

HOUSE BILL REPORT

HB 1481

As Reported by House Committee On:
Early Learning & Human Services
General Government & Information Technology

Title: An act relating to decreasing the barriers to successful community participation for individuals involved with the juvenile justice system.

Brief Description: Concerning the sealing of juvenile records and fines imposed in juvenile cases.

Sponsors: Representatives Kagi, Zeiger, Senn, Walsh, Peterson, Stambaugh, Walkinshaw, Goodman, Muri, Pettigrew, Jinkins, Hudgins, Appleton, Robinson, Gregerson, Fitzgibbon, Ormsby, Clibborn, S. Hunt, Ryu, McBride, Sawyer, Stokesbary, Rodne, Young, Farrell and Kilduff.

Brief History:

Committee Activity:

Early Learning & Human Services: 1/30/15, 2/11/15 [DPS];

General Government & Information Technology: 2/20/15, 2/23/15 [DPS(ELHS)].

Brief Summary of Substitute Bill

- Allows courts to seal juvenile records when restitution remains if the individual made a good faith effort to pay the full amount of restitution.
- Eliminates various legal financial obligations and other fees for juveniles, including the juvenile penalty assessment and interest on legal financial obligations.
- Allows courts to order community service in lieu of restitution for juveniles if the juvenile has insufficient funds to pay the restitution and with agreement of the victim.

HOUSE COMMITTEE ON EARLY LEARNING & HUMAN SERVICES

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 8 members: Representatives Kagi, Chair; Walkinshaw, Vice Chair; Walsh, Ranking Minority Member; Kilduff, McCaslin, Ortiz-Self, Sawyer and Senn.

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.

Minority Report: Do not pass. Signed by 3 members: Representatives Scott, Assistant Ranking Minority Member; Dent and Hawkins.

Staff: Luke Wickham (786-7146).

Background:

Sealing Juvenile Records.

Since 1977 juvenile offender records have been public unless sealed. Records of non-offender juvenile cases, such as dependency or adoption records, are not open to public inspection.

There are two methods by which individuals may seal their juvenile records:

1. An individual may make a motion to seal the official juvenile court record, the social file, and records of the court and any other agency in the case.
2. An individual may have their record sealed during regularly held sealing hearings.

Once a juvenile record is sealed, the proceedings in the case must be treated as if they never occurred. Any subsequent criminal adjudication or adult felony charge unseals the case.

Regular Sealing Hearings.

At the disposition hearing of a juvenile offender, courts must schedule an administrative sealing hearing after that offender turns 18 years old and is anticipated to have completed any probation and confinement. Courts shall seal the individual's juvenile court record if none of the offenses for which the court is entering disposition are a most serious offense, a sex offense under chapter 9A.44 RCW, or a felony drug offense. Respondents must also have completed the terms and conditions of disposition, including financial obligations, to seal a record during a regular sealing hearing.

Motions to Seal Juvenile Records.

An individual may also file a motion requesting that the court seal his or her juvenile record. An individual is eligible to have his or her record sealed under this process after remaining in the community without further conviction for a period of time and paying any restitution associated with the case. For class A felonies, an individual must remain in the community without conviction for five years. For class B felonies, class C felonies, and all misdemeanors, an individual must remain in the community without conviction for two years.

Individuals convicted of Rape in the first degree, Rape in the second degree, and Indecent Liberties by Forcible Compulsion are not eligible for record sealing. Other sex offenses are eligible for sealing, but an individual must be relieved of the obligation to register as a sex offender.

Legal Financial Obligations.

When an individual is adjudicated as a juvenile offender, the court may impose Legal Financial Obligations (LFOs) as part of the disposition. The LFOs include victim restitution, crime victims' compensation fees, costs associated with the offender's prosecution and sentence, fines, penalties, and assessments.

Interest Rate on Legal Financial Obligations.

Legal Financial Obligation judgments bear interest from the date of judgment at the same rate that applies to civil judgments. The rate of interest generally applicable to civil judgments is the greater of 12 percent or four points above the 26-week treasury bill rate. As a result of low treasury bill rates, 12 percent has been the interest rate on LFOs for over two decades.

Interest that accrues on restitution is paid to the victim of the offense. All other accrued interest is split between the state and county as follows: 25 percent goes to the state General Fund, 25 percent goes to the Judicial Information System Account, and 50 percent goes to the county, 25 percent of which must be used to fund local courts.

