

# HOUSE BILL REPORT

## ESHB 1651

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**As Passed House:**  
March 6, 2013

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

**Brief Description:** Concerning access to juvenile records.

**Sponsors:** House Committee on Early Learning & Human Services (originally sponsored by Representatives Kagi, Walsh, Freeman, Roberts, Farrell, Zeiger, Goodman, Pollet, Sawyer, Appleton, Bergquist, Hunt, Moscoso, Jinkins, Ryu and Morrell).

**Brief History:**

**Committee Activity:**

Early Learning & Human Services: 2/12/13, 2/22/13 [DPS];

Appropriations Subcommittee on General Government: 2/25/13 [DPS(ELHS)].

**Floor Activity:**

Passed House: 3/6/13, 97-0.

**Brief Summary of Engrossed Substitute Bill**

- Provides that juvenile offender records are confidential unless the juvenile has been adjudicated for a sex offense, a serious violent offense, or the offenses of Arson in the first degree, Kidnapping in the second degree, Assault of a Child in the second degree, Malicious Placement of an Explosive, or Leading Organized Crime; the court may release juvenile records for inspection upon good cause shown.
- Provides that confidential juvenile offender records may not be published, distributed, or sold.
- Provides that the provisions of the act are prospective and retrospective; and the act takes effect July 1, 2014.

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### HOUSE COMMITTEE ON EARLY LEARNING & HUMAN SERVICES

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 9 members: Representatives Kagi, Chair; Freeman, Vice Chair; Walsh, Ranking Minority Member; Farrell, Goodman, MacEwen, Roberts, Sawyer and Zeiger.

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**Minority Report:** Do not pass. Signed by 2 members: Representatives Scott, Assistant Ranking Minority Member; Overstreet.

**Staff:** Linda Merelle (786-7092).

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**HOUSE COMMITTEE ON APPROPRIATIONS SUBCOMMITTEE ON GENERAL GOVERNMENT**

**Majority Report:** The substitute bill by Committee on Early Learning & Human Services be substituted therefor and the substitute bill do pass. Signed by 5 members: Representatives Hudgins, Chair; Dunshee, Hunt, Pedersen and Springer.

**Minority Report:** Do not pass. Signed by 4 members: Representatives Parker, Ranking Minority Member; Buys, Chandler and Taylor.

**Staff:** Alex MacBain (786-7288).

**Background:**

Juvenile Offender Records.

Since 1977 juvenile offender records have been public unless sealed in accordance with statutory requirements. Nonoffender juvenile records, such as records in a dependency matter or adoption, are not open to public inspection.

The requirements for sealing juvenile records have changed since the records became public. The most stringent requirements were imposed in 1997 when class A felonies and sex offenses could not be sealed, and a person seeking to seal a juvenile class B felony was required to remain in the community without any further offenses for 10 years, along with the payment of any restitution ordered. A person seeking to seal a juvenile class C felony was required to wait five years, in addition to any restitution. In 2011 and 2010 the Legislature amended the sealing statutes to allow the records for class A felonies and sex offenses to be sealed. Before any juvenile offender record may be sealed, the person who is the subject of the record must not have any pending diversions or criminal charges. He or she must have been relieved of the duty to register as a sex offender and must have paid in full any restitution ordered by the court. Depending upon the offense, the person seeking to seal his or her records must have spent a minimum period of time in the community after being released from confinement without any new offenses, as follows:

<i>Offense Type</i>	<i>Years in Community without a New Offense</i>
<b>Class A Felony</b>	Five years, unless the offense was Rape in the first degree, Rape in the second degree, or Indecent Liberties with Forcible Compulsion.
<b>Sex Offense</b> May only be sealed if a court has relieved the juvenile of the duty to register as a sex offender. (Juvenile convictions for Rape	For class A juvenile sex offenses, committed when the juvenile was 15 years or older, the individual must be in the community five years without conviction of additional sex or

in the first degree, Rape in the second degree, or Indecent Liberties with Forcible Compulsion may not be sealed.)	kidnapping offenses before he or she may petition to be relieved of the duty to register. For all other offenses, the person must be in the community two years without conviction of additional sex or kidnapping offenses before petitioning the court to be relieved of the duty to register.
<b>Class B Felony</b>	Two years.
<b>Class C Felony</b>	Two years.
<b>Gross Misdemeanors</b>	Two years.
<b>Misdemeanors</b>	Two years.
<b>Diversions</b>	Two years.

