

2SHB 1651 - S COMM AMD

By Committee on Human Services & Corrections

NOT ADOPTED 03/07/2014

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

3 "Sec. 1. RCW 13.50.010 and 2013 c 23 s 6 are each amended to read
4 as follows:

5 (1) For purposes of this chapter:

6 (a) "Juvenile justice or care agency" means any of the following:
7 Police, diversion units, court, prosecuting attorney, defense attorney,
8 detention center, attorney general, the legislative children's
9 oversight committee, the office of the family and children's ombuds,
10 the department of social and health services and its contracting
11 agencies, schools; persons or public or private agencies having
12 children committed to their custody; and any placement oversight
13 committee created under RCW 72.05.415;

14 (b) "Official juvenile court file" means the legal file of the
15 juvenile court containing the petition or information, motions,
16 memorandums, briefs, findings of the court, and court orders;

17 (c) "Records" means the official juvenile court file, the social
18 file, and records of any other juvenile justice or care agency in the
19 case;

20 (d) "Social file" means the juvenile court file containing the
21 records and reports of the probation counselor.

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

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

28 (a) The agency may never knowingly record inaccurate information.
29 Any information in records maintained by the department of social and

1 health services relating to a petition filed pursuant to chapter 13.34
2 RCW that is found by the court to be false or inaccurate shall be
3 corrected or expunged from such records by the agency;

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

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

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

12 (5) Any person who has reasonable cause to believe information
13 concerning that person is included in the records of a juvenile justice
14 or care agency and who has been denied access to those records by the
15 agency may make a motion to the court for an order authorizing that
16 person to inspect the juvenile justice or care agency record concerning
17 that person. The court shall grant the motion to examine records
18 unless it finds that in the interests of justice or in the best
19 interests of the juvenile the records or parts of them should remain
20 confidential.

21 (6) A juvenile, or his or her parents, or any person who has
22 reasonable cause to believe information concerning that person is
23 included in the records of a juvenile justice or care agency may make
24 a motion to the court challenging the accuracy of any information
25 concerning the moving party in the record or challenging the continued
26 possession of the record by the agency. If the court grants the
27 motion, it shall order the record or information to be corrected or
28 destroyed.

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

33 (8) The court may permit inspection of records by, or release of
34 information to, any clinic, hospital, or agency which has the subject
35 person under care or treatment. The court may also permit inspection
36 by or release to individuals or agencies, including juvenile justice
37 advisory committees of county law and justice councils, engaged in
38 legitimate research for educational, scientific, or public purposes.

1 (~~The court shall release to the caseload forecast council records~~
2 ~~needed for its research and data gathering functions. Access to~~
3 ~~records or information for research purposes shall be permitted only if~~
4 ~~the anonymity of all persons mentioned in the records or information~~
5 ~~will be preserved.)) Each person granted permission to inspect
6 juvenile justice or care agency records for research purposes shall
7 present a notarized statement to the court stating that the names of
8 juveniles and parents will remain confidential.~~

9 (9) The court shall release to the caseload forecast council the
10 records needed for its research and data-gathering functions. Access
11 to caseload forecast data may be permitted by the council for research
12 purposes only if the anonymity of all persons mentioned in the records
13 or information will be preserved.

14 (10) Juvenile detention facilities shall release records to the
15 caseload forecast council upon request. The commission shall not
16 disclose the names of any juveniles or parents mentioned in the records
17 without the named individual's written permission.

18 ~~((+10))~~ (11) Requirements in this chapter relating to the court's
19 authority to compel disclosure shall not apply to the legislative
20 children's oversight committee or the office of the family and
21 children's ombuds.

