

2SHB 1651 - S AMD **665**

By Senators O'Ban, Darneille

ADOPTED 03/07/2014

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 are publicly available,
10 former juvenile offenders face substantial barriers to reintegration,
11 as they are denied housing, employment, and education opportunities on
12 the basis of these records.

13 (2) The legislature declares it is the policy of the state of
14 Washington that the interest in juvenile rehabilitation and
15 reintegration constitutes compelling circumstances that outweigh the
16 public interest in continued availability of juvenile court records.
17 The legislature intends that juvenile court proceedings be openly
18 administered but, except in limited circumstances, the records of these
19 proceedings be closed when the juvenile has reached the age of eighteen
20 and completed the terms of disposition.

21 **Sec. 2.** RCW 13.50.010 and 2013 c 23 s 6 are each amended to read
22 as follows:

23 (1) For purposes of this chapter:

24 (a) "Juvenile justice or care agency" means any of the following:
25 Police, diversion units, court, prosecuting attorney, defense attorney,
26 detention center, attorney general, the legislative children's
27 oversight committee, the office of the family and children's ombuds,
28 the department of social and health services and its contracting

1 agencies, schools; persons or public or private agencies having
2 children committed to their custody; and any placement oversight
3 committee created under RCW 72.05.415;

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

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

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

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

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

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

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

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

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

31 (5) Any person who has reasonable cause to believe information
32 concerning that person is included in the records of a juvenile justice
33 or care agency and who has been denied access to those records by the
34 agency may make a motion to the court for an order authorizing that
35 person to inspect the juvenile justice or care agency record concerning
36 that person. The court shall grant the motion to examine records
37 unless it finds that in the interests of justice or in the best

1 interests of the juvenile the records or parts of them should remain
2 confidential.

3 (6) A juvenile, or his or her parents, or any person who has
4 reasonable cause to believe information concerning that person is
5 included in the records of a juvenile justice or care agency may make
6 a motion to the court challenging the accuracy of any information
7 concerning the moving party in the record or challenging the continued
8 possession of the record by the agency. If the court grants the
9 motion, it shall order the record or information to be corrected or
10 destroyed.

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

15 (8) The court may permit inspection of records by, or release of
16 information to, any clinic, hospital, or agency which has the subject
17 person under care or treatment. The court may also permit inspection
18 by or release to individuals or agencies, including juvenile justice
19 advisory committees of county law and justice councils, engaged in
20 legitimate research for educational, scientific, or public purposes.
21 (~~The court shall release to the caseload forecast council records~~
22 ~~needed for its research and data-gathering functions. Access to~~
23 ~~records or information for research purposes shall be permitted only if~~
24 ~~the anonymity of all persons mentioned in the records or information~~
25 ~~will be preserved.)) Each person granted permission to inspect
26 juvenile justice or care agency records for research purposes shall
27 present a notarized statement to the court stating that the names of
28 juveniles and parents will remain confidential.~~

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

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

1 (~~(10)~~) (11) Requirements in this chapter relating to the court's
2 authority to compel disclosure shall not apply to the legislative
3 children's oversight committee or the office of the family and
4 children's ombuds.

5 (~~(11)~~) (12) For the purpose of research only, the administrative
6 office of the courts shall maintain an electronic research copy of all
7 records in the judicial information system related to juveniles.
8 Access to the research copy is restricted to the Washington state
9 center for court research. The Washington state center for court
10 research shall maintain the confidentiality of all confidential records
11 and shall preserve the anonymity of all persons identified in the
12 research copy. The research copy may not be subject to any records
13 retention schedule and must include records destroyed or removed from
14 the judicial information system pursuant to (~~RCW 13.50.050 (17) and~~
15 ~~(18)~~) section 5 of this act and RCW 13.50.100(3).

16 (~~(12)~~) (13) The court shall release to the Washington state
17 office of public defense records needed to implement the agency's
18 oversight, technical assistance, and other functions as required by RCW
19 2.70.020. Access to the records used as a basis for oversight,
20 technical assistance, or other agency functions is restricted to the
21 Washington state office of public defense. The Washington state office
22 of public defense shall maintain the confidentiality of all
23 confidential information included in the records.

