

SENATE BILL REPORT

SB 5564

As Reported by Senate Committee On:
Human Services, Mental Health & Housing, February 19, 2015
Ways & Means, February 27, 2015

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: Senators O'Ban, Darneille, Miloscia, Hargrove, Kohl-Welles, Fain, Jayapal, Brown, Habib, Dammeier, Frockt, Litzow, Warnick, Hasegawa and McAuliffe.

Brief History:

Committee Activity: Human Services, Mental Health & Housing: 2/05/15, 2/19/15 [DPS-WM, DNP].

Ways & Means: 2/24/15, 2/26/15, 2/27/15 [DP2S, w/oRec].

SENATE COMMITTEE ON HUMAN SERVICES, MENTAL HEALTH & HOUSING

Majority Report: That Substitute Senate Bill No. 5564 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators O'Ban, Chair; Miloscia, Vice Chair; Darneille, Ranking Minority Member; Hargrove.

Minority Report: Do not pass.

Signed by Senator Padden.

Staff: Lindsay Erickson (786-7465)

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: That Second Substitute Senate Bill No. 5564 be substituted therefor, and the second substitute bill do pass.

Signed by Senators Hill, Chair; Braun, Vice Chair; Dammeier, Vice Chair; Hargrove, Ranking Member; Keiser, Assistant Ranking Member on the Capital Budget; Ranker, Ranking Minority Member, Operating; Bailey, Becker, Billig, Brown, Conway, Fraser, Hasegawa, Hatfield, Hewitt, Kohl-Welles, O'Ban, Rolfes, Schoesler and Warnick.

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: That it be referred without recommendation.

Signed by Senators Honeyford, Vice Chair, Capital Budget Chair; Padden and Parlette.

Staff: Julie Murray (786-7711)

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:

- 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; or
- 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 age 18 and is anticipated to have completed any probation and confinement. Courts must 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, 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 the individual's juvenile record. An individual is eligible to have the individual's 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 with 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 (LFOs). When an individual is adjudicated as a juvenile offender, the court may impose LFOs as part of the disposition. LFOs include victim restitution, crime victims' compensation fees, costs associated with the offender's prosecution and sentence, fines, penalties, and assessments.

Interest Rate on LFOs. LFO 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 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 Bill (Recommended Second Substitute): Restitution. Courts are allowed to modify juvenile restitution amounts at any time, including the time of a contested record-sealing hearing for good cause shown, including ability to pay. The definition of good faith effort to pay, means (1) paying the principal amount in full, (2) making at least 80 percent of the value of full monthly payments within the period of disposition or deferred disposition until the time the amount of restitution owed is under review, or (3) good cause is shown why the amount paid is less than 80 percent of the full value of monthly payments. Respondents may also petition for relief from restitution. If the court determines that a juvenile has insufficient funds to pay and upon agreement of the victim, the court may order performance of a number of hours of community service in lieu of a monetary penalty, at the rate of the state minimum wage per hour. The court must allow the victim to determine the nature of the community service to be completed when it is practicable to do so.

Courts must 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 has completed approved community service in full.

Information Sharing. Sealed juvenile social files are still available to law enforcement, juvenile justice, and care agencies when an investigation or case involving the juvenile is being prosecuted, or to agencies when the 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:

- fines for gross misdemeanors related to pet animals;
- fines for the crime of selling a 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 victim's penalty assessment statute is revised to require an actual victim to impose penalty assessment on juvenile offenders.

Other Provisions. Access to information on sealed juvenile court records is expanded to include criminal justice agencies. County clerks are authorized to interact or correspond with an offender, the offender's parents, and any holders of potential assets or wages of the offender to collect an outstanding LFOs after a juvenile court record is sealed.

EFFECT OF CHANGES MADE BY WAYS & MEANS COMMITTEE (Recommended Second Substitute): A technical correction removes sentences allowing unpaid restitution to be modified in a contested hearing if good cause was shown, including ability to pay. A technical correction restores provisions regarding payment of full amount of ordered restitution. The victim's penalty assessment statute is revised to require an actual victim to impose penalty on juvenile offenders only when the crime committed has an actual victim. Expands access to information on sealed juvenile court records to include criminal justice agencies. Authorizes county clerks to interact or correspond with an offender, an offender's parents, and any holders of potential assets or wages of the offender to collect an outstanding LFO after a juvenile court record is sealed. Defines good faith effort to pay, to mean (1) paying the principal amount in full, (2) making at least 80 percent of the value of full monthly payments within the period of disposition or deferred disposition until the time the amount of restitution owed is under review, or 3) good cause is shown why the amount paid is less than 80 percent of the full value of monthly payments. Removes records maintained by the Department of Licensing from the list of records to be sealed when the court enters a written order sealing a juvenile court record.

