

2 SHB 1471 - S AMD 240
3 By Senator Costa

4 ADOPTED 04/09/01

5 Strike everything after the enacting clause and insert the
6 following:

7 "Sec. 1. RCW 13.50.050 and 1999 c 198 s 4 are each amended to read
8 as follows:

9 (1) This section governs records relating to the commission of
10 juvenile offenses, including records relating to diversions.

11 (2) The official juvenile court file of any alleged or proven
12 juvenile offender shall be open to public inspection, unless sealed
13 pursuant to subsection (12) of this section.

14 (3) All records other than the official juvenile court file are
15 confidential and may be released only as provided in this section, RCW
16 13.50.010, 13.40.215, and 4.24.550.

17 (4) Except as otherwise provided in this section and RCW 13.50.010,
18 records retained or produced by any juvenile justice or care agency may
19 be released to other participants in the juvenile justice or care
20 system only when an investigation or case involving the juvenile in
21 question is being pursued by the other participant or when that other
22 participant is assigned the responsibility for supervising the
23 juvenile.

24 (5) Except as provided in RCW 4.24.550, information not in an
25 official juvenile court file concerning a juvenile or a juvenile's
26 family may be released to the public only when that information could
27 not reasonably be expected to identify the juvenile or the juvenile's
28 family.

29 (6) Notwithstanding any other provision of this chapter, the
30 release, to the juvenile or his or her attorney, of law enforcement and
31 prosecuting attorneys' records pertaining to investigation, diversion,
32 and prosecution of juvenile offenses shall be governed by the rules of
33 discovery and other rules of law applicable in adult criminal
34 investigations and prosecutions.

35 (7) Upon the decision to arrest or the arrest, law enforcement and
36 prosecuting attorneys may cooperate with schools in releasing

1 information to a school pertaining to the investigation, diversion, and
2 prosecution of a juvenile attending the school. Upon the decision to
3 arrest or the arrest, incident reports may be released unless releasing
4 the records would jeopardize the investigation or prosecution or
5 endanger witnesses. If release of incident reports would jeopardize
6 the investigation or prosecution or endanger witnesses, law enforcement
7 and prosecuting attorneys may release information to the maximum extent
8 possible to assist schools in protecting other students, staff, and
9 school property.

10 (8) The juvenile court and the prosecutor may set up and maintain
11 a central record-keeping system which may receive information on all
12 alleged juvenile offenders against whom a complaint has been filed
13 pursuant to RCW 13.40.070 whether or not their cases are currently
14 pending before the court. The central record-keeping system may be
15 computerized. If a complaint has been referred to a diversion unit,
16 the diversion unit shall promptly report to the juvenile court or the
17 prosecuting attorney when the juvenile has agreed to diversion. An
18 offense shall not be reported as criminal history in any central
19 record-keeping system without notification by the diversion unit of the
20 date on which the offender agreed to diversion.

21 (9) Upon request of the victim of a crime or the victim's immediate
22 family, the identity of an alleged or proven juvenile offender alleged
23 or found to have committed a crime against the victim and the identity
24 of the alleged or proven juvenile offender's parent, guardian, or
25 custodian and the circumstance of the alleged or proven crime shall be
26 released to the victim of the crime or the victim's immediate family.

27 (10) Subject to the rules of discovery applicable in adult criminal
28 prosecutions, the juvenile offense records of an adult criminal
29 defendant or witness in an adult criminal proceeding shall be released
30 upon request to prosecution and defense counsel after a charge has
31 actually been filed. The juvenile offense records of any adult
32 convicted of a crime and placed under the supervision of the adult
33 corrections system shall be released upon request to the adult
34 corrections system.

35 (11) In any case in which an information has been filed pursuant to
36 RCW 13.40.100 or a complaint has been filed with the prosecutor and
37 referred for diversion pursuant to RCW 13.40.070, the person the
38 subject of the information or complaint may file a motion with the
39 court to have the court vacate its order and findings, if any, and,

1 subject to subsection (23) of this section, order the sealing of the
2 official juvenile court file, the social file, and records of the court
3 and of any other agency in the case.

