

SHB 2794 - S COMM AMD

By Committee on Human Services, Reentry & Rehabilitation

ADOPTED AND ENGROSSED 3/4/20

1 Strike everything after the enacting clause and insert the
2 following:

3 **"Sec. 1.** RCW 13.50.260 and 2015 c 265 s 3 are each amended to
4 read as follows:

5 (1)(a) The court shall hold regular sealing hearings. During
6 these regular sealing hearings, the court shall administratively seal
7 an individual's juvenile record pursuant to the requirements of this
8 subsection (~~((unless the court receives an objection to sealing or the
9 court notes a compelling reason not to seal, in which case, the court
10 shall set a contested hearing to be conducted on the record to
11 address sealing))~~). Although the juvenile record shall be sealed, the
12 social file may be available to any juvenile justice or care agency
13 when an investigation or case involving the juvenile subject of the
14 records is being prosecuted by the juvenile justice or care agency or
15 when the juvenile justice or care agency is assigned the
16 responsibility of supervising the juvenile. (~~((The contested hearing
17 shall be set no sooner than eighteen days after notice of the hearing
18 and the opportunity to object has been sent to the juvenile, the
19 victim, and juvenile's attorney.))~~) The juvenile respondent's presence
20 is not required at ((a)) any administrative sealing hearing
21 (~~((pursuant to this subsection))~~).

22 (b) At the disposition hearing of a juvenile offender, the court
23 shall schedule an administrative sealing hearing to take place during
24 the first regularly scheduled sealing hearing after the latest of the
25 following events that apply:

26 (i) The respondent's eighteenth birthday;

27 (ii) Anticipated (~~((completion))~~) end date of a respondent's
28 probation, if ordered;

29 (iii) Anticipated release from confinement at the juvenile
30 rehabilitation administration, or the completion of parole, if the
31 respondent is transferred to the juvenile rehabilitation
32 administration.

1 (c) (~~(A court shall enter a written order sealing an individual's~~
2 ~~juvenile court record pursuant to this subsection if:~~

3 ~~(i))~~ The court shall not schedule an administrative sealing
4 hearing at the disposition and no administrative sealing hearing
5 shall occur if one of the offenses for which the court has entered a
6 disposition is (~~not~~) at the time of commission of the offense:

7 ~~((A))~~ (i) A most serious offense, as defined in RCW 9.94A.030;

8 ~~((B))~~ (ii) A sex offense under chapter 9A.44 RCW; or

9 ~~((C))~~ (iii) A drug offense, as defined in RCW 9.94A.030(~~+~~
10 and)).

11 ~~((ii))~~ (d) At the time of the scheduled administrative sealing
12 hearing, the court shall enter a written order sealing the
13 respondent's juvenile court record pursuant to this subsection if the
14 court finds by a preponderance of the evidence that the respondent
15 (~~has completed the terms and conditions of disposition, including~~
16 ~~affirmative conditions~~) is no longer on supervision for the case
17 being considered for sealing and has paid the full amount of
18 restitution owing to the individual victim named in the restitution
19 order, excluding restitution owed to any (~~insurance provider~~
20 ~~authorized under Title 48 RCW~~) public or private entity providing
21 insurance coverage or health care coverage. In determining whether
22 the respondent is on supervision or owes restitution, the court shall
23 take judicial notice of court records, including records of the
24 county clerk, and, if necessary, sworn testimony from a
25 representative of the juvenile department.

26 ~~((d) Following a contested sealing hearing on the record after~~
27 ~~an objection is made pursuant to (a) of this subsection, the court~~
28 ~~shall enter a written order sealing the juvenile court record unless~~
29 ~~the court determines that sealing is not appropriate.))~~ (e) At the

30 time of the administrative sealing hearing, if the court finds the
31 respondent remains on supervision for the case being considered for
32 sealing, then the court shall continue the administrative sealing
33 hearing to a date within thirty days following the anticipated end
34 date of the respondent's supervision. At the next administrative
35 sealing hearing, the court shall again determine the respondent's
36 eligibility for sealing his or her juvenile court record pursuant to
37 (d) of this subsection, and, if necessary, continue the hearing again
38 as provided in this subsection.