24 **Sec. 3.** RCW 13.50.050 and 2012 c 177 s 2 are each amended to read
25 as follows:

26 (1) This section and sections 4 and 5 of this act govern(~~(s)~~)
27 records relating to the commission of juvenile offenses, including
28 records relating to diversions.

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

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

35 (4) Except as otherwise provided in this (~~section and RCW~~
36 ~~13.50.010~~) chapter, records retained or produced by any juvenile
37 justice or care agency may be released to other participants in the

1 juvenile justice or care system only when an investigation or case
2 involving the juvenile in question is being pursued by the other
3 participant or when that other participant is assigned the
4 responsibility for supervising the juvenile.

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

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

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

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

1 (9) Upon request of the victim of a crime or the victim's immediate
2 family, the identity of an alleged or proven juvenile offender alleged
3 or found to have committed a crime against the victim and the identity
4 of the alleged or proven juvenile offender's parent, guardian, or
5 custodian and the circumstance of the alleged or proven crime shall be
6 released to the victim of the crime or the victim's immediate family.

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

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

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

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

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;~~

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

4 ~~(vi) Full restitution has been paid.~~

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

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

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

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

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

20 ~~(v) Full restitution has been paid.~~

21 ~~(c) Notwithstanding the requirements in (a) or (b) of this~~
22 ~~subsection, the court shall grant any motion to seal records of any~~
23 ~~deferred disposition vacated under RCW 13.40.127(9) prior to June 7,~~
24 ~~2012, if restitution has been paid and the person is eighteen years of~~
25 ~~age or older at the time of the motion.~~

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

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

1 ~~be given about the existence or nonexistence of records concerning an~~
2 ~~individual.~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

37 ~~(19) The person making the motion pursuant to subsection (17) (c)~~

1 ~~or (d) of this section shall give reasonable notice of the motion to~~
2 ~~the prosecuting attorney and to any agency whose records are sought to~~
3 ~~be destroyed.~~

4 ~~(20))~~ Any juvenile to whom the provisions of this section or
5 section 4 or 5 of this act may apply shall be given written notice of
6 his or her rights under this section at the time of his or her
7 disposition hearing or during the diversion process.

8 ~~((21))~~ (12) Nothing in this section or section 4 or 5 of this act
9 may be construed to prevent a crime victim or a member of the victim's
10 family from divulging the identity of the alleged or proven juvenile
11 offender or his or her family when necessary in a civil proceeding.

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

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

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

21 ~~(23))~~ (13) Except ~~((for subsection (17)(b) of this section))~~ as
22 provided in section 5(2) of this act, no identifying information held
23 by the Washington state patrol in accordance with chapter 43.43 RCW is
24 subject to destruction or sealing under this section. For the purposes
25 of this subsection, identifying information includes photographs,
26 fingerprints, palmprints, soleprints, toeprints and any other data that
27 identifies a person by physical characteristics, name, birthdate or
28 address, but does not include information regarding criminal activity,
29 arrest, charging, diversion, conviction or other information about a
30 person's treatment by the criminal justice system or about the person's
31 behavior.

32 ~~((24))~~ (14) Information identifying child victims under age
33 eighteen who are victims of sexual assaults by juvenile offenders is
34 confidential and not subject to release to the press or public without
35 the permission of the child victim or the child's legal guardian.
36 Identifying information includes the child victim's name, addresses,
37 location, photographs, and in cases in which the child victim is a
38 relative of the alleged perpetrator, identification of the relationship

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

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

7 (1)(a) The court shall hold regular sealing hearings. During these
8 regular sealing hearings, the court shall administratively seal an
9 individual's juvenile court record pursuant to the requirements of this
10 subsection unless the court receives an objection to sealing or the
11 court notes a compelling reason not to seal, in which case, the court
12 shall set a contested hearing to be conducted on the record to address
13 sealing. The respondent and his or her attorney shall be given at
14 least eighteen days' notice of any contested sealing hearing and the
15 opportunity to respond to any objections, but the respondent's presence
16 is not required at any sealing hearing pursuant to this subsection.

