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**SUBSTITUTE SENATE BILL 5689**

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**State of Washington                      63rd Legislature                      2013 Regular Session**

**By** Senate Human Services & Corrections (originally sponsored by Senator Darneille)

READ FIRST TIME 02/21/13.

1            AN ACT Relating to access to juvenile records; amending RCW  
2 13.50.050; creating new sections; and providing an effective date.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4            NEW SECTION.    **Sec. 1.** The legislature finds that:

5            (1) The primary goal of the Washington state juvenile justice  
6 system is the rehabilitation and reintegration of former juvenile  
7 offenders. The public has a compelling interest in the rehabilitation  
8 of former juvenile offenders and their successful reintegration into  
9 society as active, law-abiding, and contributing members of their  
10 communities. When juvenile court records that do not result in  
11 adjudication or conviction are publicly available, former juvenile  
12 offenders face a substantial barrier to reintegration, as they are  
13 denied housing, employment, and education opportunities on the basis of  
14 these records.

15            (2) The Washington state Constitution establishes that the public  
16 has the right to an open court system. However, the public's right of  
17 access to court records is not absolute and may be limited to protect  
18 other interests. The legislature intends that juvenile court

1 proceedings be openly administered but that the records of these  
2 proceedings that do not result in an adjudication or conviction be  
3 presumptively closed and not disseminated.

4 (3) Given the rehabilitative goals of the juvenile justice system,  
5 the scientifically documented differences between the brain development  
6 of juveniles and adults, and the differences between the structure and  
7 goals of the juvenile justice system and the adult criminal justice  
8 system, the legislature declares that it is the policy of the state of  
9 Washington that the interest in juvenile rehabilitation and  
10 reintegration constitutes compelling circumstances that outweigh the  
11 public interest in continued availability of juvenile court records  
12 that do not result in adjudication or conviction.

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

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

17 (2) Court records and public court indices containing  
18 nonadjudication or nonconviction information relating to the commission  
19 of juvenile offenses are restricted from public access.

20 (3) For the purposes of this section, nonadjudication or  
21 nonconviction information means information contained in records  
22 collected by the courts relating to:

23 (a) Arrest, probable cause hearings, citation, charge, and service  
24 of warrant relating to an incident that did not lead to an adjudication  
25 and proceedings are no longer actively pending. There shall be a  
26 rebuttable presumption that proceedings are no longer actively pending  
27 if more than one year has elapsed since arrest, citation, charge, or  
28 service of warrant and no disposition has been entered;

29 (b) Charges resulting in a dismissal;

30 (c) Charges resulting in acquittal;

31 (d) Convictions after clemency has been granted;

32 (e) Charges dismissed under a stipulated order of continuance or  
33 similar agreement;

34 (f) Charges dismissed pursuant to a diversion or deferred sentence;

35 (g) Charges dismissed on forfeiture of bail other than in traffic,  
36 hunting, and fishing cases.

1        (4) Except as provided in subsection (2) of this section, the  
2 official juvenile court file of any alleged or proven juvenile offender  
3 shall be open to public inspection, unless sealed pursuant to  
4 subsection ~~((+12))~~ (14) of this section.

5        ~~((+3))~~ (5) All records ~~((other than))~~ retained or produced, which  
6 are not part of the official juvenile court file, are confidential and  
7 may be released only as provided in this section, RCW 13.50.010,  
8 13.40.215, and 4.24.550.

9        ~~((+4))~~ (6) Except as otherwise provided in this section and RCW  
10 13.50.010, records retained or produced by any juvenile justice or care  
11 agency may be released to other participants in the juvenile justice or  
12 care system only when an investigation or case involving the juvenile  
13 in question is being pursued by the other participant or when that  
14 other participant is assigned the responsibility for supervising the  
15 juvenile.

16        ~~((+5))~~ (7) Except as provided in RCW 4.24.550, information not in  
17 an official juvenile court file concerning a juvenile or a juvenile's  
18 family may be released to the public only when that information could  
19 not reasonably be expected to identify the juvenile or the juvenile's  
20 family.

21        ~~((+6))~~ (8) Notwithstanding any other provision of this chapter,  
22 the release, to the juvenile or his or her attorney, of law enforcement  
23 and prosecuting attorneys' records pertaining to investigation,  
24 diversion, and prosecution of juvenile offenses shall be governed by  
25 the rules of discovery and other rules of law applicable in adult  
26 criminal investigations and prosecutions.

27        ~~((+7))~~ (9) Upon the decision to arrest or the arrest, law  
28 enforcement and prosecuting attorneys may cooperate with schools in  
29 releasing information to a school pertaining to the investigation,  
30 diversion, and prosecution of a juvenile attending the school. Upon  
31 the decision to arrest or the arrest, incident reports may be released  
32 unless releasing the records would jeopardize the investigation or  
33 prosecution or endanger witnesses. If release of incident reports  
34 would jeopardize the investigation or prosecution or endanger  
35 witnesses, law enforcement and prosecuting attorneys may release  
36 information to the maximum extent possible to assist schools in  
37 protecting other students, staff, and school property.