39 (f) (i) During the administrative sealing hearing, if the court
40 finds the respondent is no longer on supervision for the case being

1 considered for sealing, but the respondent has not paid the full
2 amount of restitution owing to the individual victim named in the
3 restitution order, excluding any public or private entity providing
4 insurance coverage or health care coverage, the court shall deny
5 sealing the juvenile court record in a written order that: (A)
6 Specifies the amount of restitution that remains unpaid to the
7 original victim, excluding any public or private entity providing
8 insurance coverage or health care coverage; and (B) provides
9 direction to the respondent on how to pursue the sealing of records
10 associated with this cause of action.

11 (ii) Within five business days of the entry of the written order
12 denying the request to seal a juvenile court record, the juvenile
13 court department staff shall notify the respondent of the denial by
14 providing a copy of the order of denial to the respondent in person
15 or in writing mailed to the respondent's last known address in the
16 department of licensing database or the respondent's address provided
17 to the court, whichever is more recent.

18 (iii) At any time following entry of the written order denying
19 the request to seal a juvenile court record, the respondent may
20 contact the juvenile court department, provide proof of payment of
21 the remaining unpaid restitution to the original victim, excluding
22 any public or private entity providing insurance coverage or health
23 care coverage, and request an administrative sealing hearing. Upon
24 verification of the satisfaction of the restitution payment, the
25 juvenile court department staff shall circulate for signature an
26 order sealing the file, and file the signed order with the clerk's
27 office, who shall seal the record.

28 (iv) The administrative office of the courts must ensure that
29 sealed juvenile records remain private in case of an appeal and are
30 either not posted or redacted from any clerks papers that are posted
31 online with the appellate record, as well as taking any other prudent
32 steps necessary to avoid exposing sealed juvenile records to the
33 public.

34 (2) Except for dismissal of a deferred disposition under RCW
35 13.40.127, the court shall enter a written order immediately sealing
36 the official juvenile court record upon the acquittal after a fact
37 finding or upon the dismissal of charges with prejudice, subject to
38 the state's right, if any, to appeal the dismissal.

39 (3) If a juvenile court record has not already been sealed
40 pursuant to this section, in any case in which information has been

1 filed pursuant to RCW 13.40.100 or a complaint has been filed with
2 the prosecutor and referred for diversion pursuant to RCW 13.40.070,
3 the person who is the subject of the information or complaint may
4 file a motion with the court to have the court vacate its order and
5 findings, if any(~~(7)~~); resolve the status of any debts owing; and,
6 subject to RCW 13.50.050(13), order the sealing of the official
7 juvenile court record, the social file, and records of the court and
8 of any other agency in the case, with the exception of identifying
9 information under RCW 13.50.050(13).

10 (4) (a) The court shall grant any motion to seal records for class
11 A offenses made pursuant to subsection (3) of this section if:

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

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

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

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

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

28 (vi) The person has paid the full amount of restitution owing to
29 the individual victim named in the restitution order, excluding
30 restitution owed to any (~~insurance provider authorized under Title~~
31 ~~48 RCW~~) public or private entity providing insurance coverage or
32 health care coverage.

33 (b) The court shall grant any motion to seal records for class B,
34 class C, gross misdemeanor, and misdemeanor offenses and diversions
35 made under subsection (3) of this section if:

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

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

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

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

9 (v) The person has paid the full amount of restitution owing to
10 the individual victim named in the restitution order, excluding
11 restitution owed to any insurance provider authorized under Title 48
12 RCW.

13 (c) Notwithstanding the requirements in (a) or (b) of this
14 subsection, the court shall grant any motion to seal records of any
15 deferred disposition vacated under RCW 13.40.127(9) prior to June 7,
16 2012, if restitution has been paid and the person is eighteen years
17 of age or older at the time of the motion.

18 (5) The person making a motion pursuant to subsection (3) of this
19 section shall give reasonable notice of the motion to the prosecution
20 and to any person or agency whose records are sought to be sealed.