17 (b) At the disposition hearing of a juvenile offender, the court
18 shall schedule an administrative sealing hearing to take place during
19 the first regularly scheduled sealing hearing after the latest of the
20 following events that apply:

21 (i) The respondent's eighteenth birthday;

22 (ii) Anticipated completion of a respondent's probation, if
23 ordered;

24 (iii) Anticipated release from confinement at the juvenile
25 rehabilitation administration, or the completion of parole, if the
26 respondent is transferred to the juvenile rehabilitation
27 administration.

28 (c) A court shall enter a written order sealing an individual's
29 juvenile court record pursuant to this subsection if:

30 (i) One of the offenses for which the court has entered a
31 disposition is not at the time of commission of the offense:

32 (A) A most serious offense, as defined in RCW 9.94A.030;

33 (B) A sex offense under chapter 9A.44 RCW; or

34 (C) A drug offense, as defined in RCW 9.94A.030; and

35 (ii) The respondent has completed the terms and conditions of
36 disposition, including affirmative conditions and financial
37 obligations.

1 (d) Following a contested sealing hearing on the record after an
2 objection is made pursuant to (a) of this subsection, the court shall
3 enter a written order sealing the juvenile court record unless the
4 court determines that sealing is not appropriate.

5 (2) The court shall enter a written order immediately sealing the
6 official juvenile court record upon the acquittal after a fact finding
7 or upon dismissal of charges.

8 (3) If a juvenile court record has not already been sealed pursuant
9 to this section, in any case in which information has been filed
10 pursuant to RCW 13.40.100 or a complaint has been filed with the
11 prosecutor and referred for diversion pursuant to RCW 13.40.070, the
12 person who is the subject of the information or complaint may file a
13 motion with the court to have the court vacate its order and findings,
14 if any, and, subject to RCW 13.50.050(13), order the sealing of the
15 official juvenile court record, the social file, and records of the
16 court and of any other agency in the case.

17 (4)(a) The court shall grant any motion to seal records for class
18 A offenses made pursuant to subsection (3) of this section if:

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

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

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

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

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

34 (vi) Full restitution has been paid.

35 (b) The court shall grant any motion to seal records for class B,
36 C, gross misdemeanor, and misdemeanor offenses and diversions made
37 under subsection (3) of this section if:

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

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

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

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

13 (v) Full restitution has been paid.

14 (c) Notwithstanding the requirements in (a) or (b) of this
15 subsection, the court shall grant any motion to seal records of any
16 deferred disposition vacated under RCW 13.40.127(9) prior to June 7,
17 2012, if restitution has been paid and the person is eighteen years of
18 age or older at the time of the motion.

19 (5) The person making a motion pursuant to subsection (3) of this
20 section shall give reasonable notice of the motion to the prosecution
21 and to any person or agency whose records are sought to be sealed.

22 (6)(a) If the court enters a written order sealing the juvenile
23 court record pursuant to this section, it shall, subject to RCW
24 13.50.050(13), order sealed the official juvenile court record, the
25 social file, and other records relating to the case as are named in the
26 order. Thereafter, the proceedings in the case shall be treated as if
27 they never occurred, and the subject of the records may reply
28 accordingly to any inquiry about the events, records of which are
29 sealed. Any agency shall reply to any inquiry concerning confidential
30 or sealed records that records are confidential, and no information can
31 be given about the existence or nonexistence of records concerning an
32 individual.

33 (b) In the event the subject of the juvenile records receives a
34 full and unconditional pardon, the proceedings in the matter upon which
35 the pardon has been granted shall be treated as if they never occurred,
36 and the subject of the records may reply accordingly to any inquiry
37 about the events upon which the pardon was received. Any agency shall
38 reply to any inquiry concerning the records pertaining to the events

1 for which the subject received a pardon that records are confidential,
2 and no information can be given about the existence or nonexistence of
3 records concerning an individual.

4 (7) Inspection of the files and records included in the order to
5 seal may thereafter be permitted only by order of the court upon motion
6 made by the person who is the subject of the information or complaint,
7 except as otherwise provided in RCW 13.50.010(8) and 13.50.050(13).

