

SENATE BILL REPORT

ESHB 1651

As Reported by Senate Committee On:
Human Services & Corrections, March 28, 2013
Ways & Means, April 8, 2013

Title: An act relating to access to juvenile records.

Brief Description: Concerning access to juvenile records.

Sponsors: House Committee on Early Learning & Human Services (originally sponsored by Representatives Kagi, Walsh, Freeman, Roberts, Farrell, Zeiger, Goodman, Pollet, Sawyer, Appleton, Bergquist, Hunt, Moscoso, Jinkins, Ryu and Morrell).

Brief History: Passed House: 3/06/13, 97-0.

Committee Activity: Human Services & Corrections: 3/19/13, 3/28/13 [DPA-WM].
Ways & Means: 4/08/13 [DPA, DNP, w/oRec].

SENATE COMMITTEE ON HUMAN SERVICES & CORRECTIONS

Majority Report: Do pass as amended and be referred to Committee on Ways & Means.

Signed by Senators Pearson, Vice Chair; Darneille, Ranking Member; Baumgartner, Hargrove, Harper and Padden.

Staff: Shani Bauer (786-7468)

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: Do pass as amended.

Signed by Senators Hill, Chair; Baumgartner, Vice Chair; Hargrove, Ranking Member; Nelson, Assistant Ranking Member; Bailey, Conway, Fraser, Hasegawa, Hatfield, Keiser, Kohl-Welles, Murray, Padden, Ranker, Rivers and Tom.

Minority Report: Do not pass.

Signed by Senator Honeyford, Capital Budget Chair.

Minority Report: That it be referred without recommendation.

Signed by Senators Becker, Braun, Dammeier, Parlette and Schoesler.

Staff: Dianne Criswell (786-7433)

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.

Background: In 1977, the Legislature passed HB 371 that made juvenile offender records accessible to the public. Under current law, a person may seal their juvenile record if the person meets certain criteria. The criteria for sealing juvenile records since 1977 gradually became more stringent until 1997. Since 2004, the Legislature has enacted provisions that decrease the amount of time a person must wait before being eligible to have a juvenile record sealed and has allowed more serious offenses to be sealed.

Before a juvenile offender record may be sealed, the person must not have any pending diversion or criminal charges, must be relieved of any duty to register as a sex offender, and must pay any restitution ordered in full. The person must have also spent a specified period of time in the community without committing a new offense: five years for a class A felony and two years for other felonies, misdemeanors, and diversions.

In 2011, the Legislature established the Joint Legislative Task Force on Juvenile Record Sealing (Task Force) to:

- determine how to cost-effectively restrict public access to juvenile records when an individual meets statutory criteria without requiring a motion in court;
- determine whether and how to restrict access to diversion records; and
- address other juvenile criminal record access issues that may arise during the work of the Task Force.

The Task Force completed its report in December 2012. The Task Force explored several alternatives and options but did not come to consensus recommendations.

Serious violent offenses are defined in the Sentencing Reform Act to include murder 1 and 2, homicide by abuse, manslaughter 1, assault 1, kidnapping 1, rape 1, assault of a child 1, or an attempt to commit any of those crimes.

Summary of Bill (Recommended Amendments): Court records and public court indices containing nonadjudication or nonconviction information relating to the commission of juvenile offenses are restricted from public access. Nonadjudication or nonconviction information means information contained in records collected by the courts relating to arrest, probable cause hearings, citation, and charges that did not lead to an adjudication; charges resulting in a dismissal or acquittal; and charges dismissed pursuant to a diversion or deferred sentence. All other juvenile court records remain open for public access.

The restriction on nonadjudication or nonconviction information does not limit access by agencies for research purposes. All provisions apply prospectively and retroactively.

EFFECT OF CHANGES MADE BY WAYS & MEANS COMMITTEE (Recommended Amendments): If specific funding is not provided in the budget, the act is null and void.

EFFECT OF CHANGES MADE BY HUMAN SERVICES & CORRECTIONS COMMITTEE (Recommended Amendments): Court records containing nonadjudication or nonconviction information relating to the commission of juvenile offenses are restricted from public access. Nonadjudication or nonconviction information is defined to include arrest and probable cause records that did not lead to a conviction, charges resulting in a dismissal or acquittal, and charges dismissed pursuant to a diversion. The restriction on

nonadjudication or nonconviction information does not limit access by agencies for research purposes.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

Effective Date: The bill takes effect on July 1, 2014.