22 ~~((+11))~~ (12) For the purpose of research only, the administrative
23 office of the courts shall maintain an electronic research copy of all
24 records in the judicial information system related to juveniles.
25 Access to the research copy is restricted to the Washington state
26 center for court research. The Washington state center for court
27 research shall maintain the confidentiality of all confidential records
28 and shall preserve the anonymity of all persons identified in the
29 research copy. The research copy may not be subject to any records
30 retention schedule and must include records destroyed or removed from
31 the judicial information system pursuant to RCW 13.50.050 ~~((+17) and)~~
32 (18) and (19) and 13.50.100(3).

33 ~~((+12))~~ (13) The court shall release to the Washington state
34 office of public defense records needed to implement the agency's
35 oversight, technical assistance, and other functions as required by RCW
36 2.70.020. Access to the records used as a basis for oversight,
37 technical assistance, or other agency functions is restricted to the

1 Washington state office of public defense. The Washington state office
2 of public defense shall maintain the confidentiality of all
3 confidential information included in the records.

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

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

8 (2) The official juvenile court file of any alleged or proven
9 juvenile offender shall be open to public inspection, unless sealed
10 pursuant to subsection (~~(12)~~) (13) of this section.

11 (3) All records other than the official juvenile court file are
12 confidential and may be released only as provided in this section, RCW
13 13.50.010, 13.40.215, and 4.24.550.

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

21 (5) Except as provided in RCW 4.24.550, information not in an
22 official juvenile court file concerning a juvenile or a juvenile's
23 family may be released to the public only when that information could
24 not reasonably be expected to identify the juvenile or the juvenile's
25 family.

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

32 (7) Upon the decision to arrest or the arrest, law enforcement and
33 prosecuting attorneys may cooperate with schools in releasing
34 information to a school pertaining to the investigation, diversion, and
35 prosecution of a juvenile attending the school. Upon the decision to
36 arrest or the arrest, incident reports may be released unless releasing
37 the records would jeopardize the investigation or prosecution or

1 endanger witnesses. If release of incident reports would jeopardize
2 the investigation or prosecution or endanger witnesses, law enforcement
3 and prosecuting attorneys may release information to the maximum extent
4 possible to assist schools in protecting other students, staff, and
5 school property.

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

17 (9) Upon request of the victim of a crime or the victim's immediate
18 family, the identity of an alleged or proven juvenile offender alleged
19 or found to have committed a crime against the victim and the identity
20 of the alleged or proven juvenile offender's parent, guardian, or
21 custodian and the circumstance of the alleged or proven crime shall be
22 released to the victim of the crime or the victim's immediate family.

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

31 (11)(a) At the disposition hearing of a juvenile offender, the
32 court shall schedule an administrative sealing hearing to take place no
33 later than thirty days after the last day of probation ordered, if any;
34 or if the respondent has been sentenced to the juvenile rehabilitation
35 administration, no later than thirty days after release from
36 confinement, or the completion of parole, if any is required by law,
37 unless one of the offenses for which the court has entered a
38 disposition is:

- 1 (i) A serious violent offense, as defined in RCW 9.94A.030;
2 (ii) A sex offense under chapter 9A.44 RCW;
3 (iii) Arson in the first degree or criminal solicitation of or
4 criminal conspiracy to commit arson in the first degree;
5 (iv) Assault of a child in the second degree;
6 (v) Kidnapping in the second degree;
7 (vi) Leading organized crime; or
8 (vii) Malicious placement of an explosive in the first degree.

9 (b) At the administrative sealing hearing, the court shall enter a
10 written order sealing the juvenile court file unless, upon the
11 objection of any person or other compelling reason identified by the
12 court, the court determines that sealing is not appropriate after
13 weighing the competing privacy interests of the juvenile with the
14 interests identified by the person opposed to sealing or with another
15 compelling reason identified by the court, with a presumption in favor
16 of sealing the juvenile court file. The respondent and his or her
17 attorney shall be given notice and an opportunity to respond to any
18 objection.

19 (c) The respondent's presence at the administrative sealing hearing
20 is not required.