8 (8)(a) Any adjudication of a juvenile offense or a crime subsequent
9 to sealing has the effect of nullifying a sealing order; however, the
10 court may order the juvenile court record resealed upon disposition of
11 the subsequent matter if the case meets the sealing criteria under this
12 section and the court record has not previously been resealed.

13 (b) Any charging of an adult felony subsequent to the sealing has
14 the effect of nullifying the sealing order.

15 (c) The administrative office of the courts shall ensure that the
16 superior court judicial information system provides prosecutors access
17 to information on the existence of sealed juvenile records.

18 (9) If the juvenile court record has been sealed pursuant to this
19 section, the record of an employee is not admissible in an action for
20 liability against the employer based on the former juvenile offender's
21 conduct to show that the employer knew or should have known of the
22 juvenile record of the employee. The record may be admissible,
23 however, if a background check conducted or authorized by the employer
24 contained the information in the sealed record.

25 NEW SECTION. **Sec. 5.** A new section is added to chapter 13.50 RCW
26 to read as follows:

27 (1)(a) Subject to RCW 13.50.050(13), all records maintained by any
28 court or law enforcement agency, including the juvenile court, local
29 law enforcement, the Washington state patrol, and the prosecutor's
30 office, shall be automatically destroyed within ninety days of becoming
31 eligible for destruction. Juvenile records are eligible for
32 destruction when:

33 (i) The person who is the subject of the information or complaint
34 is at least eighteen years of age;

35 (ii) The person's criminal history consists entirely of one
36 diversion agreement or counsel and release entered on or after June 12,
37 2008;

1 (iii) Two years have elapsed since completion of the agreement or
2 counsel and release;

3 (iv) No proceeding is pending against the person seeking the
4 conviction of a criminal offense; and

5 (v) There is no restitution owing in the case.

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

14 (c) The state and local governments and their officers and
15 employees are not liable for civil damages for the failure to destroy
16 records pursuant to this section.

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

23 (3)(a) A person may request that the court order the records in his
24 or her case destroyed as follows:

25 (i) A person eighteen years of age or older whose criminal history
26 consists entirely of one diversion agreement or counsel and release
27 entered prior to June 12, 2008. The request shall be granted if the
28 court finds that two years have elapsed since completion of the
29 agreement or counsel and release.

30 (ii) A person twenty-three years of age or older whose criminal
31 history consists of only referrals for diversion. The request shall be
32 granted if the court finds that all diversion agreements have been
33 successfully completed and no proceeding is pending against the person
34 seeking the conviction of a criminal offense.

35 (b) If the court grants the motion to destroy records made pursuant
36 to this subsection, it shall, subject to RCW 13.50.050(13), order the
37 official juvenile court record, the social file, and any other records
38 named in the order to be destroyed.

1 (c) The person making the motion pursuant to this subsection must
2 give reasonable notice of the motion to the prosecuting attorney and to
3 any agency whose records are sought to be destroyed.

4 (4) Any juvenile justice or care agency may, subject to the
5 limitations in RCW 13.50.050(13) and this section, develop procedures
6 for the routine destruction of records relating to juvenile offenses
7 and diversions.

8 (a) Records may be routinely destroyed only when the person the
9 subject of the information or complaint has attained twenty-three years
10 of age or older or pursuant to subsection (1) of this section.

11 (b) The court may not routinely destroy the official juvenile court
12 record or recordings or transcripts of any proceedings.

13 **Sec. 6.** RCW 13.40.127 and 2013 c 179 s 5 are each amended to read
14 as follows:

15 (1) A juvenile is eligible for deferred disposition unless he or
16 she:

17 (a) Is charged with a sex or violent offense;

18 (b) Has a criminal history which includes any felony;

19 (c) Has a prior deferred disposition or deferred adjudication; or

20 (d) Has two or more adjudications.