21 (6)(a) If the court enters a written order sealing the juvenile
22 court record pursuant to this section, it shall, subject to RCW
23 13.50.050(13), order sealed the official juvenile court record, the
24 social file, and other records relating to the case as are named in
25 the order. Thereafter, the proceedings in the case shall be treated
26 as if they never occurred, and the subject of the records may reply
27 accordingly to any inquiry about the events, records of which are
28 sealed. Any agency shall reply to any inquiry concerning confidential
29 or sealed records that records are confidential, and no information
30 can be given about the existence or nonexistence of records
31 concerning an individual.

32 (b) In the event the subject of the juvenile records receives a
33 full and unconditional pardon, the proceedings in the matter upon
34 which the pardon has been granted shall be treated as if they never
35 occurred, and the subject of the records may reply accordingly to any
36 inquiry about the events upon which the pardon was received. Any
37 agency shall reply to any inquiry concerning the records pertaining
38 to the events for which the subject received a pardon that records
39 are confidential, and no information can be given about the existence
40 or nonexistence of records concerning an individual.

1 (c) Effective July 1, 2019, the department of licensing may
2 release information related to records the court has ordered sealed
3 only to the extent necessary to comply with federal law and
4 regulation.

5 (7) Inspection of the files and records included in the order to
6 seal may thereafter be permitted only by order of the court upon
7 motion made by the person who is the subject of the information or
8 complaint, except as otherwise provided in RCW 13.50.010(8) and
9 13.50.050(13).

10 (8)(a) Any adjudication of a juvenile offense or a crime
11 subsequent to sealing has the effect of nullifying a sealing order;
12 however, the court may order the juvenile court record resealed upon
13 disposition of the subsequent matter if the case meets the sealing
14 criteria under this section and the court record has not previously
15 been resealed.

16 (b) Any charging of an adult felony subsequent to the sealing has
17 the effect of nullifying the sealing order.

18 (c) The administrative office of the courts shall ensure that the
19 superior court judicial information system provides prosecutors
20 access to information on the existence of sealed juvenile records.

21 (d) The Washington state patrol shall ensure that the Washington
22 state identification system provides Washington state criminal
23 justice agencies access to sealed juvenile records information.

24 (9) If the juvenile court record has been sealed pursuant to this
25 section, the record of an employee is not admissible in an action for
26 liability against the employer based on the former juvenile
27 offender's conduct to show that the employer knew or should have
28 known of the juvenile record of the employee. The record may be
29 admissible, however, if a background check conducted or authorized by
30 the employer contained the information in the sealed record.

31 (10) County clerks may interact or correspond with the
32 respondent, his or her parents, restitution recipients, and any
33 holders of potential assets or wages of the respondent for the
34 purposes of collecting an outstanding legal financial obligation
35 after juvenile court records have been sealed pursuant to this
36 section.

37 (11) Persons and agencies that obtain sealed juvenile records
38 information pursuant to this section may communicate about this
39 information with the respondent, but may not disseminate or be
40 compelled to release the information to any person or agency not

1 specifically granted access to sealed juvenile records in this
2 section.

3 (12) All criminal justice agencies must not disclose confidential
4 information or sealed records accessed through the Washington state
5 identification system or other means, and no information can be given
6 to third parties other than Washington state criminal justice
7 agencies about the existence or nonexistence of confidential or
8 sealed records concerning an individual.

9 **Sec. 2.** RCW 10.97.050 and 2012 c 125 s 2 are each amended to
10 read as follows:

11 (1) Conviction records may be disseminated without restriction.

12 (2) Any criminal history record information which pertains to an
13 incident that occurred within the last twelve months for which a
14 person is currently being processed by the criminal justice system,
15 including the entire period of correctional supervision extending
16 through final discharge from parole, when applicable, may be
17 disseminated without restriction.

18 (3) Criminal history record information which includes
19 nonconviction data may be disseminated by a criminal justice agency
20 to another criminal justice agency for any purpose associated with
21 the administration of criminal justice, or in connection with the
22 employment of the subject of the record by a criminal justice or
23 juvenile justice agency, except as provided under RCW 13.50.260. A
24 criminal justice agency may respond to any inquiry from another
25 criminal justice agency without any obligation to ascertain the
26 purpose for which the information is to be used by the agency making
27 the inquiry.

28 (4) Criminal history record information which includes
29 nonconviction data may be disseminated by a criminal justice agency
30 to implement a statute, ordinance, executive order, or a court rule,
31 decision, or order which expressly refers to records of arrest,
32 charges, or allegations of criminal conduct or other nonconviction
33 data and authorizes or directs that it be available or accessible for
34 a specific purpose.

