

SENATE BILL REPORT

SHB 1793

As Reported by Senate Committee On:
Human Services & Corrections, March 24, 2011

Title: An act relating to restricting access to juvenile records.

Brief Description: Restricting access to juvenile records.

Sponsors: House Committee on Early Learning & Human Services (originally sponsored by Representatives Darneille, Roberts and Kagi).

Brief History: Passed House: 3/05/11, 56-41.

Committee Activity: Human Services & Corrections: 3/17/11, 3/24/11 [DPA, w/oRec].

SENATE COMMITTEE ON HUMAN SERVICES & CORRECTIONS

Majority Report: Do pass as amended.

Signed by Senators Hargrove, Chair; Regala, Vice Chair; Carrell, Harper and McAuliffe.

Minority Report: That it be referred without recommendation.

Signed by Senator Baxter.

Staff: Jennifer Strus (786-7316)

Background: Motions to Seal Records. The official juvenile court file is the legal file of the juvenile court containing petitions, information, motions, memorandums, briefs, findings of the court, and court orders. The social file is the juvenile court file which contains the records and reports of a probation counselor. Juvenile records are a combination of the official juvenile court file, the social file, and the records of any other juvenile justice or care agency regarding a particular juvenile.

To seal a juvenile record, a person must file a motion with the superior court. While records of sex offenses cannot be sealed, the court does have discretion to seal the following records:

- class A offenses where the person has spent five consecutive years since the last date of release from confinement, full-time residential treatment, or entry of disposition in the community without being convicted of any offense or crime; and
- class B, class C, gross misdemeanor, and misdemeanor offenses and diversions where the person has spent two consecutive years since the last date of release from

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confinement, full-time residential treatment, or entry of disposition in the community without being convicted of any offense or crime.

Furthermore, the court cannot seal juvenile records if there is a proceeding pending against the moving party seeking his or her conviction for a juvenile or criminal offense, a proceeding pending seeking the formation of a diversion agreement with that person, and full restitution has not been paid.

If the court grants the motion to seal, the order to seal covers the juvenile court file, the social file, and other records relating to the case as are named in the order. The order to seal means the proceedings in the case can be treated as though they never occurred and the subject of the records may reply accordingly to any inquiry about the events contained in the record.

Consumer Protection Act. The Washington Consumer Protection Act (Act) declares that unfair and deceptive practices in trade or commerce that harm the public interest are illegal. The Act gives the Office of the Attorney General the authority to bring lawsuits against businesses, and to ask the court for injunctions and restitution for consumers. It also allows individuals to bring consumer protection lawsuits.

Summary of Bill (Recommended Amendments): The Administrative Office of the Courts (AOC) must convene a workgroup of stakeholders to develop recommendations that would allow juvenile records to cost-effectively be sealed without requiring the person who is the subject of the records to make a motion to the court. The members of the workgroup must include representatives from AOC, the Judicial Information Systems Data Dissemination Committee, the Association of Clerks, the Washington Defender Association, the Washington Association of Prosecuting Attorneys, the Washington State Patrol, and a member of the Washington State Bar Association Juvenile Law Section. The workgroup must report its recommendations to the Legislature by December 1, 2011.

When the subject of juvenile criminal records receives a full and unconditional pardon, the subject of those records may reply as if those proceedings had never occurred to any inquiry about the events for which the pardon was received. Any agency that receives an inquiry about records pertaining to events upon which the pardon was received must reply that the records are confidential and that no information about the existence or nonexistence of the records can be given.

All records maintained by a court, law enforcement agency or prosecutor must be automatically destroyed when the subject of those records receives a full and unconditional pardon by the Governor.

State and local governments are liable for damages for the failure to destroy juvenile records pertaining to the events for which a person has received a full and unconditional pardon.

The provisions relating to the pardoned person's response to an inquiry about the events for which the person received a full and unconditional pardon and the requirement that the juvenile records pertaining to the event for which the person received the full and unconditional pardon must be destroyed are to be applied retroactively.

EFFECT OF CHANGES MADE BY HUMAN SERVICES & CORRECTIONS COMMITTEE (Recommended Amendments): Removes the provisions related to prohibiting a consumer reporting agency from disseminating juvenile criminal record data. Also removes the provisions relating to the Consumer Protection Act. Adds provisions requiring the destruction of juvenile records relating to an event for which the subject of the records received a full and unconditional pardon.

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 Substitute House Bill: PRO: A program called REACH brought this issue to the prime sponsor's attention. The program works with a lot of troubled youth and adults to help them turn their lives around. There is broad accessibility to criminal records, and the effect of having juvenile records so widely available hurts the chances of young people who are trying to turn their lives around. They find that because of their juvenile record they cannot buy a car or sign a lease. The REACH program sets up training programs for young adults, and they discovered there was difficulty getting the youth into some programs because of their juvenile records. A lot of them need a fresh start, and they are impeded in this because of their records. One girl spent from age 15-21 in the Juvenile Rehabilitation Administration (JRA). Although she has a college degree and works in a job that requires her to work with youth in detention facilities, she has a hard time getting access because of her juvenile record. By statute she can state honestly that she was never convicted of a crime, but then a background check will show her juvenile record and the people conducting the check think she is a liar. It is wrong to put roadblocks in front of youth who are trying to turn their lives around. Under the state's fair credit reporting act there is a seven year limit on when credit reporting agencies (CRA) can report criminal record information. Seven years after release from prison and the end of parole or disposition in a case, the CRA must remove the record from their database. For a number of youth, release from JRA may not start the seven year process; if they have a legal financial obligation (LFO) to pay then the record stays on the credit report; they can't pay the LFO because they can't get a job, and they can't get a job because their juvenile record shows up on a credit report. CRA's do have the ability to remove records from their databases. If they are complying with state law, they must follow the seven year rule and remove records from their database. Plus juvenile records begin with a 5, 6, 7 or 8. All a CRA would have to do is search for any of those numbers, and they could find the records to remove.

CON: Landlords should have the right to choose who their tenants will be, and that is why they use CRAs to obtain reports on prospective tenants. Some landlords rent to people with criminal records, but some cannot do so. If the CRA cannot provide the criminal background information to the landlord, then the landlord does not have all the information needed to decide whether to rent to a person. It is important to get nonconviction data on tenants as well because being arrested a number of times shows a pattern, and a landlord needs all the information about a person. Some landlords listen to the stories of the tenants and even if the

person has a record they will rent to them. It does not matter if it is a juvenile or adult offense - the landlord needs to be aware of this because landlords are held responsible for the safety in the community. Removal of access to information puts the community at risk. CRAs obtain information they place on their databases from lots of different places: tax records, real estate records, etc.

Persons Testifying: PRO: Representative Darneille, prime sponsor; Korbett Mosesly, REACH; Starcia Ague, University of Washington (UW); Ramona Whittington, UW Children and Youth Advocacy Clinic.

CON: Bryon Mize, Washington Apartment Association; Robert Mize, Snohomish County Apartment Operator's Association; Julie Johnson, Rental Housing Association; Cliff Webster, Consumer Data Industry Assn.