21 (2) The juvenile court may, upon motion at least fourteen days
22 before commencement of trial and, after consulting the juvenile's
23 custodial parent or parents or guardian and with the consent of the
24 juvenile, continue the case for disposition for a period not to exceed
25 one year from the date the juvenile is found guilty. The court shall
26 consider whether the offender and the community will benefit from a
27 deferred disposition before deferring the disposition. The court may
28 waive the fourteen-day period anytime before the commencement of trial
29 for good cause.

30 (3) Any juvenile who agrees to a deferral of disposition shall:

31 (a) Stipulate to the admissibility of the facts contained in the
32 written police report;

33 (b) Acknowledge that the report will be entered and used to support
34 a finding of guilt and to impose a disposition if the juvenile fails to
35 comply with terms of supervision;

36 (c) Waive the following rights to: (i) A speedy disposition; and
37 (ii) call and confront witnesses; and

1 (d) Acknowledge the direct consequences of being found guilty and
2 the direct consequences that will happen if an order of disposition is
3 entered.

4 The adjudicatory hearing shall be limited to a reading of the
5 court's record.

6 (4) Following the stipulation, acknowledgment, waiver, and entry of
7 a finding or plea of guilt, the court shall defer entry of an order of
8 disposition of the juvenile.

9 (5) Any juvenile granted a deferral of disposition under this
10 section shall be placed under community supervision. The court may
11 impose any conditions of supervision that it deems appropriate
12 including posting a probation bond. Payment of restitution under RCW
13 13.40.190 shall be a condition of community supervision under this
14 section.

15 The court may require a juvenile offender convicted of animal
16 cruelty in the first degree to submit to a mental health evaluation to
17 determine if the offender would benefit from treatment and such
18 intervention would promote the safety of the community. After
19 consideration of the results of the evaluation, as a condition of
20 community supervision, the court may order the offender to attend
21 treatment to address issues pertinent to the offense.

22 The court may require the juvenile to undergo a mental health or
23 substance abuse assessment, or both. If the assessment identifies a
24 need for treatment, conditions of supervision may include treatment for
25 the assessed need that has been demonstrated to improve behavioral
26 health and reduce recidivism.

27 (6) A parent who signed for a probation bond has the right to
28 notify the counselor if the juvenile fails to comply with the bond or
29 conditions of supervision. The counselor shall notify the court and
30 surety of any failure to comply. A surety shall notify the court of
31 the juvenile's failure to comply with the probation bond. The state
32 shall bear the burden to prove, by a preponderance of the evidence,
33 that the juvenile has failed to comply with the terms of community
34 supervision.

35 (7)(a) Anytime prior to the conclusion of the period of
36 supervision, the prosecutor or the juvenile's juvenile court community
37 supervision counselor may file a motion with the court requesting the

1 court revoke the deferred disposition based on the juvenile's lack of
2 compliance or treat the juvenile's lack of compliance as a violation
3 pursuant to RCW 13.40.200.

4 (b) If the court finds the juvenile failed to comply with the terms
5 of the deferred disposition, the court may:

6 (i) Revoke the deferred disposition and enter an order of
7 disposition; or

8 (ii) Impose sanctions for the violation pursuant to RCW 13.40.200.

9 (8) At any time following deferral of disposition the court may,
10 following a hearing, continue supervision for an additional one-year
11 period for good cause.

12 (9)(a) At the conclusion of the period of supervision, the court
13 shall determine whether the juvenile is entitled to dismissal of the
14 deferred disposition only when the court finds:

15 (i) The deferred disposition has not been previously revoked;

16 (ii) The juvenile has completed the terms of supervision;

17 (iii) There are no pending motions concerning lack of compliance
18 pursuant to subsection (7) of this section; and

19 (iv) The juvenile has either paid the full amount of restitution,
20 or, made a good faith effort to pay the full amount of restitution
21 during the period of supervision.

22 (b) If the court finds the juvenile is entitled to dismissal of the
23 deferred disposition pursuant to (a) of this subsection, the juvenile's
24 conviction shall be vacated and the court shall dismiss the case with
25 prejudice, except that a conviction under RCW 16.52.205 shall not be
26 vacated. Whenever a case is dismissed with restitution still owing,
27 the court shall enter a restitution order pursuant to RCW 13.40.190 for
28 any unpaid restitution. Jurisdiction to enforce payment and modify
29 terms of the restitution order shall be the same as those set forth in
30 RCW 13.40.190.