35 (5) Criminal history record information which includes
36 nonconviction data may be disseminated to individuals and agencies
37 pursuant to a contract with a criminal justice agency to provide
38 services related to the administration of criminal justice. Such
39 contract must specifically authorize access to criminal history

1 record information, but need not specifically state that access to
2 nonconviction data is included. The agreement must limit the use of
3 the criminal history record information to stated purposes and insure
4 the confidentiality and security of the information consistent with
5 state law and any applicable federal statutes and regulations.

6 (6) Criminal history record information which includes
7 nonconviction data may be disseminated to individuals and agencies
8 for the express purpose of research, evaluative, or statistical
9 activities pursuant to an agreement with a criminal justice agency.
10 Such agreement must authorize the access to nonconviction data, limit
11 the use of that information which identifies specific individuals to
12 research, evaluative, or statistical purposes, and contain provisions
13 giving notice to the person or organization to which the records are
14 disseminated that the use of information obtained therefrom and
15 further dissemination of such information are subject to the
16 provisions of this chapter and applicable federal statutes and
17 regulations, which shall be cited with express reference to the
18 penalties provided for a violation thereof.

19 (7) Every criminal justice agency that maintains and disseminates
20 criminal history record information must maintain information
21 pertaining to every dissemination of criminal history record
22 information except a dissemination to the effect that the agency has
23 no record concerning an individual. Information pertaining to
24 disseminations shall include:

- 25 (a) An indication of to whom (agency or person) criminal history
26 record information was disseminated;
27 (b) The date on which the information was disseminated;
28 (c) The individual to whom the information relates; and
29 (d) A brief description of the information disseminated.

30 The information pertaining to dissemination required to be
31 maintained shall be retained for a period of not less than one year.

32 (8) In addition to the other provisions in this section allowing
33 dissemination of criminal history record information, RCW 4.24.550
34 governs dissemination of information concerning offenders who commit
35 sex offenses as defined by RCW 9.94A.030. Criminal justice agencies,
36 their employees, and officials shall be immune from civil liability
37 for dissemination on criminal history record information concerning
38 sex offenders as provided in RCW 4.24.550.

1 NEW SECTION. **Sec. 3.** (1) The department of children, youth, and
2 families and the office of the superintendent of public instruction
3 shall develop policies and procedures that prevent any information
4 from being included on a student transcript indicating that a student
5 received credit while confined in a detention facility as defined
6 under RCW 13.40.020, institution as defined under RCW 13.40.020,
7 juvenile correctional facility under alternative administration
8 operated by a consortium of counties under RCW 13.04.035, community
9 facility as defined under RCW 72.05.020, or correctional facility as
10 defined under RCW 70.48.020.

11 (2) By November 1, 2020, and in compliance with RCW 43.01.036,
12 the department of children, youth, and families and the office of the
13 superintendent of public instruction shall provide a report to the
14 appropriate committees of the legislature and the governor describing
15 the actions, policies, and procedures in place to prevent information
16 from being included on a student transcript indicating that a student
17 received credit while confined in a detention facility as defined
18 under RCW 13.40.020, institution as defined under RCW 13.40.020,
19 juvenile correctional facility under alternative administration
20 operated by a consortium of counties under RCW 13.04.035, community
21 facility as defined under RCW 72.05.020, or correctional facility as
22 defined under RCW 70.48.020.

23 (3) This section expires June 30, 2021.

24 NEW SECTION. **Sec. 4.** This act applies to all juvenile record
25 sealing hearings commenced on or after the effective date of this
26 section, regardless of when the underlying hearing was scheduled or
27 the underlying record was created. To this extent, this act applies
28 retroactively, but in all other respects it applies prospectively.

29 NEW SECTION. **Sec. 5.** Sections 1, 2, and 4 of this act take
30 effect January 1, 2021."

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31 On page 1, line 1 of the title, after "sealing;" strike the
32 remainder of the title and insert "amending RCW 13.50.260 and

1 10.97.050; creating new sections; providing an effective date; and
2 providing an expiration date."

--- **END** ---