Serious Violent Offenses.

A "serious violent offense" is a subcategory of violent offenses, and includes the following offenses, as well as an attempt, solicitation, or conspiracy to commit such offense:

- Murder in the first degree;
- Homicide by Abuse;
- Murder in the second degree;
- Manslaughter in the first degree;
- Assault in the first degree;
- Kidnapping in the first degree;
- Rape in the first degree; or
- Assault of a Child in the first degree.

Consumer Reporting Agencies.

In 2011 the Legislature enacted Substitute House Bill 1793 which prohibited consumer reporting agencies from including in their reports the juvenile record of a person, aged 21 or older, at the time that the report is made.

**Summary of Engrossed Substitute Bill:**

Juvenile Offender Records Classified as Confidential.

Juvenile offender records are confidential unless the juvenile has been adjudicated of a sex offense for which registration is required, a serious violent offense or one of the following offenses:

- Arson in the first degree;
- Kidnapping in the second degree
- Assault of a Child in the second degree;
- Malicious Placement of an Explosive; or
- Leading Organized Crime.

Access to confidential juvenile offender records is limited to the court, the prosecuting attorney, the parties and their attorneys, and juvenile justice or care agencies. The juvenile

justice or care agencies, such as law enforcement, diversion units or the Department of Social and Health Services and its contractors, may have access only when an investigation or case is being pursued by such agency or the agency is responsible for supervising the juvenile who is the subject of the records. Access to records for research and data gathering purposes is not affected.

#### Hearing to Open Records to Public.

Upon the application of an interested party, and after a hearing with notice to all parties, the court may, for good cause shown, may release to the petitioner individual records, reports, or certain information contained in the juvenile file. The release of information in the file must be limited to the specific purpose expressly ordered by the court upon the following findings:

- anyone present when the motion to open the juvenile records was heard had an opportunity to address the motion;
- the court has weighed the competing privacy interests of the juvenile with the interests identified by the petitioners as they apply to the specific court record, with the presumption in favor of confidentiality;
- the court has determined that a compelling reason exists for the requested inspection and that the release or disclosure is necessary for the protection of a compelling public or private interest; and
- the order of the court is not broader in application or duration than necessary.

#### Access to Confidential Juvenile Offender Records.

Confidential juvenile offense records that are maintained by the court, law enforcement, state agencies, or the prosecutor's office may not be published, distributed, or sold. The prohibition against publication, distribution, or sale does not affect or prevent the use of a juvenile offender's prior adjudication in later juvenile or adult offender proceedings.

The provisions regarding the confidentiality of juvenile records apply prospectively and retroactively to all existing juvenile court files of any alleged or proven juvenile offender. Except for juvenile court files that have already been sealed, any existing juvenile offender record containing an adjudication prior to July 1, 2014, for a sex offense for which the juvenile offender must register, a serious violent offense, or Arson in the first degree, Kidnapping in the second degree, Assault of a Child in the second degree, Malicious Placement of an Explosive, or Leading Organized Crime, is public effective July 1, 2014.

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date:** The bill takes effect 90 days after adjournment of the session in which the bill is passed, except for sections 2 and 3 relating to the designation of confidential records and the sale and distribution of confidential records, which take effect July 1, 2014.