4 (12) The court shall grant the motion to seal records made pursuant
5 to subsection (11) of this section if it finds that:

6 (a) For class B offenses other than sex offenses, since the last
7 date of release from confinement, including full-time residential
8 treatment, if any, or entry of disposition, the person has spent ten
9 consecutive years in the community without committing any offense or
10 crime that subsequently results in conviction. For class C offenses
11 other than sex offenses, since the last date of release from
12 confinement, including full-time residential treatment, if any, or
13 entry of disposition, the person has spent five consecutive years in
14 the community without committing any offense or crime that subsequently
15 results in conviction. For diversions, since completion of the
16 diversion agreement, the person has spent two consecutive years in the
17 community without committing any offense or crime that subsequently
18 results in conviction or diversion and the person is at least eighteen
19 years old;

20 (b) No proceeding is pending against the moving party seeking the
21 conviction of a juvenile offense or a criminal offense;

22 (c) No proceeding is pending seeking the formation of a diversion
23 agreement with that person;

24 (d) The person has not been convicted of a class A or sex offense;
25 and

26 (e) Full restitution has been paid.

27 (13) The person making a motion pursuant to subsection (11) of this
28 section shall give reasonable notice of the motion to the prosecution
29 and to any person or agency whose files are sought to be sealed.

30 (14) If the court grants the motion to seal made pursuant to
31 subsection (11) of this section, it shall, subject to subsection (23)
32 of this section, order sealed the official juvenile court file, the
33 social file, and other records relating to the case as are named in the
34 order. Thereafter, the proceedings in the case shall be treated as if
35 they never occurred, and the subject of the records may reply
36 accordingly to any inquiry about the events, records of which are
37 sealed. Any agency shall reply to any inquiry concerning confidential
38 or sealed records that records are confidential, and no information can

1 be given about the existence or nonexistence of records concerning an
2 individual.

3 (15) Inspection of the files and records included in the order to
4 seal may thereafter be permitted only by order of the court upon motion
5 made by the person who is the subject of the information or complaint,
6 except as otherwise provided in RCW 13.50.010(8) and subsection (23) of
7 this section.

8 (16) Any adjudication of a juvenile offense or a crime subsequent
9 to sealing has the effect of nullifying the sealing order. Any
10 charging of an adult felony subsequent to the sealing has the effect of
11 nullifying the sealing order for the purposes of chapter 9.94A RCW.

12 (17)(a) A person eighteen years of age or older whose criminal
13 history consists of only one referral for diversion may request that
14 the court order the records in that case destroyed. The request shall
15 be granted, subject to subsection (23) of this section, if the court
16 finds that two years have elapsed since completion of the diversion
17 agreement.

18 (b) A person twenty-three years of age or older whose criminal
19 history consists of only referrals for diversion may request that the
20 court order the records in those cases destroyed. The request shall be
21 granted, subject to subsection (23) of this section, if the court finds
22 that all diversion agreements have been successfully completed and no
23 proceeding is pending against the person seeking the conviction of a
24 criminal offense.

25 (18) If the court grants the motion to destroy records made
26 pursuant to subsection (17) of this section, it shall, subject to
27 subsection (23) of this section, order the official juvenile court
28 file, the social file, and any other records named in the order to be
29 destroyed.

30 (19) The person making the motion pursuant to subsection (17) of
31 this section shall give reasonable notice of the motion to the
32 prosecuting attorney and to any agency whose records are sought to be
33 destroyed.

34 (20) Any juvenile to whom the provisions of this section may apply
35 shall be given written notice of his or her rights under this section
36 at the time of his or her disposition hearing or during the diversion
37 process.

38 (21) Nothing in this section may be construed to prevent a crime
39 victim or a member of the victim's family from divulging the identity

1 of the alleged or proven juvenile offender or his or her family when
2 necessary in a civil proceeding.

3 (22) Any juvenile justice or care agency may, subject to the
4 limitations in subsection (23) of this section and (a) and (b) of this
5 subsection, develop procedures for the routine destruction of records
6 relating to juvenile offenses and diversions.

7 (a) Records may be routinely destroyed only when the person the
8 subject of the information or complaint has attained twenty-three years
9 of age or older, or is eighteen years of age or older and his or her
10 criminal history consists entirely of one diversion agreement and two
11 years have passed since completion of the agreement.

12 (b) The court may not routinely destroy the official juvenile court
13 file or recordings or transcripts of any proceedings.

