

HOUSE BILL REPORT

HB 2034

As Reported by House Committee On:
Children, Youth & Families

Title: An act relating to juvenile records.

Brief Description: Concerning juvenile records.

Sponsors: Representatives Frame, Harris-Talley, Berry, Fitzgibbon, Simmons, Ramel, Chase and Macri.

Brief History:

Committee Activity:

Children, Youth & Families: 1/24/22, 2/2/22 [DPS].

Brief Summary of Substitute Bill

- Creates a cause of action where various legal and government entities that disseminate sealed or destroyed juvenile records may be sued for damages by the subject of those records.
- Requires that courts provide written notice to individuals whose records are sealed that includes information about the meaning of having a sealed juvenile record.
- Prohibits state government agencies that conduct state-based background checks for licensing or hiring determinations from considering or using any information related to the commission of a juvenile offense unless the agency confirms that the official juvenile court record related to that offense remains open for public inspection.

HOUSE COMMITTEE ON CHILDREN, YOUTH & FAMILIES

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

Signed by 9 members: Representatives Senn, Chair; Harris-Talley, Vice Chair; Rule, Vice Chair; Chase, Assistant Ranking Minority Member; Callan, Eslick, Goodman, Ortiz-Self and Wicks.

Minority Report: Without recommendation. Signed by 4 members: Representatives Dent, Ranking Minority Member; McCaslin, Assistant Ranking Minority Member; Klippert and Young.

Staff: Luke Wickham (786-7146).

Background:

Juvenile Records.

Juvenile adjudication records are public unless sealed. Court records for juvenile cases that do not involve an adjudication, such as dependency or adoption records, are not open to public inspection.

Sealing of Juvenile Records.

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

- 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
- through a regularly held administrative sealing hearing.

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

Administrative Sealing Hearings.

At the disposition hearing of a juvenile offender, courts must schedule an administrative sealing hearing after offender turns 18 years old and is anticipated to have completed any probation and confinement. Courts must seal the individual's juvenile court record if the offense is not a most serious offense, a sex offense, 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.

Destruction of Juvenile Records.

All records maintained by any court or law enforcement agency must be automatically destroyed within 90 days of becoming eligible for destruction. Records are eligible for such destruction when:

- the person is at least 18 years of age;
- the records consist of successfully completed diversion agreements and counsel and release agreements, or both, which were completed on or after June 7, 2018; and
- there is no restitution owing in the case.

Summary of Substitute Bill:

Cause of Action.

Any corporation, business trust, estate, partnership, association, joint venture, any other legal or commercial entity, government, government subdivision, agency, municipality, or other legal entity who disseminates sealed or destroyed records may be sued for damages by the subject of those records.

If the plaintiff prevails in such an action, the court may award:

- a per day penalty of \$100 a day for each day since the record is shared without corrective action or actual damages, whichever is greater; and
- any other relief the court deems appropriate.

The court must also award reasonable attorneys' fees and costs to any prevailing plaintiff.

Employees of governments, governmental subdivisions, agencies, and municipalities are not liable for civil damages for actions taken as part of their work as such an employee.

Any corporation, business trust, estate, trust, partnership, association, joint venture, any other legal or commercial entity, government, governmental subdivision, agency, municipality, and other legal entities are not liable for illegally sharing a sealed or destroyed juvenile record if the entity did not have notice that a record is sealed or destroyed.

Juvenile Record Sealing.

The subject of a sealed juvenile record may reply to an inquiry about the subject's commission of a juvenile offense, including an inquiry about whether the subject has a

disqualifying arrest or adjudication, that the subject does not have a juvenile arrest or adjudication.

The court must provide the juvenile and victims of the offense notice of the juvenile's eligibility for juvenile records sealing during a dispositional hearing.

Courts must provide written notice to individuals whose records are sealed that includes information about the meaning of having a sealed juvenile record.

All Washington state government agencies that conduct state-based background checks for licensing or hiring determinations may not consider or use any information provided by an applicant related to the commission of a juvenile offense or information produced by a state source related to the commission of a juvenile offense unless the agency confirms that the official juvenile court record related to that offense remains open for public inspection.

The Department of Children, Youth, and Families must adopt rules regarding the use of sealed juvenile records related to the commission of a juvenile offense, and create an automatic sealing process for the use of records the agency holds arising from, relating to, or revealing the existence of a juvenile adjudication.