21 (d) The court shall enter a written order immediately sealing the
22 official juvenile court file:

23 (i) Upon receipt of notification that the respondent has performed
24 his or her obligations under a diversion agreement as provided in RCW
25 13.40.080(12)(d);

26 (ii) Upon the acquittal after a fact finding or upon dismissal of
27 charges; or

28 (iii) If the prosecutor does not file charges within seventy-two
29 hours after a juvenile has been taken into custody pursuant to RCW
30 13.40.050.

31 (12) If a juvenile court file has not already been sealed pursuant
32 to subsection (11) of this section, in any case in which an information
33 has been filed pursuant to RCW 13.40.100 or a complaint has been filed
34 with the prosecutor and referred for diversion pursuant to RCW
35 13.40.070, the person who is the subject of the information or
36 complaint may file a motion with the court to have the court vacate its
37 order and findings, if any, and, subject to subsection ((+23+)) (24) of

1 this section, order the sealing of the official juvenile court file,
2 the social file, and records of the court and of any other agency in
3 the case.

4 ~~((+12+))~~ (13)(a) The court shall ~~((not))~~ grant any motion to seal
5 records for class A offenses made pursuant to subsection ~~((+11+))~~ (12)
6 of this section ~~((that is filed on or after July 1, 1997, unless))~~ if:

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

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

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

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

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

22 (vi) Full restitution has been paid.

23 (b) The court shall ~~((not))~~ grant any motion to seal records for
24 class B, C, gross misdemeanor and misdemeanor offenses and diversions
25 made under subsection ~~((+11+))~~ (12) of this section ~~((unless))~~ if:

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

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

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

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

38 (v) Full restitution has been paid.

1 (c) Notwithstanding the requirements in (a) or (b) of this
2 subsection, the court shall grant any motion to seal records of any
3 deferred disposition vacated under RCW 13.40.127(9) prior to June 7,
4 2012, if restitution has been paid and the person is eighteen years of
5 age or older at the time of the motion.

6 ~~((+13+))~~ (14) The person making a motion pursuant to subsection
7 ~~((+11+))~~ (12) of this section shall give reasonable notice of the
8 motion to the prosecution and to any person or agency whose files are
9 sought to be sealed.

10 ~~((+14+))~~ (15)(a) If the court enters a written order sealing the
11 juvenile court file pursuant to subsection (11) of this section or
12 grants ~~((the))~~ a motion to seal ~~((made))~~ pursuant to subsection
13 ~~((+11+))~~ (12) of this section, it shall, subject to subsection ~~((+23+))~~
14 (24) of this section, order sealed the official juvenile court file,
15 the social file, and other records relating to the case as are named in
16 the order. Thereafter, the proceedings in the case shall be treated as
17 if they never occurred, and the subject of the records may reply
18 accordingly to any inquiry about the events, records of which are
19 sealed. Any agency shall reply to any inquiry concerning confidential
20 or sealed records that records are confidential, and no information can
21 be given about the existence or nonexistence of records concerning an
22 individual.

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

32 ~~((+15+))~~ (16) Inspection of the files and records included in the
33 order to seal may thereafter be permitted only by order of the court
34 upon motion made by the person who is the subject of the information or
35 complaint, except as otherwise provided in RCW 13.50.010(8) and
36 subsection ~~((+23+))~~ (24) of this section.

37 ~~((+16+))~~ (17) Any adjudication of a juvenile offense or a crime
38 subsequent to sealing has the effect of nullifying ~~((the))~~ a sealing

1 order; however, the court may order the juvenile court record resealed
2 upon disposition of the subsequent matter if the case meets the sealing
3 criteria under subsection (11) or (12) of this section and the court
4 record has not previously been resealed. Any charging of an adult
5 felony subsequent to the sealing has the effect of nullifying the
6 sealing order for the purposes of chapter 9.94A RCW. The
7 administrative office of the courts shall ensure that the superior
8 court judicial information system provides prosecutors access to
9 information on the existence of sealed juvenile records.