14 (23) No identifying information held by the Washington state patrol
15 in accordance with chapter 43.43 RCW is subject to destruction or
16 sealing under this section. For the purposes of this subsection,
17 identifying information includes photographs, fingerprints, palmprints,
18 soleprints, toeprints and any other data that identifies a person by
19 physical characteristics, name, birthdate or address, but does not
20 include information regarding criminal activity, arrest, charging,
21 diversion, conviction or other information about a person's treatment
22 by the criminal justice system or about the person's behavior.

23 (24) Information identifying child victims under age eighteen who
24 are victims of sexual assaults by juvenile offenders is confidential
25 and not subject to release to the press or public without the
26 permission of the child victim or the child's legal guardian.
27 Identifying information includes the child victim's name, addresses,
28 location, photographs, and in cases in which the child victim is a
29 relative of the alleged perpetrator, identification of the relationship
30 between the child and the alleged perpetrator. Information identifying
31 a child victim of sexual assault may be released to law enforcement,
32 prosecutors, judges, defense attorneys, or private or governmental
33 agencies that provide services to the child victim of sexual assault.

34 **Sec. 2.** RCW 13.40.070 and 1997 c 338 s 17 are each amended to read
35 as follows:

36 (1) Complaints referred to the juvenile court alleging the
37 commission of an offense shall be referred directly to the prosecutor.

1 The prosecutor, upon receipt of a complaint, shall screen the complaint
2 to determine whether:

3 (a) The alleged facts bring the case within the jurisdiction of the
4 court; and

5 (b) On a basis of available evidence there is probable cause to
6 believe that the juvenile did commit the offense.

7 (2) If the identical alleged acts constitute an offense under both
8 the law of this state and an ordinance of any city or county of this
9 state, state law shall govern the prosecutor's screening and charging
10 decision for both filed and diverted cases.

11 (3) If the requirements of subsections (1)(a) and (b) of this
12 section are met, the prosecutor shall either file an information in
13 juvenile court or divert the case, as set forth in subsections (5),
14 (6), and (7) of this section. If the prosecutor finds that the
15 requirements of subsection (1)(a) and (b) of this section are not met,
16 the prosecutor shall maintain a record, for one year, of such decision
17 and the reasons therefor. In lieu of filing an information or
18 diverting an offense a prosecutor may file a motion to modify community
19 supervision where such offense constitutes a violation of community
20 supervision.

21 (4) An information shall be a plain, concise, and definite written
22 statement of the essential facts constituting the offense charged. It
23 shall be signed by the prosecuting attorney and conform to chapter
24 10.37 RCW.

25 (5) Where a case is legally sufficient, the prosecutor shall file
26 an information with the juvenile court if:

27 (a) An alleged offender is accused of a class A felony, a class B
28 felony, an attempt to commit a class B felony, a class C felony listed
29 in RCW 9.94A.440(2) as a crime against persons or listed in RCW
30 9A.46.060 as a crime of harassment, or a class C felony that is a
31 violation of RCW 9.41.080 or 9.41.040(1)(b)(iii); or

32 (b) An alleged offender is accused of a felony and has a criminal
33 history of any felony, or at least two gross misdemeanors, or at least
34 two misdemeanors; or

35 (c) An alleged offender has previously been committed to the
36 department; or

37 (d) An alleged offender has been referred by a diversion unit for
38 prosecution or desires prosecution instead of diversion; or

1 (e) An alleged offender has two or more diversion (~~contracts~~)
2 agreements on the alleged offender's criminal history; or

3 (f) A special allegation has been filed that the offender or an
4 accomplice was armed with a firearm when the offense was committed.

5 (6) Where a case is legally sufficient the prosecutor shall divert
6 the case if the alleged offense is a misdemeanor or gross misdemeanor
7 or violation and the alleged offense is the offender's first offense or
8 violation. If the alleged offender is charged with a related offense
9 that must or may be filed under subsections (5) and (7) of this
10 section, a case under this subsection may also be filed.

11 (7) Where a case is legally sufficient and falls into neither
12 subsection (5) nor (6) of this section, it may be filed or diverted.
13 In deciding whether to file or divert an offense under this section the
14 prosecutor shall be guided only by the length, seriousness, and recency
15 of the alleged offender's criminal history and the circumstances
16 surrounding the commission of the alleged offense.