1       (~~(+8)~~) (10) The juvenile court and the prosecutor may set up and  
2 maintain a central recordkeeping system which may receive information  
3 on all alleged juvenile offenders against whom a complaint has been  
4 filed pursuant to RCW 13.40.070 whether or not their cases are  
5 currently pending before the court. The central recordkeeping system  
6 may be computerized. If a complaint has been referred to a diversion  
7 unit, the diversion unit shall promptly report to the juvenile court or  
8 the prosecuting attorney when the juvenile has agreed to diversion. An  
9 offense shall not be reported as criminal history in any central  
10 recordkeeping system without notification by the diversion unit of the  
11 date on which the offender agreed to diversion.

12       (~~(+9)~~) (11) Upon request of the victim of a crime or the victim's  
13 immediate family, the identity of an alleged or proven juvenile  
14 offender alleged or found to have committed a crime against the victim  
15 and the identity of the alleged or proven juvenile offender's parent,  
16 guardian, or custodian and the circumstance of the alleged or proven  
17 crime shall be released to the victim of the crime or the victim's  
18 immediate family.

19       (~~(+10)~~) (12) Subject to the rules of discovery applicable in adult  
20 criminal prosecutions, the juvenile offense records of an adult  
21 criminal defendant or witness in an adult criminal proceeding shall be  
22 released upon request to prosecution and defense counsel after a charge  
23 has actually been filed. The juvenile offense records of any adult  
24 convicted of a crime and placed under the supervision of the adult  
25 corrections system shall be released upon request to the adult  
26 corrections system.

27       (~~(+11)~~) (13) In any case in which an information has been filed  
28 pursuant to RCW 13.40.100 or a complaint has been filed with the  
29 prosecutor and referred for diversion pursuant to RCW 13.40.070, the  
30 person the subject of the information or complaint may file a motion  
31 with the court to have the court vacate its order and findings, if any,  
32 and, subject to subsection (~~(+23)~~) (25) of this section, order the  
33 sealing of the official juvenile court file, the social file, and  
34 records of the court and of any other agency in the case.

35       (~~(+12)~~) (14)(a) The court shall not grant any motion to seal  
36 records for class A offenses made pursuant to subsection (~~(+11)~~) (13)  
37 of this section that is filed on or after July 1, 1997, unless:

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

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;

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

16 (vi) Full restitution has been paid.

17 (b) The court shall not grant any motion to seal records for class  
18 B, C, gross misdemeanor and misdemeanor offenses and diversions made  
19 under subsection (~~((11))~~) (13) of this section unless:

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

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

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

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

32 (v) Full restitution has been paid.

33 (c) Notwithstanding the requirements in (a) or (b) of this  
34 subsection, the court shall grant any motion to seal records of any  
35 deferred disposition vacated under RCW 13.40.127(9) prior to June 7,  
36 2012, if restitution has been paid and the person is eighteen years of  
37 age or older at the time of the motion.

1           (~~(+13)~~) (15) The person making a motion pursuant to subsection  
2           (~~(+11)~~) (13) of this section shall give reasonable notice of the  
3 motion to the prosecution and to any person or agency whose files are  
4 sought to be sealed.

5           (~~(+14)~~) (16)(a) If the court grants the motion to seal made  
6 pursuant to subsection (~~(+11)~~) (13) of this section, it shall, subject  
7 to subsection (~~(+23)~~) (25) of this section, order sealed the official  
8 juvenile court file, the social file, and other records relating to the  
9 case as are named in the order. Thereafter, the proceedings in the  
10 case shall be treated as if they never occurred, and the subject of the  
11 records may reply accordingly to any inquiry about the events, records  
12 of which are sealed. Any agency shall reply to any inquiry concerning  
13 confidential or sealed records that records are confidential, and no  
14 information can be given about the existence or nonexistence of records  
15 concerning an individual.

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

25           (~~(+15)~~) (17) Inspection of the files and records included in the  
26 order to seal may thereafter be permitted only by order of the court  
27 upon motion made by the person who is the subject of the information or  
28 complaint, except as otherwise provided in RCW 13.50.010(8) and  
29 subsection (~~(+23)~~) (25) of this section.

30           (~~(+16)~~) (18) Any adjudication of a juvenile offense or a crime  
31 subsequent to sealing has the effect of nullifying the sealing order.  
32 Any charging of an adult felony subsequent to the sealing has the  
33 effect of nullifying the sealing order for the purposes of chapter  
34 9.94A RCW. The administrative office of the courts shall ensure that  
35 the superior court judicial information system provides prosecutors  
36 access to information on the existence of sealed juvenile records.