31 (c) If the court finds the juvenile is not entitled to dismissal of
32 the deferred disposition pursuant to (a) of this subsection, the court
33 shall revoke the deferred disposition and enter an order of
34 disposition. A deferred disposition shall remain a conviction unless
35 the case is dismissed and the conviction is vacated pursuant to (b) of
36 this subsection or sealed pursuant to ((RCW 13.50.050)) section 4 of
37 this act.

1 (10)(a)(i) Any time the court vacates a conviction pursuant to
2 subsection (9) of this section, if the juvenile is eighteen years of
3 age or older and the full amount of restitution ordered has been paid,
4 the court shall enter a written order sealing the case.

5 (ii) Any time the court vacates a conviction pursuant to subsection
6 (9) of this section, if the juvenile is not eighteen years of age or
7 older and full restitution ordered has been paid, the court shall
8 schedule an administrative sealing hearing to take place no later than
9 thirty days after the respondent's eighteenth birthday, at which time
10 the court shall enter a written order sealing the case. The
11 respondent's presence at the administrative sealing hearing is not
12 required.

13 (iii) Any deferred disposition vacated prior to June 7, 2012, is
14 not subject to sealing under this subsection.

15 (b) Nothing in this subsection shall preclude a juvenile from
16 petitioning the court to have the records of his or her deferred
17 dispositions sealed under (~~RCW 13.50.050 (11) and (12)~~) section 4 of
18 this act.

19 (c) Records sealed under this provision shall have the same legal
20 status as records sealed under (~~RCW 13.50.050~~) section 4 of this act.

21 **Sec. 7.** RCW 13.40.190 and 2010 c 134 s 1 are each amended to read
22 as follows:

23 (1)(a) In its dispositional order, the court shall require the
24 respondent to make restitution to any persons who have suffered loss or
25 damage as a result of the offense committed by the respondent. In
26 addition, restitution may be ordered for loss or damage if the offender
27 pleads guilty to a lesser offense or fewer offenses and agrees with the
28 prosecutor's recommendation that the offender be required to pay
29 restitution to a victim of an offense or offenses which, pursuant to a
30 plea agreement, are not prosecuted.

31 (b) Restitution may include the costs of counseling reasonably
32 related to the offense.

33 (c) The payment of restitution shall be in addition to any
34 punishment which is imposed pursuant to the other provisions of this
35 chapter.

36 (d) The court may determine the amount, terms, and conditions of
37 the restitution including a payment plan extending up to ten years if

1 the court determines that the respondent does not have the means to
2 make full restitution over a shorter period. For the purposes of this
3 section, the respondent shall remain under the court's jurisdiction for
4 a maximum term of ten years after the respondent's eighteenth birthday
5 and, during this period, the restitution portion of the dispositional
6 order may be modified as to amount, terms, and conditions at any time.
7 Prior to the expiration of the ten-year period, the juvenile court may
8 extend the judgment for the payment of restitution for an additional
9 ten years. If the court grants a respondent's petition pursuant to
10 ((~~RCW 13.50.050(11)~~)) section 4 of this act, the court's jurisdiction
11 under this subsection shall terminate.

12 (e) Nothing in this section shall prevent a respondent from
13 petitioning the court pursuant to ((~~RCW 13.50.050(11)~~)) section 4 of
14 this act if the respondent has paid the full restitution amount stated
15 in the court's order and has met the statutory criteria.

16 (f) If the respondent participated in the crime with another person
17 or other persons, all such participants shall be jointly and severally
18 responsible for the payment of restitution.

19 (g) At any time, the court may determine that the respondent is not
20 required to pay, or may relieve the respondent of the requirement to
21 pay, full or partial restitution to any insurance provider authorized
22 under Title 48 RCW if the respondent reasonably satisfies the court
23 that he or she does not have the means to make full or partial
24 restitution to the insurance provider and could not reasonably acquire
25 the means to pay the insurance provider the restitution over a ten-year
26 period.