17 (8) Whenever a juvenile is placed in custody or, where not placed
18 in custody, referred to a diversion interview, the parent or legal
19 guardian of the juvenile shall be notified as soon as possible
20 concerning the allegation made against the juvenile and the current
21 status of the juvenile. Where a case involves victims of crimes
22 against persons or victims whose property has not been recovered at the
23 time a juvenile is referred to a diversion unit, the victim shall be
24 notified of the referral and informed how to contact the unit.

25 (9) The responsibilities of the prosecutor under subsections (1)
26 through (8) of this section may be performed by a juvenile court
27 probation counselor for any complaint referred to the court alleging
28 the commission of an offense which would not be a felony if committed
29 by an adult, if the prosecutor has given sufficient written notice to
30 the juvenile court that the prosecutor will not review such complaints.

31 (10) The prosecutor, juvenile court probation counselor, or
32 diversion unit may, in exercising their authority under this section or
33 RCW 13.40.080, refer juveniles to mediation or victim offender
34 reconciliation programs. Such mediation or victim offender
35 reconciliation programs shall be voluntary for victims.

36 **Sec. 3.** RCW 13.40.127 and 1997 c 338 s 21 are each amended to read
37 as follows:

1 (1) A juvenile is eligible for deferred disposition unless he or
2 she:

3 (a) Is charged with a sex or violent offense;

4 (b) Has a criminal history which includes any felony;

5 (c) Has a prior deferred disposition or deferred adjudication; or

6 (d) Has two or more (~~diversions~~) adjudications.

7 (2) The juvenile court may, upon motion at least fourteen days
8 before commencement of trial and, after consulting the juvenile's
9 custodial parent or parents or guardian and with the consent of the
10 juvenile, continue the case for disposition for a period not to exceed
11 one year from the date the juvenile is found guilty. The court shall
12 consider whether the offender and the community will benefit from a
13 deferred disposition before deferring the disposition.

14 (3) Any juvenile who agrees to a deferral of disposition shall:

15 (a) Stipulate to the admissibility of the facts contained in the
16 written police report;

17 (b) Acknowledge that the report will be entered and used to support
18 a finding of guilt and to impose a disposition if the juvenile fails to
19 comply with terms of supervision; and

20 (c) Waive the following rights to: (i) A speedy disposition; and
21 (ii) call and confront witnesses.

22 The adjudicatory hearing shall be limited to a reading of the
23 court's record.

24 (4) Following the stipulation, acknowledgment, waiver, and entry of
25 a finding or plea of guilt, the court shall defer entry of an order of
26 disposition of the juvenile.

27 (5) Any juvenile granted a deferral of disposition under this
28 section shall be placed under community supervision. The court may
29 impose any conditions of supervision that it deems appropriate
30 including posting a probation bond. Payment of restitution under RCW
31 13.40.190 shall be a condition of community supervision under this
32 section.

33 (6) A parent who signed for a probation bond has the right to
34 notify the counselor if the juvenile fails to comply with the bond or
35 conditions of supervision. The counselor shall notify the court and
36 surety of any failure to comply. A surety shall notify the court of
37 the juvenile's failure to comply with the probation bond. The state
38 shall bear the burden to prove, by a preponderance of the evidence,

1 that the juvenile has failed to comply with the terms of community
2 supervision.

3 (7) A juvenile's lack of compliance shall be determined by the
4 judge upon written motion by the prosecutor or the juvenile's juvenile
5 court community supervision counselor. If a juvenile fails to comply
6 with terms of supervision, the court shall enter an order of
7 disposition.

8 (8) At any time following deferral of disposition the court may,
9 following a hearing, continue the case for an additional one-year
10 period for good cause.

11 (9) At the conclusion of the period set forth in the order of
12 deferral and upon a finding by the court of full compliance with
13 conditions of supervision and payment of full restitution, the
14 respondent's conviction shall be vacated and the court shall dismiss
15 the case with prejudice."

16 **SHB 1471** - S AMD 240
17 By Senator Costa

18 ADOPTED 04/09/01

19 On page 1, line 1 of the title, after "diversion;" strike the
20 remainder of the title and insert "and amending RCW 13.50.050,
21 13.40.070, and 13.40.127."

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