Summary of Substitute Bill:

Restitution.

Courts are allowed to modify juvenile restitution amounts at any time, including at the time of a contested record sealing hearing for good cause shown, including ability to pay. Respondents may also petition for relief from restitution.

If a court determines that a juvenile has insufficient funds to pay restitution, and upon agreement of the victim, the court may order community service in place of a monetary penalty.

Courts may either order joint and several restitution or may divide restitution equally among the respondents.

Courts shall seal the juvenile records of individuals who meet the existing criteria for sealing records and if either the individual has paid the full amount of restitution or made a good faith effort to pay. "Good faith effort to pay" is defined as paying the principal amount in full, having made at least 80 percent of the value of full monthly payments within the period from disposition until the time the restitution is under review, or a showing of good cause as to why less than 80 percent has been paid.

If a court seals a juvenile record with restitution still owing, the court shall order a payment plan for the remaining restitution. Those records will no longer be sealed if an individual does not make at least four of the first five monthly payments or does not continue to make 80 percent of the payments.

The county clerk must make restitution disbursements to victims prior to payments to an insurance provider.

Information Sharing.

Sealed juvenile social files are still available to juvenile justice and care agencies when an investigation or case involving the juvenile is being prosecuted or when an agency is responsible for supervising the juvenile. Juvenile records, whether sealed or not, may be

provided without personal identifiers to researchers conducting legitimate research so long as the information is not used to identify an individual with a juvenile record.

Juvenile LFOs or Other Fees Modified or Eliminated.

The following LFOs or other fees are eliminated for juveniles:

- juvenile penalty assessments;
- fines for gross misdemeanors related to pet animals;
- fines for the crime of selling a stolen pet animal to a research institution;
- penalties for cheating crimes;
- deferred prosecution or sentence fees;
- fees for the crime of Commercial Sexual Abuse of a Minor involving an internet advertisement;
- general fines for felonies and misdemeanors;
- fines for interference with a health care facility;
- fines for the crime of Unlawful Issuance of a Bank Check;
- fines for the crime of Theft of Livestock;
- fines for the crimes of Indecent Exposure and Prostitution;
- fines after impoundment of a vehicle upon arrest for Prostitution related and Commercial Sexual Abuse of a Minor crimes;
- appellate costs;
- interest on financial obligations;
- penalty assessments for crimes involving domestic violence;
- juvenile diversion fines;
- clerk's collection fees;
- conviction fees;
- sheriffs fees;
- crime lab analysis fees;
- fees for crimes including Driving Under the Influence, Physical Control of a Vehicle Under the Influence, and Vehicular Homicide or Assault;
- fees for crimes listed in the Uniform Controlled Substances Act;
- fines for the crime of intent to manufacture controlled substances;
- criminal wildlife penalty assessments for the crime of Unlawful Hunting of Big Game; and
- public defense costs.

In addition to the elimination of those LFOs, cities, towns, and counties may not impose any LFOs for juveniles without express statutory authority.

The DNA collection fee may not be imposed on juvenile offenders if the state has previously collected the juvenile's DNA.

Other Provisions.

Records of a juvenile offense maintained by the Department of Licensing (DOL) shall be sealed when the court enters an order sealing a juvenile court record.

Clerks are authorized to interact or correspond with the respondent, his or her parents, and any holders of potential assets or wages of the respondent for purposes of collecting an outstanding legal financial obligation after a juvenile court record is sealed.

Substitute Bill Compared to Original Bill:

The substitute bill makes several substantive and technical changes to the underlying bill. County clerks must make restitution disbursements to victims prior to payments to insurance providers. Courts may either order joint and several restitution or equally divide restitution among the respondents. The agreement of the victim is required for the court to convert restitution to community service. If an individual whose record has been sealed with restitution owing does not make at least four payments in the first five months or 80 percent of the payments thereafter, the record is no longer sealed. Courts must order a payment plan after sealing a juvenile court record for which restitution is still owing.