27 (2) Regardless of the provisions of subsection (1) of this section,
28 the court shall order restitution in all cases where the victim is
29 entitled to benefits under the crime victims' compensation act, chapter
30 7.68 RCW. If the court does not order restitution and the victim of
31 the crime has been determined to be entitled to benefits under the
32 crime victims' compensation act, the department of labor and
33 industries, as administrator of the crime victims' compensation
34 program, may petition the court within one year of entry of the
35 disposition order for entry of a restitution order. Upon receipt of a
36 petition from the department of labor and industries, the court shall
37 hold a restitution hearing and shall enter a restitution order.

1 (3) If an order includes restitution as one of the monetary
2 assessments, the county clerk shall make disbursements to victims named
3 in the order. The restitution to victims named in the order shall be
4 paid prior to any payment for other penalties or monetary assessments.

5 (4) For purposes of this section, "victim" means any person who has
6 sustained emotional, psychological, physical, or financial injury to
7 person or property as a direct result of the offense charged. "Victim"
8 may also include a known parent or guardian of a victim who is a minor
9 child or is not a minor child but is incapacitated, incompetent,
10 disabled, or deceased.

11 (5) A respondent under obligation to pay restitution may petition
12 the court for modification of the restitution order.

13 **Sec. 8.** RCW 13.50.100 and 2013 c 23 s 7 are each amended to read
14 as follows:

15 (1) This section governs records not covered by RCW 13.50.050 and
16 sections 4 and 5 of this act.

17 (2) Records covered by this section shall be confidential and shall
18 be released only pursuant to this section and RCW 13.50.010.

19 (3) Records retained or produced by any juvenile justice or care
20 agency may be released to other participants in the juvenile justice or
21 care system only when an investigation or case involving the juvenile
22 in question is being pursued by the other participant or when that
23 other participant is assigned the responsibility of supervising the
24 juvenile. Records covered under this section and maintained by the
25 juvenile courts which relate to the official actions of the agency may
26 be entered in the statewide judicial information system. However,
27 truancy records associated with a juvenile who has no other case
28 history, and records of a juvenile's parents who have no other case
29 history, shall be removed from the judicial information system when the
30 juvenile is no longer subject to the compulsory attendance laws in
31 chapter 28A.225 RCW. A county clerk is not liable for unauthorized
32 release of this data by persons or agencies not in his or her employ or
33 otherwise subject to his or her control, nor is the county clerk liable
34 for inaccurate or incomplete information collected from litigants or
35 other persons required to provide identifying data pursuant to this
36 section.

1 (4) Subject to (a) of this subsection, the department of social and
2 health services may release information retained in the course of
3 conducting child protective services investigations to a family or
4 juvenile court hearing a petition for custody under chapter 26.10 RCW.

5 (a) Information that may be released shall be limited to
6 information regarding investigations in which: (i) The juvenile was an
7 alleged victim of abandonment or abuse or neglect; or (ii) the
8 petitioner for custody of the juvenile, or any individual aged sixteen
9 or older residing in the petitioner's household, is the subject of a
10 founded or currently pending child protective services investigation
11 made by the department subsequent to October 1, 1998.

12 (b) Additional information may only be released with the written
13 consent of the subject of the investigation and the juvenile alleged to
14 be the victim of abandonment or abuse and neglect, or the parent,
15 custodian, guardian, or personal representative of the juvenile, or by
16 court order obtained with notice to all interested parties.

17 (5) Any disclosure of records or information by the department of
18 social and health services pursuant to this section shall not be deemed
19 a waiver of any confidentiality or privilege attached to the records or
20 information by operation of any state or federal statute or regulation,
21 and any recipient of such records or information shall maintain it in
22 such a manner as to comply with such state and federal statutes and
23 regulations and to protect against unauthorized disclosure.