Substitute Bill Compared to Original Bill:

The substitute bill removes the portions of the bill that create a process for destroying sealed juvenile offense records.

The substitute bill removes individuals from liability under the cause of action created in the bill while retaining liability for any corporation, business trust, estate, trust, partnership, association, joint venture, any other legal or commercial entity, government, governmental subdivision, agency, municipality, and other similar legal persons.

The substitute bill provides that employees of governments, government subdivisions, agencies, and municipalities are not liable under the cause of action created for action taken as part of the work as such an employee.

The substitute bill provides that entities are not liable under the cause of action created in the bill for illegally sharing a sealed or destroyed juvenile record if the entity did not have notice that a record was sealed or destroyed.

The substitute bill requires that the court provide the juvenile and victims of the offense notice of the juvenile's eligibility for juvenile records sealing during a dispositional hearing.

The substitute bill requires that courts provide written notice to individuals whose records are sealed that includes information about the meaning of having a sealed juvenile record.

The substitute bill prohibits all Washington state government agencies that conduct state-based background checks for licensing or hiring determinations from considering or use any information provided by an applicant related to the commission of a juvenile offense or information produced by a state source related to the commission of a juvenile offense unless the agency confirms that the official juvenile court record related to that offense remains open for public inspection.

The substitute bill requires the Department of Children, Youth, and Families to adopt rules regarding the use of sealed juvenile records related to the commission of a juvenile offense, and create an automatic sealing process for the use of records the agency holds arising from, relating to, or revealing the existence of a juvenile adjudication.

Appropriation: None.

Fiscal Note: Available. New fiscal note requested on February 3, 2022.

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) This bill is about accountability as it relates to the state so that people can operate in the world acting on the promise they were provided that they can operate as if a record no longer existed. Young people are told that they can move on, and the goal and purpose is to support that message.

It is confusing to figure out how to seal and expunge juvenile records. Once an individual has sealed a record, it is difficult to know what to say about those records during employment or other applications.

Children can be involved in gangs and prostitution based on survival. After paying for their mistakes, the record should not follow them.

Many people are adjudicated of juvenile offenses because of their status as a foster youth. These people should not have that record follow them forever.

There are people who committed serious offenses as a child who rebuild their lives. In 2015 the Washington State Patrol released sealed records which harmed the people whose records were shared. Many of the people who committed juvenile offenses have rehabilitated, and the record should not follow them.

The existing system of juvenile record sealing and protection do not fulfill the promise that those records disappear. Juveniles diverted from the juvenile justice system benefit from

the current system of record sealing and expungement. Children of color are disproportionately left out of the diversion process.

Without vacating and destroying records, records may be used against those people. This process does not allow for automatic destruction of serious violent offenses or offenses that require registration.

This promotes equity across the state and does not depend on the resources of the person or the jurisdiction. This bill ensures that records do not carry over into a person's adult life.

(Opposed) This is a repeat issue that stakeholders have been working on to find a solution. Much of the court data, even after sealing, is available on the commercial market. There are reasons to maintain these records, like an individual wanting to receive those records themselves later on to demonstrate that they completed the terms of their disposition.

There are some offenses where records should be maintained. Sex offenses or violent offenses that are plead down would be destroyed according to the terms of this bill.

(Other) The Department of Children, Youth, and Families (DCYF) supports the underlying intent of the bill.

The records held by the DCYF are unique to the DCYF, and these records cannot appear on a background check. Automatic destruction of records would create concerns about continuity of care for the DCYF. Destruction would make it difficult for the DCYF to provide data and determine its accountability.

The county clerks understand the intent of the legislation, but there are concerns over record keeping provisions. There is opposition to destruction of records without a court order. The bill would subject individual court clerks to civil liability.

Persons Testifying: (In support) Representative Noel Frame, prime sponsor; KC Chiu; Jack Murphy, Washington Association of Juvenile Court Administrators; Liz Trautman and Miracle Negron, The Mockingbird Society; Xaxira Velasco Ponce de León, Columbia Legal Services; Greg Melrose; and George Yeannakis, Office of Public Defense.

(Opposed) Russell Brown, Washington Association of Prosecuting Attorneys.

(Other) Josie Delvin, Washington State Association of County Clerks; and Allison Krutsinger, Department of Children, Youth, and Families.

Persons Signed In To Testify But Not Testifying: None.