

HOUSE BILL REPORT

HB 2794

As Reported by House Committee On:
Human Services & Early Learning

Title: An act relating to juvenile record sealing.

Brief Description: Concerning juvenile record sealing.

Sponsors: Representatives Frame, Davis, Peterson, Lekanoff, Pollet and Santos.

Brief History:

Committee Activity:

Human Services & Early Learning: 2/4/20, 2/7/20 [DPS].

<p>Brief Summary of Substitute Bill</p> <ul style="list-style-type: none">• Modifies provisions related to juvenile record sealing.
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HOUSE COMMITTEE ON HUMAN SERVICES & EARLY LEARNING

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 9 members: Representatives Senn, Chair; Callan, Vice Chair; Frame, Vice Chair; Eslick, Assistant Ranking Minority Member; Goodman, Griffey, Kilduff, Lovick and Ortiz-Self.

Minority Report: Do not pass. Signed by 4 members: Representatives Dent, Ranking Minority Member; McCaslin, Assistant Ranking Minority Member; Corry and Klippert.

Staff: Luke Wickham (786-7146).

Background:

Sealing Juvenile Records.

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

Two methods by which individuals may seal their juvenile records include:

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- filing 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
- having a record sealed during regularly held administrative 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, 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 file a motion requesting that the court seal his or her juvenile record. An individual is eligible to have his or her record sealed 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.

Summary of Substitute Bill:

The ability for the court to receive an objection to sealing or note a compelling reason not to seal, and set a contested administrative sealing hearing is removed.

The requirement that a respondent completes the terms and conditions of disposition before a court seals a juvenile court record during an administrative sealing hearing is removed, while requiring the individual to no longer be on supervision for the case.

Any restitution owing to a public or private entity providing insurance coverage is excluded from the requirement that a respondent has paid the full amount of restitution at the time of an administrative sealing hearing.

The court must take judicial notice of court records, including records of the county court clerk (clerk), and, if necessary, sworn testimony from a representative of the juvenile department.

If the court finds during an administrative sealing hearing that the respondent remains on supervision for the case, the court shall continue the hearing to a date within 30 days following the anticipated end date of the respondent's supervision.

During the administrative sealing hearing, if the court finds the respondent is no longer on supervision for the case, but the respondent has not paid the full amount of restitution owing to the individual victim named in the restitution order, excluding any public or private entity providing insurance coverage or health care coverage, the court must deny sealing the juvenile court record in its written order and include the amount of restitution remaining unpaid to the original victim and provide direction to the respondent on how to pursue sealing of records.

The juvenile court department staff must notify the respondent after the court denies sealing by providing a copy of the order.

At any time following entry of the written order of denying the request to seal a juvenile court record, the respondent may contact the juvenile court department, provide proof of payment of the amount of restitution that remains unpaid to the individual victim, and request the record be sealed.

The juvenile court department staff must circulate an order sealing the file and file the signed order with the clerk's office upon verification of satisfaction of the restitution payment.

The Administrative Office of the Courts (AOC) must ensure that sealed juvenile records remain private in case of an appeal.

A respondent may file a motion with the court to have the court resolve the status of any debts owing.

Court clerks may correspond with restitution recipients.

If the clerk fails to seal the respondent's juvenile court record within five business days for any reason, then the clerk shall note the matter for a hearing within 60 days of the respondent's request to seal, and provide the respondent written notice of the hearing mailed at least 10 days prior to the hearing. If the clerk fails to note the matter for a court hearing within 60 days for any reason, the respondent may bring a motion to administratively seal the record.

Criminal justice agencies may not disclose confidential information or sealed records accessed through the Washington State Identification System or other means, and no information can be given to third parties other than Washington criminal justice agencies about the existence or nonexistence of confidential or sealed records.

The Department of Children, Youth, and Families (DCYF) and the Office of the Superintendent of Public Instruction (OSPI) must develop policies and procedures that prevent any information from being included on a student transcript indicating that a student received credit while confined in a juvenile detention facility or institution and provide a

report by November 1, 2020, to the Legislature and the Governor describing the procedures in place to prevent this from happening.

Substitute Bill Compared to Original Bill:

The substitute bill specifies that a court, when denying sealing of a juvenile record during an administrative sealing hearing, must include in its written order the amount of restitution remaining unpaid to the original victim and provide direction to the respondent on how to pursue sealing of records.

The substitute bill requires the juvenile court department staff, instead of the clerk, to notify the respondent after the court denies sealing by providing a copy of the order.

The substitute bill allows a respondent to contact the juvenile court department, instead of the clerk, to provide payment of restitution and request that the juvenile record be sealed.

The substitute bill requires the juvenile court department staff to circulate an order sealing the file and file the signed order with the clerk's office upon verification of satisfaction of the restitution payment.

The substitute bill requires that the AOC ensure that sealed juvenile records remain private in case of an appeal.

The substitute bill allows a respondent to file a motion with the court to have the court resolve the status of any debts owing.

The substitute bill allows clerks to correspond with restitution recipients.

The substitute bill restores the requirement that the Washington State Patrol provide access for criminal justice agencies to sealed juvenile records, but prohibits any criminal justice agency from disclosing confidential information or sealed records accessed through the Washington State Identification System or other means, and no information can be given to third parties other than Washington criminal justice agencies about the existence or nonexistence of confidential or sealed records.

The substitute bill requires the DCYF and the OSPI to develop policies and procedures that prevent any information from being included on a student transcript indicating that a student received credit while confined in a juvenile detention facility or institution and provide a report by November 1, 2020, to the Legislature and the Governor describing the procedures in place to prevent this from happening.

The substitute bill restores current law provision prohibiting the sealing of juvenile court records for indecent liberties "actually committed with" forcible compulsion.

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 substitute bill is the same form as the Senate companion bill that was voted out of committee unanimously. The bill does not change who can seal juvenile records but changes the mechanism for sealing. This bill prioritizes payment of restitution to victims but does not require payment of restitution to insurance companies before records are sealed. The sealing of juvenile records is necessary for individuals to seek employment. The bill also sets up a process that is more easily accessible and informs individuals about the remaining restitution owed before the case can be sealed. The Senate bill strikes the right balance between protecting juveniles in the criminal justice system, while allowing law enforcement and prosecutors to still have access to these records. Allowing criminal justice agencies access to this information allows those agencies to make appropriate decisions.

(Opposed) None.

(Other) The proposed substitute bill resolves any issues that the bill previously had.

Persons Testifying: (In support) Representative Frame, prime sponsor; and Russell Brown, Washington Association of Prosecuting Attorneys.

(Other) James McMahan, Washington Association of Sheriffs and Police Chiefs.

Persons Signed In To Testify But Not Testifying: None.