

CERTIFICATION OF ENROLLMENT

ENGROSSED SECOND SUBSTITUTE SENATE BILL 6561

Chapter 150, Laws of 2010

61st Legislature
2010 Regular Session

JUVENILE OFFENDER RECORDS--ACCESS

EFFECTIVE DATE: 06/10/10

Passed by the Senate March 9, 2010
YEAS 31 NAYS 14

BRAD OWEN

President of the Senate

Passed by the House March 2, 2010
YEAS 59 NAYS 38

FRANK CHOPP

Speaker of the House of Representatives

Approved March 22, 2010, 2:18 p.m.

CHRISTINE GREGOIRE

Governor of the State of Washington

CERTIFICATE

I, Thomas Hoemann, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **ENGROSSED SECOND SUBSTITUTE SENATE BILL 6561** as passed by the Senate and the House of Representatives on the dates hereon set forth.

THOMAS HOEMANN

Secretary

FILED

March 22, 2010

**Secretary of State
State of Washington**

ENGROSSED SECOND SUBSTITUTE SENATE BILL 6561

AS AMENDED BY THE HOUSE

Passed Legislature - 2010 Regular Session

State of Washington 61st Legislature 2010 Regular Session

By Senate Ways & Means (originally sponsored by Senators Hargrove, McCaslin, Regala, and Stevens)

READ FIRST TIME 02/09/10.

1 AN ACT Relating to restricting access to juvenile offender records;
2 and amending RCW 13.04.240, 13.50.050, 13.50.010, and 13.04.011.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 **Sec. 1.** RCW 13.04.240 and 1961 c 302 s 16 are each amended to read
5 as follows:

6 An order of court adjudging a child (~~delinquent~~) a juvenile
7 offender or dependent under the provisions of this chapter shall in no
8 case be deemed a conviction of crime.

9 **Sec. 2.** RCW 13.50.050 and 2008 c 221 s 1 are each amended to read
10 as follows:

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

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

16 (3) All records other than the official juvenile court file are
17 confidential and may be released only as provided in this section, RCW
18 13.50.010, 13.40.215, and 4.24.550.

1 (4) Except as otherwise provided in this section and RCW 13.50.010,
2 records retained or produced by any juvenile justice or care agency may
3 be released to other participants in the juvenile justice or care
4 system only when an investigation or case involving the juvenile in
5 question is being pursued by the other participant or when that other
6 participant is assigned the responsibility for supervising the
7 juvenile.

8 (5) Except as provided in RCW 4.24.550, information not in an
9 official juvenile court file concerning a juvenile or a juvenile's
10 family may be released to the public only when that information could
11 not reasonably be expected to identify the juvenile or the juvenile's
12 family.

13 (6) Notwithstanding any other provision of this chapter, the
14 release, to the juvenile or his or her attorney, of law enforcement and
15 prosecuting attorneys' records pertaining to investigation, diversion,
16 and prosecution of juvenile offenses shall be governed by the rules of
17 discovery and other rules of law applicable in adult criminal
18 investigations and prosecutions.

19 (7) Upon the decision to arrest or the arrest, law enforcement and
20 prosecuting attorneys may cooperate with schools in releasing
21 information to a school pertaining to the investigation, diversion, and
22 prosecution of a juvenile attending the school. Upon the decision to
23 arrest or the arrest, incident reports may be released unless releasing
24 the records would jeopardize the investigation or prosecution or
25 endanger witnesses. If release of incident reports would jeopardize
26 the investigation or prosecution or endanger witnesses, law enforcement
27 and prosecuting attorneys may release information to the maximum extent
28 possible to assist schools in protecting other students, staff, and
29 school property.

30 (8) The juvenile court and the prosecutor may set up and maintain
31 a central record-keeping system which may receive information on all
32 alleged juvenile offenders against whom a complaint has been filed
33 pursuant to RCW 13.40.070 whether or not their cases are currently
34 pending before the court. The central record-keeping system may be
35 computerized. If a complaint has been referred to a diversion unit,
36 the diversion unit shall promptly report to the juvenile court or the
37 prosecuting attorney when the juvenile has agreed to diversion. An

1 offense shall not be reported as criminal history in any central
2 record-keeping system without notification by the diversion unit of the
3 date on which the offender agreed to diversion.