24 (6) A contracting agency or service provider of the department of
25 social and health services that provides counseling, psychological,
26 psychiatric, or medical services may release to the office of the
27 family and children's ombuds information or records relating to
28 services provided to a juvenile who is dependent under chapter 13.34
29 RCW without the consent of the parent or guardian of the juvenile, or
30 of the juvenile if the juvenile is under the age of thirteen years,
31 unless such release is otherwise specifically prohibited by law.

32 (7) A juvenile, his or her parents, the juvenile's attorney, and
33 the juvenile's parent's attorney, shall, upon request, be given access
34 to all records and information collected or retained by a juvenile
35 justice or care agency which pertain to the juvenile except:

36 (a) If it is determined by the agency that release of this
37 information is likely to cause severe psychological or physical harm to
38 the juvenile or his or her parents the agency may withhold the

1 information subject to other order of the court: PROVIDED, That if the
2 court determines that limited release of the information is
3 appropriate, the court may specify terms and conditions for the release
4 of the information; or

5 (b) If the information or record has been obtained by a juvenile
6 justice or care agency in connection with the provision of counseling,
7 psychological, psychiatric, or medical services to the juvenile, when
8 the services have been sought voluntarily by the juvenile, and the
9 juvenile has a legal right to receive those services without the
10 consent of any person or agency, then the information or record may not
11 be disclosed to the juvenile's parents without the informed consent of
12 the juvenile unless otherwise authorized by law; or

13 (c) That the department of social and health services may delete
14 the name and identifying information regarding persons or organizations
15 who have reported alleged child abuse or neglect.

16 (8) A juvenile or his or her parent denied access to any records
17 following an agency determination under subsection (7) of this section
18 may file a motion in juvenile court requesting access to the records.
19 The court shall grant the motion unless it finds access may not be
20 permitted according to the standards found in subsection (7)(a) and (b)
21 of this section.

22 (9) The person making a motion under subsection (8) of this section
23 shall give reasonable notice of the motion to all parties to the
24 original action and to any agency whose records will be affected by the
25 motion.

26 (10) Subject to the rules of discovery in civil cases, any party to
27 a proceeding seeking a declaration of dependency or a termination of
28 the parent-child relationship and any party's counsel and the guardian
29 ad litem of any party, shall have access to the records of any natural
30 or adoptive child of the parent, subject to the limitations in
31 subsection (7) of this section. A party denied access to records may
32 request judicial review of the denial. If the party prevails, he or
33 she shall be awarded attorneys' fees, costs, and an amount not less
34 than five dollars and not more than one hundred dollars for each day
35 the records were wrongfully denied.

36 (11) No unfounded allegation of child abuse or neglect as defined
37 in RCW 26.44.020(1) may be disclosed to a child-placing agency, private
38 adoption agency, or any other licensed provider."

ADOPTED 03/07/2014

1 On page 1, line 1 of the title, after "records;" strike the
2 remainder of the title and insert "amending RCW 13.50.010, 13.50.050,
3 13.40.127, 13.40.190, and 13.50.100; adding new sections to chapter
4 13.50 RCW; and creating a new section."

EFFECT: (1) Removes the provisions designating juvenile records as confidential.

(2) Specifies that courts shall hold regular sealing hearings, during which a court shall administratively seal an eligible juvenile court record unless the court receives an objection to sealing or the court notes a compelling reason not to seal, in which case, the court shall conduct a contested hearing on the record.

(3) Specifies that a court shall schedule a sealing hearing at disposition for the later of a juvenile's 18th birthday, the completion of probation, or the completion of a JRA confinement or parole, whichever is later.

(4) A sealed juvenile record is not admissible in an action for liability against an employer based on the former juvenile offender's conduct to show that the employer knew or should have known of the juvenile record of the employee.

(5) Specifies that a court shall seal the juvenile court record if the crime is not a most serious offense, sex offense, or felony drug offense and the respondent has complied with the conditions of disposition, including affirmative conditions and financial obligations.

(6) The respondent and his or her attorney must be given at least 18 days' notice of any contested sealing hearing and an opportunity to respond, but his or her presence at any sealing hearing is not required.

(7) Requires that the court immediately seal a juvenile court file upon acquittal or dismissal of charges.

(8) Specifies that 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.

--- END ---