37           (~~(+17)~~) (19)(a)(i) Subject to subsection (~~(+23)~~) (25) of this  
38 section, all records maintained by any court or law enforcement agency,

1 including the juvenile court, local law enforcement, the Washington  
2 state patrol, and the prosecutor's office, shall be automatically  
3 destroyed within ninety days of becoming eligible for destruction.  
4 Juvenile records are eligible for destruction when:

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

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

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

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

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

14 (ii) No less than quarterly, the administrative office of the  
15 courts shall provide a report to the juvenile courts of those  
16 individuals whose records may be eligible for destruction. The  
17 juvenile court shall verify eligibility and notify the Washington state  
18 patrol and the appropriate local law enforcement agency and  
19 prosecutor's office of the records to be destroyed. The requirement to  
20 destroy records under this subsection is not dependent on a court  
21 hearing or the issuance of a court order to destroy records.

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

25 (b) All records maintained by any court or law enforcement agency,  
26 including the juvenile court, local law enforcement, the Washington  
27 state patrol, and the prosecutor's office, shall be automatically  
28 destroyed within thirty days of being notified by the governor's office  
29 that the subject of those records received a full and unconditional  
30 pardon by the governor.

31 (c) A person eighteen years of age or older whose criminal history  
32 consists entirely of one diversion agreement or counsel and release  
33 entered prior to June 12, 2008, may request that the court order the  
34 records in his or her case destroyed. The request shall be granted,  
35 subject to subsection ~~((+23+))~~ (25) of this section, if the court finds  
36 that two years have elapsed since completion of the agreement or  
37 counsel and release.

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

8 ~~((+18+))~~ (20) If the court grants the motion to destroy records  
9 made pursuant to subsection ~~((+17+))~~ (19)(c) or (d) of this section, it  
10 shall, subject to subsection ~~((+23+))~~ (25) of this section, order the  
11 official juvenile court file, the social file, and any other records  
12 named in the order to be destroyed.

13 ~~((+19+))~~ (21) The person making the motion pursuant to subsection  
14 ~~((+17+))~~ (19)(c) or (d) of this section shall give reasonable notice of  
15 the motion to the prosecuting attorney and to any agency whose records  
16 are sought to be destroyed.

17 ~~((+20+))~~ (22) Any juvenile to whom the provisions of this section  
18 may apply shall be given written notice of his or her rights under this  
19 section at the time of his or her disposition hearing or during the  
20 diversion process.

21 ~~((+21+))~~ (23) Nothing in this section may be construed to prevent  
22 a crime victim or a member of the victim's family from divulging the  
23 identity of the alleged or proven juvenile offender or his or her  
24 family when necessary in a civil proceeding.

25 ~~((+22+))~~ (24) Any juvenile justice or care agency may, subject to  
26 the limitations in subsection ~~((+23+))~~ (25) of this section and (a) and  
27 (b) of this subsection, develop procedures for the routine destruction  
28 of records relating to juvenile offenses and diversions.

29 (a) Records may be routinely destroyed only when the person the  
30 subject of the information or complaint has attained twenty-three years  
31 of age or older or pursuant to subsection ~~((+17+))~~ (19)(a) of this  
32 section.

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

35 ~~((+23+))~~ (25) Except for subsection ~~((+17+))~~ (19)(b) of this  
36 section, no identifying information held by the Washington state patrol  
37 in accordance with chapter 43.43 RCW is subject to destruction or  
38 sealing under this section. For the purposes of this subsection,



1 identifying information includes photographs, fingerprints, palmprints,  
2 soleprints, toeprints and any other data that identifies a person by  
3 physical characteristics, name, birthdate or address, but does not  
4 include information regarding criminal activity, arrest, charging,  
5 diversion, conviction or other information about a person's treatment  
6 by the criminal justice system or about the person's behavior.

7 ~~((+24))~~ (26) Information identifying child victims under age  
8 eighteen who are victims of sexual assaults by juvenile offenders is  
9 confidential and not subject to release to the press or public without  
10 the permission of the child victim or the child's legal guardian.  
11 Identifying information includes the child victim's name, addresses,  
12 location, photographs, and in cases in which the child victim is a  
13 relative of the alleged perpetrator, identification of the relationship  
14 between the child and the alleged perpetrator. Information identifying  
15 a child victim of sexual assault may be released to law enforcement,  
16 prosecutors, judges, defense attorneys, or private or governmental  
17 agencies that provide services to the child victim of sexual assault.

18 NEW SECTION. **Sec. 3.** Section 2 of this act applies prospectively  
19 and retroactively to all existing official juvenile court files of any  
20 alleged or proven juvenile offender.

21 NEW SECTION. **Sec. 4.** Section 2 of this act takes effect July 1,  
22 2014.

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