

HOUSE BILL REPORT

2SHB 1651

As Amended by the Senate

Title: An act relating to access to juvenile records.

Brief Description: Concerning access to juvenile records.

Sponsors: House Committee on Appropriations Subcommittee on General Government & Information Technology (originally sponsored by Representatives Kagi, Walsh, Freeman, Roberts, Farrell, Zeiger, Goodman, Pollet, Sawyer, Appleton, Bergquist, S. Hunt, Moscoso, Jinkins, Ryu and Morrell).

Brief History:

Committee Activity:

Early Learning & Human Services: 2/12/13, 2/22/13 [DPS].

Appropriations Subcommittee on General Government & Information Technology:
2/25/13 [DPS(ELHS)], 1/29/14 [DP2S].

Floor Activity:

Passed House: 3/6/13, 97-0.

Floor Activity:

Passed House: 2/14/14, 96-0.

Senate Amended.

Passed Senate: 3/7/14, 48-0.

Brief Summary of Second Substitute Bill

- Provides that juvenile offender records are confidential unless the juvenile has been adjudicated for a sex offense, a serious violent offense, or the offenses of Arson in the first degree, Kidnapping in the second degree, Assault of a Child in the second degree, Malicious Placement of an Explosive, or Leading Organized Crime; the court may release juvenile records for inspection upon good cause shown.
- Provides that confidential juvenile offender records may not be published, distributed, or sold.
- Provides that the provisions of the act are prospective and retrospective; and the act takes effect on the date that the Administrative Office of the Courts fully implements a court data system that allows juvenile records to be categorized as confidential.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

HOUSE COMMITTEE ON APPROPRIATIONS SUBCOMMITTEE ON GENERAL GOVERNMENT & INFORMATION TECHNOLOGY

Majority Report: The second substitute bill be substituted therefor and the second substitute bill do pass. Signed by 7 members: Representatives Hudgins, Chair; Parker, Ranking Minority Member; Buys, Dunshee, S. Hunt, Jinkins and Springer.

Minority Report: Do not pass. Signed by 2 members: Representatives Christian and Taylor.

Staff: Alex MacBain (786-7288).

Background:

Juvenile Offender Records.

Since 1977 juvenile offender records have been public unless sealed in accordance with statutory requirements. Nonoffender juvenile records, such as records in a dependency matter or adoption, are not open to public inspection.

The requirements for sealing juvenile records have changed since the records became public. The most stringent requirements were imposed in 1997 when class A felonies and sex offenses could not be sealed, and a person seeking to seal a juvenile class B felony was required to remain in the community without any further offenses for 10 years, along with the payment of any restitution ordered. A person seeking to seal a juvenile class C felony was required to wait five years, in addition to any restitution. In 2011 and 2010 the Legislature amended the sealing statutes to allow the records for class A felonies and sex offenses to be sealed. Before any juvenile offender record may be sealed, the person who is the subject of the record must not have any pending diversions or criminal charges. He or she must have been relieved of the duty to register as a sex offender and must have paid in full any restitution ordered by the court. Depending upon the offense, the person seeking to seal his or her records must have spent a minimum period of time in the community after being released from confinement without any new offenses, as follows:

<i>Offense Type</i>	<i>Years in Community without a New Offense</i>
Class A Felony	Five years, unless the offense was Rape in the first degree, Rape in the second degree, or Indecent Liberties with Forcible Compulsion.
Sex Offense May only be sealed if a court has relieved the juvenile of the duty to register as a sex offender. (Juvenile convictions for Rape in the first degree, Rape in the second degree, or Indecent Liberties with Forcible Compulsion may not be sealed.)	For class A juvenile sex offenses, committed when the juvenile was 15 years or older, the individual must be in the community five years without conviction of additional sex or kidnapping offenses before he or she may petition to be relieved of the duty to register. For all other offenses, the person must be in the community two years without conviction of additional sex or kidnapping offenses before

	petitioning the court to be relieved of the duty to register.
Class B Felony	Two years.
Class C Felony	Two years.
Gross Misdemeanors	Two years.
Misdemeanors	Two years.
Diversions	Two years.

Serious Violent Offenses.

A "serious violent offense" is a subcategory of violent offenses, and includes the following offenses as well as an attempt, solicitation, or conspiracy to commit such offense:

- Murder in the first degree;
- Homicide by Abuse;
- Murder in the second degree;
- Manslaughter in the first degree;
- Assault in the first degree;
- Kidnapping in the first degree;
- Rape in the first degree; or
- Assault of a Child in the first degree.

Consumer Reporting Agencies.

In 2011 the Legislature enacted Substitute House Bill 1793 which prohibited consumer reporting agencies from including in their reports the juvenile record of a person, age 21 or older, at the time that the report is made.

Summary of Second Substitute Bill:

Juvenile Offender Records Classified as Confidential.

Juvenile offender records are confidential unless the juvenile has been adjudicated of a sex offense for which registration is required, a serious violent offense or one of the following offenses:

- Arson in the first degree;
- Kidnapping in the second degree
- Assault of a Child in the second degree;
- Malicious Placement of an Explosive; or
- Leading Organized Crime.

The provisions regarding the confidentiality of juvenile records apply prospectively and retroactively to all existing juvenile court files of any alleged or proven juvenile offender.

Access to confidential juvenile offender records is limited to the court, the prosecuting attorney, the parties and their attorneys, and juvenile justice or care agencies. The juvenile justice or care agencies, such as law enforcement, diversion units or the Department of Social and Health Services and its contractors, may have access only when an investigation or case is being pursued by such agency or the agency is responsible for supervising the juvenile who is the subject of the records. Access to records for research and data gathering purposes is not affected.