4 (9) Upon request of the victim of a crime or the victim's immediate
5 family, the identity of an alleged or proven juvenile offender alleged
6 or found to have committed a crime against the victim and the identity
7 of the alleged or proven juvenile offender's parent, guardian, or
8 custodian and the circumstance of the alleged or proven crime shall be
9 released to the victim of the crime or the victim's immediate family.

10 (10) Subject to the rules of discovery applicable in adult criminal
11 prosecutions, the juvenile offense records of an adult criminal
12 defendant or witness in an adult criminal proceeding shall be released
13 upon request to prosecution and defense counsel after a charge has
14 actually been filed. The juvenile offense records of any adult
15 convicted of a crime and placed under the supervision of the adult
16 corrections system shall be released upon request to the adult
17 corrections system.

18 (11) In any case in which an information has been filed pursuant to
19 RCW 13.40.100 or a complaint has been filed with the prosecutor and
20 referred for diversion pursuant to RCW 13.40.070, the person the
21 subject of the information or complaint may file a motion with the
22 court to have the court vacate its order and findings, if any, and,
23 subject to subsection (23) of this section, order the sealing of the
24 official juvenile court file, the social file, and records of the court
25 and of any other agency in the case.

26 (12)(a) The court shall not grant any motion to seal records for
27 class A offenses made pursuant to subsection (11) of this section that
28 is filed on or after July 1, 1997, unless ~~((it finds that))~~:

29 ~~((a) For class B offenses other than sex offenses,))~~ (i) Since the
30 last date of release from confinement, including full-time residential
31 treatment, if any, or entry of disposition, the person has spent five
32 consecutive years in the community without committing any offense or
33 crime that subsequently results in an adjudication or conviction(~~(-~~
34 ~~For class C offenses other than sex offenses, since the last date of~~
35 ~~release from confinement, including full-time residential treatment, if~~
36 ~~any, or entry of disposition, the person has spent two consecutive~~
37 ~~years in the community without committing any offense or crime that~~
38 ~~subsequently results in conviction. For gross misdemeanors and~~

1 ~~misdemeanors, — since — the — last — date — of — release — from — confinement,~~
2 ~~including — full — time — residential — treatment, — if — any, — or — entry — of~~
3 ~~disposition, — the — person — has — spent — two — consecutive — years — in — the~~
4 ~~community — without — committing — any — offense — or — crime — that — subsequently~~
5 ~~results — in — conviction. — For — diversions, — since — completion — of — the~~
6 ~~diversion — agreement, — the — person — has — spent — two — consecutive — years — in — the~~
7 ~~community — without — committing — any — offense — or — crime — that — subsequently~~
8 ~~results — in — conviction — or — diversion));~~

9 ~~((b))~~ (ii) No proceeding is pending against the moving party
10 seeking the conviction of a juvenile offense or a criminal offense;

11 ~~((c))~~ (iii) No proceeding is pending seeking the formation of a
12 diversion agreement with that person;

13 ~~((d))~~ (iv) The person has not been convicted of a ~~(class A or)~~
14 sex offense; and

15 ~~((e))~~ (v) Full restitution has been paid.

16 (b) The court shall not grant any motion to seal records for class
17 B, C, gross misdemeanor and misdemeanor offenses and diversions made
18 under subsection (11) of this section unless:

19 (i) Since the date of last release from confinement, including
20 full-time residential treatment, if any, entry of disposition, or
21 completion of the diversion agreement, the person has spent two
22 consecutive years in the community without being convicted of any
23 offense or crime;

24 (ii) No proceeding is pending against the moving party seeking the
25 conviction of a juvenile offense or a criminal offense;

26 (iii) No proceeding is pending seeking the formation of a diversion
27 agreement with that person;

28 (iv) The person has not been convicted of a sex offense; and

29 (v) Full restitution has been paid.