Notice of a contested sealing must be sent to the victim. County clerks are authorized to interact or correspond with an offender, his or her parents, and holders of assets or wages for purposes of collecting outstanding LFOs after a juvenile court record is sealed. The DNA collection fee may not be imposed on juveniles if the state has previously collected the juvenile's DNA.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Substitute Bill: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) The Legislature voted 145-1 on House Bill 1651 last year to give youth who made a mistake a second chance. When a youth's parents pay a fine, the youth is not proving herself to be accountable. A youth whose family cannot pay for legal financial obligations is not proving herself to be less accountable than the families that can afford this. Collection rates for legal financial obligations are very low for juveniles, about 15 percent. Victim restitution is not being collected very well. Each county imposes the available legal financial obligations differently, which leads to disparate treatment. It matters more where a juvenile commits a crime than the crime itself. Due to bad life decisions, including involvement in a hit and run, an individual has been unable to move beyond barriers imposed by the \$7,500 in legal financial obligations. These obligations make it difficult to find employment and housing. Brain science demonstrates that teens perceive the world differently than adults. Often, juvenile offenders are not aware of the legal financial obligations ordered. Individuals may not be able to pay even \$200 in fines and that prevents these individuals from getting employment. It is difficult to keep someone encouraged for a year when employers are unwilling to look beyond the record. Many individuals re-offend after trying to get employment. Without opening the door for individuals, it is difficult for these individuals to move forward. This is a bipartisan issue. Texas has made a number of reforms like the one included in this bill, which has resulted in a significant decrease in the number of incarcerations. There are individuals who are making diligent restitution payments, but because there is still restitution remaining, they cannot seal their juvenile records. The Youth

Equity and Reintegration Act would give a judge discretion to apply community service hours to restitution. Juveniles are young and make mistakes, but should be given an opportunity to make up for those crimes. This bill provides additional flexibility to courts. This bill also provides some fixes from last year's bill, including a requirement that the DOL comply with sealing orders and clarifying language around data sharing. Judges should be given discretion to determine the appropriate course of action regarding LFOs. Children whose parents have abandoned them should not be further treated unfairly by imposing LFOs that will prevent them from sealing their records and moving on.

(Opposed) Prosecutors support the original goals regarding sealing juvenile records, including the opportunity for juveniles to take positive steps and move on with their lives. All measures of accountability imposed by a judge on a juvenile must be met before sealing a juvenile record. These principles were included in the sealing bill that passed last year. Restitution is a very important element of accountability and justice, and in juvenile court this is called out as a goal of juvenile justice. All models of juvenile justice include accountability. Victims often face similar disadvantages to those faced by juvenile offenders. It is important to balance the importance of rehabilitating juvenile offenders with the importance of honoring victims. There is opposition to the bill because sealing can be accomplished before paying restitution. Converting restitution to a civil judgment places a burden on victims to seek repayment. Clerks are not generally on the side of sealing records, but were in support of the bill that passed last year. The DOL records should not be hidden from public view. Converting remaining restitution to a civil infraction may be a problem. The ability for an offender to have financial restitution converted to community service may be a problem as well because victims may not be aware that restitution was converted to community service. There is a concern with eliminating all LFOs. If LFOs could be converted to community service hours, instead of eliminating those LFOs, there would be more support for the bill. Community service is helpful for youth. The newspapers hold the courts accountable. The bill does not comply with the state constitutional requirement for open courts. These records should be open. Sheriffs are concerned that they do not have access to sealed juvenile records.

Persons Testifying: (In support) Thomas O'Ban and Daniel O'Brien, University of Washington Law School Children and Youth Clinic; Sonya Watkins; Debra Baker, Raising Our Youth as Leaders; Jerry Madden, Right on Crime; Hope Baldwin, King County Department of Public Defense; Tom McBride, Juvenile Court Administration; Marian Stewart, Northlake Unitarian Universalist Church; Steve Lindstrom, Green Hill Evergreen Students; Seth Dawson, Youth Care and Washington Association for Children and Families; Toney Montgomery, Tacoma Ministerial Alliance; and Hillary Madsen, Columbia Legal Services.

(Opposed) John Tunheim, Thurston County Prosecutor's Office and Washington Association of Prosecuting Attorneys; Barbara Miner and Joel McAllister, Washington State Association of County Clerks; Chester Baldwin, Washington Rental Owners Association; Rowland Thompson, Allied Daily Newspapers; and James McMahan, Washington Association of Sheriffs and Police Chiefs.

Persons Signed In To Testify But Not Testifying: None.