Staff Summary of Public Testimony on Engrossed Substitute House Bill (Human Services & Corrections): PRO: This bill only impacts the confidentiality of records. Juvenile proceedings themselves are still open to the public and therefore subject to public accountability. Open records for juveniles have implications for housing, employment, and the future success of our youth. The House accepted five amendments to address concerns of housing providers and, as a result, the bill passed out of the House unanimously. This bill strikes a good balance between public safety and allowing youth to move on with their lives. Provisions in the bill that preserve open records for data-gathering purposes further ensures accountability. Specific case names are not needed to ensure that the justice system is working appropriately. Approximately 27,500 young people have their records sold to background check companies every year. A childhood mistake should not turn into a life sentence. This issue also has a disproportionate impact on youth of color. We should want youth to grow up to obtain employment and housing and become contributing taxpayers. We want to remove the sense of helplessness that youth feel when they cannot move forward because of their record. Our current system is not working to rehabilitate kids or get them back on the right track. This runs contrary to the message of opportunity and success.

Principals differentiating differences between adults and youth date back 100 years, even before all of the recent research regarding brain development. Few people have the sophistication to hire an attorney or navigate the court system in order to get a record sealed. Even then, sealing a record does not ensure that the information has not already been disseminated into the public forum. How does the state expect restitution to be paid when the juvenile has no ability to become employed? It is impossible for a juvenile to rehabilitate when we let their record follow them into adulthood. The Legislature determined that certain classes of cases are appropriately exempt from public dissemination, including records of dependency cases, status offenses, and mental health cases. The Legislature can therefore determine that juvenile records are appropriate for confidentiality as well. The court specifically stated that the Ishikawa factors do not apply to juvenile cases.

CON: Our state is distinguished by the very strong provision in our constitution which states that justice must be administered openly. It is not sufficient to require the public to go to the courthouse to observe these processes. We agree that discrimination against youth on the basis of a juvenile record is inappropriate. The right thing to do is to amend the law regarding discrimination and prevent discrimination on the basis of that juvenile record. That is a better solution than eliminating all public access to juvenile records. This legislation asks the citizens of this state to take a very large leap of faith that we trust the judicial system to always do the right thing. Records are not sold. Companies that acquire these records

enter into contracts with the courts in order to be able to gather records in a systematic fashion without interfering with the court's business. The payments are to reimburse the state for the cost of accessing the system. Landlords use this information to protect the health, safety, and welfare of their tenants. A best practice for landlords is to gather all of the information in the public realm to assist in decision making. The wholesale sealing of an entire class of records is not appropriate. Mechanisms already exist in the law for individual sealing. For the last 35 years, these records have been open to public. Sealing requires that the court balance competing interests utilizing the Ishikawa factors.

OTHER: Given the current structural changes going on with the judicial information system, it would be better if the timing of these provisions coincided with when the new case management system becomes available. We have major concerns as to the ability to implement this law in the current system. This bill represents a complete departure from the platform the current system was built on. This would require 4300 hours and two years of work at a cost of over \$500,000. The good news is that we are entering into a contract with a company to build a new system. The system will take two to five years to get off the ground. It would make sense to include these provisions in the new system.

Persons Testifying (Human Services & Corrections): PRO: Representative Kagi, prime sponsor; Priya Rai, Jane Schroeder, University of WA Law Children and Youth Legislative Advocacy Clinic; Adrian Diaz, Seattle Police; Starcia Ague, University of WA Dept. of Psychiatry and Behavioral Sciences; Laura Inveen, Superior Court Judges Assn.; Dominique Davis, 180 Program; Ed Prince, WA State Commission on African American Affairs; Sara Franklin, Daniel Bryner, Sue Steinman, citizens.

CON: Toby Nixon, WA Coalition for Open Government; Bill Will, WA Newspaper Publishers Assn.; Kyle Woodring, Rental Housing Assn. of WA; Chester Baldwin, WA Apartment Assn.; Rowland Thompson, Allied Daily Newspapers of WA.

OTHER: Mellani McAleenan, Board for Judicial Administration.

Staff Summary of Public Testimony on the Companion Senate Bill 5689 (Ways & Means): PRO: Increasing public access to these records is trapping youth in poverty. Even if charges are dismissed, arrest records create disadvantages in the job market, in education, and in housing. Removing barriers to self sufficiency will save public resources. Diversions are already expunged from these records. There are concerns about the fiscal note on the bill as introduced, as well as the substitute bill. The costs are larger than were estimated on similar proposals last year.

CON: Local courts should be concerned about the potential costs of implementing the requirements in the substitute bill. Landlords do background checks because they have a duty to protect the health, welfare, and safety of their tenants. Publicly available information should not be limited.

Persons Testifying (Ways & Means): PRO: Jane Schroeder, Briya Rai, University of WA Law Children and Youth Legislative Advocacy Clinic.

CON: Rowland Thompson, Allied Daily Newspapers; Chester Baldwin, WA Apartment Assn.; Kyle Woodring, Rental Housing Assn.