of which are sealed. Any agency shall reply to any inquiry concerning
35 confidential or sealed records that records are confidential, and no
36 information can be given about the existence or nonexistence of records
37 concerning an individual.

1 (b) In the event the subject of the juvenile records receives a
2 full and unconditional pardon, the proceedings in the matter upon which
3 the pardon has been granted shall be treated as if they never occurred,
4 and the subject of the records may reply accordingly to any inquiry
5 about the events upon which the pardon was received. Any agency shall
6 reply to any inquiry concerning the records pertaining to the events
7 for which the subject received a pardon that records are confidential,
8 and no information can be given about the existence or nonexistence of
9 records concerning an individual.

10 ~~((+15+))~~ (17) Inspection of the files and records included in the
11 order to seal may thereafter be permitted only by order of the court
12 upon motion made by the person who is the subject of the information or
13 complaint, except as otherwise provided in RCW 13.50.010(8) and
14 subsection ~~((+23+))~~ (26) of this section.

15 ~~((+16+))~~ (18) The restrictions in subsection (2) of this section do
16 not limit the access by agencies to any juvenile records for research
17 and data-gathering purposes as provided in RCW 13.50.010(8).

18 (19) Any adjudication of a juvenile offense or a crime subsequent
19 to sealing has the effect of nullifying the sealing order. Any
20 charging of an adult felony subsequent to the sealing has the effect of
21 nullifying the sealing order for the purposes of chapter 9.94A RCW.
22 The administrative office of the courts shall ensure that the superior
23 court judicial information system provides prosecutors access to
24 information on the existence of sealed juvenile records.

25 ~~((+17+))~~ (20)(a)(i) Subject to subsection ~~((+23+))~~ (26) of this
26 section, all records maintained by any court or law enforcement agency,
27 including the juvenile court, local law enforcement, the Washington
28 state patrol, and the prosecutor's office, shall be automatically
29 destroyed within ninety days of becoming eligible for destruction.
30 Juvenile records are eligible for destruction when:

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

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

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

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

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

2 (ii) No less than quarterly, the administrative office of the
3 courts shall provide a report to the juvenile courts of those
4 individuals whose records may be eligible for destruction. The
5 juvenile court shall verify eligibility and notify the Washington state
6 patrol and the appropriate local law enforcement agency and
7 prosecutor's office of the records to be destroyed. The requirement to
8 destroy records under this subsection is not dependent on a court
9 hearing or the issuance of a court order to destroy records.

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

13 (b) All records maintained by any court or law enforcement agency,
14 including the juvenile court, local law enforcement, the Washington
15 state patrol, and the prosecutor's office, shall be automatically
16 destroyed within thirty days of being notified by the governor's office
17 that the subject of those records received a full and unconditional
18 pardon by the governor.

19 (c) A person eighteen years of age or older whose criminal history
20 consists entirely of one diversion agreement or counsel and release
21 entered prior to June 12, 2008, may request that the court order the
22 records in his or her case destroyed. The request shall be granted,
23 subject to subsection ~~((+23+))~~ (26) of this section, if the court finds
24 that two years have elapsed since completion of the agreement or
25 counsel and release.

26 (d) A person twenty-three years of age or older whose criminal
27 history consists of only referrals for diversion may request that the
28 court order the records in those cases destroyed. The request shall be
29 granted, subject to subsection ~~((+23+))~~ (26) of this section, if the
30 court finds that all diversion agreements have been successfully
31 completed and no proceeding is pending against the person seeking the
32 conviction of a criminal offense.

33 ~~((+18+))~~ (21) If the court grants the motion to destroy records
34 made pursuant to subsection ~~((+17+))~~ (20)(c) or (d) of this section, it
35 shall, subject to subsection ~~((+23+))~~ (26) of this section, order the
36 official juvenile court file, the social file, and any other records
37 named in the order to be destroyed.

1 ~~((+19+))~~ (22) The person making the motion pursuant to subsection
2 ~~((+17+))~~ (20)(c) or (d) of this section shall give reasonable notice of
3 the motion to the prosecuting attorney and to any agency whose records
4 are sought to be destroyed.

5 ~~((+20+))~~ (23) Any juvenile to whom the provisions of this section
6 may apply shall be given written notice of his or her rights under this
7 section at the time of his or her disposition hearing or during the
8 diversion process.

9 ~~((+21+))~~ (24) Nothing in this section may be construed to prevent
10 a crime victim or a member of the victim's family from divulging the
11 identity of the alleged or proven juvenile offender or his or her
12 family when necessary in a civil proceeding.

13 ~~((+22+))~~ (25) Any juvenile justice or care agency may, subject to
14 the limitations in subsection ~~((+23+))~~ (26) of this section and (a) and
15 (b) of this subsection, develop procedures for the routine destruction
16 of records relating to juvenile offenses and diversions.

17 (a) Records may be routinely destroyed only when the person the
18 subject of the information or complaint has attained twenty-three years
19 of age or older or pursuant to subsection ~~((+17+))~~ (20)(a) of this
20 section.

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

23 ~~((+23+))~~ (26) Except for subsection ~~((+17+))~~ (20)(b) of this
24 section, no identifying information held by the Washington state patrol
25 in accordance with chapter 43.43 RCW is subject to destruction or
26 sealing under this section. For the purposes of this subsection,
27 identifying information includes photographs, fingerprints, palmprints,
28 soleprints, toeprints and any other data that identifies a person by
29 physical characteristics, name, birthdate or address, but does not
30 include information regarding criminal activity, arrest, charging,
31 diversion, conviction or other information about a person's treatment
32 by the criminal justice system or about the person's behavior.

33 ~~((+24+))~~ (27) Information identifying child victims under age
34 eighteen who are victims of sexual assaults by juvenile offenders is
35 confidential and not subject to release to the press or public without
36 the permission of the child victim or the child's legal guardian.
37 Identifying information includes the child victim's name, addresses,
38 location, photographs, and in cases in which the child victim is a

1 relative of the alleged perpetrator, identification of the relationship
2 between the child and the alleged perpetrator. Information identifying
3 a child victim of sexual assault may be released to law enforcement,
4 prosecutors, judges, defense attorneys, or private or governmental
5 agencies that provide services to the child victim of sexual assault.

6 NEW SECTION. **Sec. 3.** Section 2 of this act applies prospectively
7 and retroactively to all existing official juvenile court files of any
8 alleged or proven juvenile offender.

9 NEW SECTION. **Sec. 4.** Section 2 of this act takes effect July 1,
10 2014."

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NOT CONSIDERED

11 On page 1, line 1 of the title, after "records;" strike the
12 remainder of the title and insert "amending RCW 13.50.050; creating new
13 sections; and providing an effective date."

EFFECT: The bill is replaced in its entirety. Court records and public court indices containing nonadjudication or nonconviction information relating to the commission of juvenile offenses are restricted from public access. Nonadjudication or nonconviction information means information contained in records collected by the courts relating to arrest, probable cause hearings, citation, and charges that did not lead to an adjudication; charges resulting in a dismissal or acquittal; and charges dismissed pursuant to a diversion or deferred sentence. All other juvenile court records remain open for public access. The restriction on nonadjudication or nonconviction information does not limit access by agencies for research purposes. These provisions apply prospectively and retroactively.

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