10 ~~((+17))~~ (18)(a)(i) Subject to subsection ~~((+23))~~ (24) of this
11 section, all records maintained by any court or law enforcement agency,
12 including the juvenile court, local law enforcement, the Washington
13 state patrol, and the prosecutor's office, shall be automatically
14 destroyed within ninety days of becoming eligible for destruction.
15 Juvenile records are eligible for destruction when:

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

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

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

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

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

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

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

36 (b) All records maintained by any court or law enforcement agency,
37 including the juvenile court, local law enforcement, the Washington
38 state patrol, and the prosecutor's office, shall be automatically

1 destroyed within thirty days of being notified by the governor's office
2 that the subject of those records received a full and unconditional
3 pardon by the governor.

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

11 (d) A person twenty-three years of age or older whose criminal
12 history consists of only referrals for diversion may request that the
13 court order the records in those cases destroyed. The request shall be
14 granted, subject to subsection ~~((+23+))~~ (24) of this section, if the
15 court finds that all diversion agreements have been successfully
16 completed and no proceeding is pending against the person seeking the
17 conviction of a criminal offense.

18 ~~((+18+))~~ (19) If the court grants the motion to destroy records
19 made pursuant to subsection ~~((+17+))~~ (18)(c) or (d) of this section, it
20 shall, subject to subsection ~~((+23+))~~ (24) of this section, order the
21 official juvenile court file, the social file, and any other records
22 named in the order to be destroyed.

23 ~~((+19+))~~ (20) The person making the motion pursuant to subsection
24 ~~((+17+))~~ (18)(c) or (d) of this section shall give reasonable notice of
25 the motion to the prosecuting attorney and to any agency whose records
26 are sought to be destroyed.

27 ~~((+20+))~~ (21) Any juvenile to whom the provisions of this section
28 may apply shall be given written notice of his or her rights under this
29 section at the time of his or her disposition hearing or during the
30 diversion process.

31 ~~((+21+))~~ (22) Nothing in this section may be construed to prevent
32 a crime victim or a member of the victim's family from divulging the
33 identity of the alleged or proven juvenile offender or his or her
34 family when necessary in a civil proceeding.

35 ~~((+22+))~~ (23) Any juvenile justice or care agency may, subject to
36 the limitations in subsection ~~((+23+))~~ (24) of this section and (a) and
37 (b) of this subsection, develop procedures for the routine destruction
38 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+))~~ (18)(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+))~~ (24) Except for subsection ~~((+17+))~~ (18)(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+))~~ (25) 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."

2SHB 1651 - S COMM AMD

By Committee on Human Services & Corrections

NOT ADOPTED 03/07/2014

28 On page 1, line 1 of the title, after "records;" strike the
29 remainder of the title and insert "and amending RCW 13.50.010 and

EFFECT: (1) Provisions designating juvenile records as confidential are removed;

(2) At the disposition hearing of a juvenile offender, the court must schedule an administrative sealing hearing to occur no later than 30 days after the juvenile has completed probation or confinement and parole unless the juvenile was adjudicated of certain serious crimes;

(3) The court must enter a written order sealing the juvenile court record unless any person objects or the court identifies some other compelling reason, in which case the court must weigh competing interests;

(4) The court must immediately seal a juvenile court file when a juvenile completes the requirements of a diversion agreement, upon acquittal or dismissal of charges; or if the prosecutor does not file charges within 72 hours of being taken into custody;

(5) Any adjudication of a juvenile offense or crime subsequent to the sealing order will nullify the order; however, the court may reseal the file upon conclusion of the subsequent matter if the case meets the sealing criteria and the case has not previously been resealed;

(6) Allows the Caseload Forecast Council to share information with AOC and other agencies to assist them in gathering data for research purposes so long as the anonymity of persons named in the records is preserved.

--- END ---