Hearing to Open Records to Public.

Upon the application of an interested party, and after a hearing with notice to all parties, the court may, for good cause shown, release to the petitioner individual records, reports, or certain information contained in the juvenile file. The release of information in the file must be limited to the specific purpose expressly ordered by the court upon the following findings:

- anyone present when the motion to open the juvenile records was heard had an opportunity to address the motion;
- the court has weighed the competing privacy interests of the juvenile with the interests identified by the petitioners as they apply to the specific court record, with the presumption in favor of confidentiality;
- the court has determined that a compelling reason exists for the requested inspection and that the release or disclosure is necessary for the protection of a compelling public or private interest; and
- the order of the court is not broader in application or duration than necessary.

Access to Confidential Juvenile Offender Records.

Confidential juvenile offense records that are maintained by the court, law enforcement, state agencies, or the prosecutor's office may not be published, distributed, or sold. The prohibition against publication, distribution, or sale does not affect or prevent the use of a juvenile offender's prior adjudication in later juvenile or adult offender proceedings.

Effective Date.

The bill takes effect on the date that the Administrative Office of the Courts (AOC) fully implements a court data system that allows juvenile records to be categorized as confidential. The AOC must provide notice of the effective date to the Chief Clerk of the House of Representatives, the Secretary of the Senate, the Office of the Code Reviser, and others deemed appropriate by the Administrative Office of the Courts.

EFFECT OF SENATE AMENDMENT(S):

The amendment adopted in the Senate makes the following changes:

1. Removes the provisions designating juvenile records as confidential.
2. Specifies that courts 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. Requires that the respondent and his or her attorney 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.
4. 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.
5. Specifies that 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.
6. 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.
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.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The provisions take effect on the date that the Administrative Office of the Courts fully implements a court data system that allows juvenile records to be categorized as confidential.

Staff Summary of Public Testimony:

(In support) The bill unanimously passed the House of Representatives last year. The amendment will reduce the cost of the bill significantly by implementing the changes once the courts have upgraded their information technology system in 2018 or 2019. Washington is one of eight states that does not have juvenile records covered by confidentiality, and is one of three states that sell those juvenile records. The juvenile justice system is founded on the core principle of rehabilitation. When youth make serious mistakes, we hold them accountable and give them an opportunity to earn a fresh start after they restore the harm that has been done by their actions. Availability of juvenile offender records has an impact on the ability of youth to later get education, jobs, and housing. It reduces opportunity for the youth to succeed in life as well as to support their communities and the general economy. Public accessibility of juvenile offense records increases unemployment, trapping youth in a cycle of homelessness and poverty, and thus creating a drain on state and local resources. Accessibility also dramatically increases the chances of youth to re-enter the juvenile justice system or the adult criminal justice system. The impacts disproportionately fall on minorities. It takes time, money, and an attorney to get a record sealed. Only 6 percent of people eligible to have their records sealed do so because they either don't know that they can seal their records, or can't afford an attorney.

(Neutral) It would cost over \$500,000 to implement the engrossed substitute version of the bill, due to the cost of modifications that would be needed for the current outdated technology systems. The AOC is supportive of the amendment discussed by the committee that would substantially reduce the costs by making the bill effective when the courts fully implement a court data system that allows juvenile records to be categorized as confidential.

(With concerns) Newspapers report on these actions all the time. No names of juveniles are published unless the juvenile is declined to adult prosecution. For local jurisdictions there are potential high costs associated with moving cases between public status and confidential status if a case is charged as one of the listed crimes with a public status and adjudicated as a lesser charge. If the Legislature chooses to go forward with this bill, it should consider

alternatives such as making all class A felonies public in order to make it cheaper and clearer for court clerks. Additionally, the Legislature should consider some sort of mechanism that allows the dockets for juvenile offender cases to be followed.

(Opposed) There is a broad public interest in seeing that justice is administered fairly and equally. It is important that journalists have access to juvenile records. Access to court records is a constitutional right in Washington. Access insures that courts are held accountable to the people for their decisions and don't discriminate based on race, gender, national origin, economic status, or political connections. Sealing juvenile court records is not the right approach. A better approach would be to make discriminating against former juvenile offenders a violation of the discrimination laws which would allow complaints of such a violation to be enforced by the Human Rights Commission. Secrecy in the court system is not solution to the problem of discrimination against former juvenile offenders. Landlords are responsible for the health, welfare, and safety of tenants on their properties. Best practices in the industry are to get all the available public information to determine a housing situation. There is a process in place now for sealing juvenile records.

Persons Testifying: (In support) Representative Kagi, prime sponsor; Sam Merrill, Friends Committee on Washington Public Policy; Jill Malat, Columbia Legal Service; Terri Stewart, Youth Chaplaincy Coalition; Chris Kaasa, American Civil Liberties Union of Washington; Terry Pottmeyer; Sue Steinman; Bailey Stober; and Seth Dawson, YouthCare.

(Neutral) Ramsey Radwan, Administrative Office of the Courts.

(With concerns) Rowland Thompson, Allied Daily Newspapers.

(Opposed) Toby Nixon, Washington Coalition for Open Government; Bill Will, Washington Newspaper Publishers Association; Chester Baldwin, Washington Apartment Association; and John Woodring, Rental Housing Association.

Persons Signed In To Testify But Not Testifying: None.