EFFECT OF CHANGES MADE BY HUMAN SERVICES, MENTAL HEALTH & HOUSING COMMITTEE (Recommended First Substitute): Removes the good faith effort to pay requirement and instead requires that juvenile offenders pay full restitution or complete approved community service in full before a juvenile record can be sealed. Requires that the juvenile pay the crime victim penalty assessment. Limits the imposition of the DNA collection fee such that it is not imposed if the state has previously collected the juvenile offender's DNA as a result of a prior conviction. Expands access to information on

the existence of sealed juvenile records to include law enforcement. Requires agreement of the victim to convert restitution to community service and allows the victim to determine the nature of the community service to be completed when it is practicable to do so. This act applies to any juvenile offender cases filed after the effective date of this bill.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Original Bill (Human Services, Mental Health & Housing): PRO: For juveniles, we should focus our efforts on rehabilitation. We want to offer these juveniles the ability to have a second chance that our system presupposes. An essential component to this second chance is to allow those juveniles with nonserious crimes to have their records to be sealed. This bill would help those individuals to seal their records by reducing their LFOs. This population has limited resources, and this bill would focus any resources the juvenile has on restitution for victims of crimes. We are already not recovering significant amounts of restitution from young people. Last year, the Legislature passed the Youth Opportunities Act which allows youth to have access to automatic record sealing. However, LFOs continue to be a barrier for youth to be productive members of society. These open records prevent employment which would help to general restitution funds to pay victims. Families with means can pay off these LFOs, but a low-income juvenile will have a record remaining open because they do not have the same means to pay off their LFOs. Not paying LFOs doesn't make these youth less accountable for what they have done. Only 9.9 percent of restitution is currently collected in this state. There is a huge disparity between counties regarding how LFOs are assessed, and it prevents low-income youth across the state from gaining equal access to employment. If records cannot be sealed with financial obligations still owing, then very few juvenile records will ever be sealed. Even if the records are sealed, they do not go away; the current bill requires the Administrative Office of the Courts to make available facts about sealed records to prosecutors and courts.

CON: We do not oppose the idea of allowing a juvenile to seal a record and allowing them to move forward in life. But it is important that this sealing not happen until all obligations have been completed – specifically restitution. Restitution is a critical element of accountability and justice. The victims of these crimes are often just as disadvantaged as the juvenile offenders, and this would not allow them to be made whole and would not keep the juveniles accountable. Reasons for not paying may also have to do with indifference, not just inability to pay. Regarding the disparity of restitution between counties, the disparity may be accounted for based on a single case that accounts for a large restitution number. Victims' rights to notifications are not included in this bill; victims should provide a right of notice and participation in the contested hearing. This bill would be hard to implement in current form. The ability to convert any obligations still owed by the juvenile into a civil citation does not currently exist within the county courts. It is current practice with the clerks that

any money received from the offender is first collected and put toward any restitution owing. This would be a big hit to the crime victims' fund.

Persons Testifying (Human Services, Mental Health & Housing): PRO: Michael Huggins, University of WA – Caylac Clinic; Austin Kennish, Preston Meza, Green Hill Academic School; Steve Lindstrom, Capitol Classrooms; Debra Baker, ROYAL; Seth Dawson, YouthCare; Tony Montgomery, My Father's Church, Tacoma Ministry Alliance; Hillary Madsen, Columbia Legal Services; Sonya Watkins, Daniel Bryner, citizens.

CON: Jon Tunheim, WA Assn. of Prosecuting Attorneys; Ruth Gordon, WA Assn. of County Clerks; Joel McAllister, WA State Assn. of County Clerks, King County Clerk's Office; Chester Baldwin, WA Rental Owners Assn.; James McMahan, WA Assn. Sheriffs and Police Chiefs; Rowland Thompson, Allied Daily Newspapers of WA.

Staff Summary of Public Testimony on Substitute (Ways & Means): PRO: Less than 10 percent of the impact of this bill is to the state and the remainder, on average, costs counties \$21,000 per year. Additionally, keeping a juvenile off the road to incarceration saves money. The fiscal note fails to recognize the cost savings to counties from reduced collection responsibilities and adjudications. A youth who commits a crime deserves a second chance if they have earned it even if their parents do not have the money to pay their fines. Persons who make a good faith effort to pay their LFOs should not be prevented from the second chance that a sealed juvenile record provides. The disparity between counties on how they impose LFOs is large and unfair and is a barrier to low-income youth from accessing housing, employment, and educational opportunities.

CON: We cannot support this bill until the state backfills the county loss of revenue; the criminal justice system relies on a variety of fees and the loss will impact that system.

OTHER: Our concern rests with access to sealed juvenile records for investigative or pre-employment purposes and we have been working with the sponsor to alleviate our concerns.

Persons Testifying (Ways & Means): PRO: Michael Huggins, Green Hill School, Chehalis and Evergreen High School, Vancouver; Hillary Madsen, Columbia Legal Services; Thomas O'Ban, citizen.

CON: Brian Enslow, WA State Assn. of Counties.

OTHER: James McMahan, WA Assn. Sheriffs and Police Chiefs.