**Staff Summary of Public Testimony** (Early Learning & Human Services):

(In support) The juvenile justice system is founded on the core principle of rehabilitation. When children and youth make serious mistakes, we hold them accountable and give them an opportunity to earn a fresh start after they restore the harm that has been done by their actions. Washington is one of only eight states that have all juvenile arrest and conviction records public. Those records are out there to haunt a child as he or she makes an effort to move forward. Education is the key to developing into productive successful adults. Youth with records cannot get an education, and their chances of re-entering the juvenile justice system go up dramatically. There is a growing underclass of youth in Washington who are trapped in homelessness or joblessness. The number one reason that these kids are not getting housing, jobs, or education is not for lack of want, effort, or personal responsibility; it is because of the public availability of their juvenile records. The sealing process is out of reach of many individuals. Once records are placed on line, they can never really be sealed. This bill would reduce homelessness, joblessness, and incarceration which are huge drains on the resources of the state.

(Opposed) There is a broad public interest in seeing that justice is administered fairly and equally. It is important that journalists have access to juvenile records. They are not looking for names. They are looking for patterns to see whether juveniles are being treated differently because of their race or based upon the position of the youth's family in the community. The bill contradicts statutes that require background checks to help vulnerable adults and children. These records keep the system accountable. There is no ability to seek to open these records because there is no way to even know that the record exists if it is confidential. There are not very many prosecutions for serious violent offenses. There could be many felony sex offenses that would not be known to the public.

**Staff Summary of Public Testimony** (Appropriations Subcommittee on General Government):

(In support) Washington is one of eight states that do not have juvenile records covered by confidentiality. Juvenile arrest and conviction records are sold to credit bureaus and the information stays out in the public domain forever, impacting future employment, housing, and scholarship opportunities. This bill exempts serious violent and sex offenses from confidentiality. Juveniles make mistakes and once they pay the consequences they should have the opportunity to move on with their lives. Juveniles in Washington are shackled to their childhood mistakes by the public accessibility to their criminal records. This bill has no ongoing costs and balances the juvenile justice systems goals of rehabilitation and public safety. This bill will reduce homelessness, poverty, and future crime. The estimated costs for the courts have quadrupled since last year for essentially the same bill. The current record sealing process is costly, time consuming, and does not work.

(With concerns) Over the last couple of decades the Legislature has mandated that background checks be required for employment in a variety of work environments such as working with vulnerable adults, schools, and youth groups. The bill sets up a process to gain access to these records, but the fiscal note does not address the additional court costs related to going through that process. There are many property and violent offenses which will be confidential under the bill. The court actions that will have to be completed to gain access to the information for purposes of background checks required in statute will be very costly for local governments.

(Opposed) Landlords are responsible for the health, welfare, and safety of tenants on their properties. Best practices in the industry are to get all the available public information to determine a housing situation. There is a process in place now for sealing juvenile records and it works just fine.

**Persons Testifying** (Early Learning & Human Services): (In support) Representative Kagi, prime sponsor; Kimberly Shertz, Drew Gibson, and Jane Schroeder, Children and Youth Legislative Advocacy Clinic; Angelissa Sciuno, Record Sealing Clinic; Mary Yu, Superior Court Judges Association and Minority Disclosure Commission; Bailey Stober, Washington State Coalition on African American Affairs; and John Brumbach, Mockingbird Society.

(Opposed) Bill Will, Washington Newspaper Publishers Association; and Rowland Thompson, Allied Daily Newspaper.

**Persons Testifying** (Appropriations Subcommittee on General Government): (In support) Priya Rai, University of Washington Law School; and Angie Savino, King County Sealing Clinic.

(With concerns) Rowland Thompson, Allied Daily Newspapers.

(Opposed) Kyle Woodring, Rental Housing Association of Puget Sound; and Chester Baldwin, Washington Apartment Association.

**Persons Signed In To Testify But Not Testifying** (Early Learning & Human Services): None.

**Persons Signed In To Testify But Not Testifying** (Appropriations Subcommittee on General Government): None.