HOUSE COMMITTEE ON GENERAL GOVERNMENT & INFORMATION TECHNOLOGY

Majority Report: The substitute bill by Committee on Early Learning & Human Services be substituted therefor and the substitute bill do pass. Signed by 6 members: Representatives Hudgins, Chair; Senn, Vice Chair; MacEwen, Ranking Minority Member; Caldier, Assistant Ranking Minority Member; Morris and Takko.

Minority Report: Do not pass. Signed by 1 member: Representative McCabe.

Staff: Meghan Bunch (786-7119).

Summary of Recommendation of Committee On General Government & Information Technology Compared to Recommendation of Committee On Early Learning & Human Services:

No new changes were recommended.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Substitute Bill: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) Last year, the Legislature passed a bill to close records at the age of 18, but it did not include the opportunity to seal records with outstanding legal financial obligations (LFOs). Washington is one of eight states keeping juvenile records open. The bill requires courts to pay victims first and notify victims when there is a contested hearing. Additionally, victims must agree to allow offenders to do community service as an alternative to paying restitution.

Some families can afford to pay off financial obligations, but many other families cannot, creating an economic disadvantage for low-income juveniles. Significant financial barriers prevent juveniles from receiving a second chance. Having a record can be devastating. Since many employers do not employ people with criminal records, this bill gives youth the ability to get a job, make money, and pay victims. Some youth experience homelessness, endure long periods of unemployment, and cannot gain acceptance into schools. About 26 percent of youth released from confinement will experience homelessness per year. There are 638 youth abandoned in Pierce County alone. The system of LFOs does not allow youth the opportunity to start over and move ahead. The system is broken, and this bill will fix it.

Additionally, statistics show a large disparity in LFO collections across counties. There are 22 LFOs in the Washington State code, of which about half are mandatory and about half are discretionary. In the last five years, Clark County assessed over \$1.6 million in non-restitution. Within the same time frame, King County, which has a population nearly five

times greater than Clark County, assessed less than \$1 million in non-restitution. Some counties will seal records after restitution is paid, other counties, such as Yakima, will not seal records until all LFO's and restitution are paid. This bill will help create consistencies across Washington's courts.

Regarding the fiscal impact, this bill costs about \$20,000 per county, per year in lost revenues. In exchange, the state is providing a second chance for jobs, scholarships, fair housing, and a tool to lead youth away from welfare. Only about 15 percent of restitution is currently paid. It could take a juvenile with a record decades before they are able to pay off restitution and accumulated interest. One of the largest fiscal impacts recognized in the fiscal note is the elimination of clerk's fees. When a young adult turns 18 years old, they pay \$100 per year, per case in clerk's fees. If a person has 8 cases, they are paying \$800 a year, just in clerk's fees.

It costs about \$95,000 per year to incarcerate a person. The Department of Social and Health Services shows that it costs three times more to house a juvenile. Avoiding incarcerations, home detentions, or welfare cases helps to overcome the minor expense of this bill. Youth offenders are not off the hook entirely, as offenders must pay or be paying restitution to seal a record. People need to be held accountable. The Legislature should evaluate whether restitution is more likely to be paid if they are given the chance to participate in the workforce.

(Opposed) Staff mentioned the \$1.8 million impact to counties, which is not pennies and is driven by LFOs and fees, not the restitution components. Often a large court judgment will skew the percentage of fee collections. When you analyze cases, and cases paid in full, you find that over 90 percent of restitution cases are paid in full. The criminal justice system and courts system have significant operating revenues from obligations and fines. The system is disproportionately indigent. If the Legislature changes the system by creating better outcomes for individuals by removing the ability to adequately fund courts, the Legislature will hurt the courts' ability to provide better outcomes and services overall. A backfill in funding for Washington's courts is needed if this bill is to pass.

This bill may also inhibit law enforcement's ability to access records in investigations and screenings for law-enforcement duties.

Persons Testifying: (In support) Representative Kagi, prime sponsor; Thomas O'Ban, University of Washington Law School Child and Youth Legislative Advocacy Clinic; Daniel Briner, DNB Graphics (Youth Affected); Steve Lindstrom, Evergreen High School and Green Hill School; Seth Dawson, Youthcare; Hickory Gateless, Center for Children and Youth Justice; and Hillary Madsen, Columbia Legal Services.

(Opposed) Brian Enslow, Washington State Association of Counties; and James McMahan, Washington Association of Sheriffs and Police Chiefs.

Persons Signed In To Testify But Not Testifying: None.