

SENATE BILL REPORT

2SHB 1651

As Reported by Senate Committee On:
Human Services & Corrections, February 28, 2014

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

Committee Activity: Human Services & Corrections: 2/24/14, 2/28/14 [DPA, w/oRec].

SENATE COMMITTEE ON HUMAN SERVICES & CORRECTIONS

Majority Report: Do pass as amended.

Signed by Senators O'Ban, Chair; Darneille, Ranking Member; Hargrove and Padden.

Minority Report: That it be referred without recommendation.

Signed by Senator Pearson, Vice Chair.

Staff: Shani Bauer (786-7468)

Background: In 1977 the Legislature passed HB 371 which 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.

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.

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): 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 a sex offense, serious violent offense, or one of the following offenses:

- arson in the first degree;
- criminal solicitation or conspiracy to commit arson in the first degree;
- assault of a child in the second degree;
- kidnapping in the second degree;
- leading organized crime; or
- malicious placement of an explosive in the first degree.

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 the competing privacy interests of the juvenile with the interests identified by the person opposed to sealing or with another compelling reason identified by the court, with a presumption in favor of sealing. The respondent and the respondent's attorney must be given notice and an opportunity to respond to any objection. The respondent's presence at the administrative sealing hearing is not required.

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.

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.

The Caseload Forecast Council may share information with the Administrative Office of the Courts 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.

EFFECT OF CHANGES MADE BY HUMAN SERVICES & CORRECTIONS COMMITTEE (Recommended Amendments): Provisions designating juvenile records as

confidential are removed. 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. 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. 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. 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. 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.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

Effective Date: The bill takes effect on the date the AOC implements a new court data system for juvenile records.

Staff Summary of Public Testimony:

Testimony From 2013 Regular Session on Engrossed Substitute House Bill.

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.

Testimony From 2014 Regular Session on Second Substitute House Bill.

PRO: This bill provides juveniles with the ability to move on and lead productive lives, get an education, and obtain a job. Washington's system is contrary to the practice in 42 other states that seal or vacate juvenile records. In many other states, records are confidential for all but capital crimes. The court or law enforcement is directed to respond that no record exists. Additionally many mental health records are closed. When a juvenile commits a crime, the question is whether they should have to carry that crime for the rest of their lives. This is a balance of open government and the ability of juveniles to move forward. The long-term ramifications of keeping records open is very serious. Juveniles by their very nature enter the system when they are the most capable of change and rehabilitation. The juvenile court system was created to hold them accountable while teaching them socially acceptable behavior. The goal is to reduce recidivism. This bill is consistent with that philosophy.

The current mechanism in place to seal records is broken. Volunteer attorneys cannot meet the need. Statistics show that 94 percent of juvenile cases are eligible to be sealed, yet only 6 percent are actually sealed by the court. The ones that do get sealed are overwhelmingly

white. Commercial data mining companies hold the records and do not purge them when records are sealed. There is no accountability for those companies that distribute records to the public. The records become a barrier for housing, employment, and educational opportunities.

Law enforcement solves crime based on evidence, not juvenile records. Ninety-five percent of offenses are nonviolent. If this is a true public safety concern, landlords should stop renting to individuals from other states because juvenile records are not available from other states. Landlords are not trained to read these records and deny housing to anyone with a criminal indicator including those who have been acquitted. Federally regulated agencies do not have an interest in these records and we do not think landlords should either.

Designating juvenile records as confidential is not unconstitutional. Washington had closed records for many years until juvenile justice reform was passed. This bill still allows access to aggregated information for research. Proceedings are also open for attendance to the public and the press. If that is not enough, a person of interest can petition the court for access for good cause.

CON: Landlords have a responsibility to protect tenants from guns, assaults, and gang activity. Legislation in the last few years has increased those duties. Sealing juvenile records works at cross purposes to this goal by not allowing landlords to adequately screen tenants. This is a slippery slope and we see other inroads in the Legislature attempting to limit the availability of non-conviction records and domestic violence records. Denial of an entire category of records is unconstitutional. We feel that a case-by-case determination would be the best solution. In balancing competing interests, the Legislature also needs to consider the need for public accountability. The press serves the interest of public accountability and making sure the juvenile justice system is doing what it is supposed to do. We need to explore alternatives before taking the radical step of designating files as confidential. This step puts you in conflict with a number of other statutes that require background checks for certain types of positions. Sealing is the best way to do this. It puts the decision in a judge's hands to determine on a case-by-case basis.

Persons Testifying:

Persons Testifying From 2013 Regular Session.

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.

Persons Testifying From 2014 Regular Session.

PRO: Representative Kagi, prime sponsor; Mary Yu, Superior Court Judges Assn.; Kim Ambrose, Professor, University of WA Law School; Casey Trupin, attorney, Columbia Legal Services; Sara Franklin, Commission on African American Affairs; Shawn Ledford, Chief of Police, Shoreline Police Dept.; Paul Benz, Faith Action Network; Mary Lou Dickerson, Children's Campaign Fund; Rev. Terri Stewart, Youth Chaplaincy Coalition; Rosa Franklin, former Senator, WA State Legislature; Seth Dawson, Youthcare; Jane Schroeder, University of WA School of Law, Child and Youth Advocacy Clinic; Chris Kaasa, American Civil Liberties Union of WA.

CON: John Woodring, Residential Housing Assn.; Bill Will, WA Newspaper Publishers Assn.; Rowland Thompson, Allied Daily Newspapers of WA; Angie Bonner, citizen.