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

33 (14) If the court grants the motion to seal made pursuant to
34 subsection (11) of this section, it shall, subject to subsection (23)
35 of this section, order sealed the official juvenile court file, the
36 social file, and other records relating to the case as are named in the
37 order. Thereafter, the proceedings in the case shall be treated as if
38 they never occurred, and the subject of the records may reply

1 accordingly to any inquiry about the events, records of which are
2 sealed. Any agency shall reply to any inquiry concerning confidential
3 or sealed records that records are confidential, and no information can
4 be given about the existence or nonexistence of records concerning an
5 individual.

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

11 (16) Any adjudication of a juvenile offense or a crime subsequent
12 to sealing has the effect of nullifying the sealing order. Any
13 charging of an adult felony subsequent to the sealing has the effect of
14 nullifying the sealing order for the purposes of chapter 9.94A RCW.
15 The administrative office of the courts shall ensure that the superior
16 court judicial information system provides prosecutors access to
17 information on the existence of sealed juvenile records.

18 (17)(a)(i) Subject to subsection (23) of this section, all records
19 maintained by any court or law enforcement agency, including the
20 juvenile court, local law enforcement, the Washington state patrol, and
21 the prosecutor's office, shall be automatically destroyed within ninety
22 days of becoming eligible for destruction. Juvenile records are
23 eligible for destruction when:

24 (A) The person who is the subject of the information or complaint
25 is at least eighteen years of age;

26 (B) His or her criminal history consists entirely of one diversion
27 agreement or counsel and release entered on or after June 12, 2008;

28 (C) Two years have elapsed since completion of the agreement or
29 counsel and release;

30 (D) No proceeding is pending against the person seeking the
31 conviction of a criminal offense; and

32 (E) There is no restitution owing in the case.

33 (ii) No less than quarterly, the administrative office of the
34 courts shall provide a report to the juvenile courts of those
35 individuals whose records may be eligible for destruction. The
36 juvenile court shall verify eligibility and notify the Washington state
37 patrol and the appropriate local law enforcement agency and

1 prosecutor's office of the records to be destroyed. The requirement to
2 destroy records under this subsection is not dependent on a court
3 hearing or the issuance of a court order to destroy records.

4 (iii) The state and local governments and their officers and
5 employees are not liable for civil damages for the failure to destroy
6 records pursuant to this section.

7 (b) A person eighteen years of age or older whose criminal history
8 consists entirely of one diversion agreement or counsel and release
9 entered prior to June 12, 2008, may request that the court order the
10 records in his or her case destroyed. The request shall be granted,
11 subject to subsection (23) of this section, if the court finds that two
12 years have elapsed since completion of the agreement or counsel and
13 release.

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

21 (18) If the court grants the motion to destroy records made
22 pursuant to subsection (17)(b) or (c) of this section, it shall,
23 subject to subsection (23) of this section, order the official juvenile
24 court file, the social file, and any other records named in the order
25 to be destroyed.

26 (19) The person making the motion pursuant to subsection (17)(b) or
27 (c) of this section shall give reasonable notice of the motion to the
28 prosecuting attorney and to any agency whose records are sought to be
29 destroyed.

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

34 (21) Nothing in this section may be construed to prevent a crime
35 victim or a member of the victim's family from divulging the identity
36 of the alleged or proven juvenile offender or his or her family when
37 necessary in a civil proceeding.

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

5 (a) Records may be routinely destroyed only when the person the
6 subject of the information or complaint has attained twenty-three years
7 of age or older or pursuant to subsection (17)(a) of this section.

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

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

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

30 **Sec. 3.** RCW 13.50.010 and 2009 c 440 s 1 are each amended to read
31 as follows:

32 (1) For purposes of this chapter:

33 (a) "Juvenile justice or care agency" means any of the following:
34 Police, diversion units, court, prosecuting attorney, defense attorney,
35 detention center, attorney general, the legislative children's
36 oversight committee, the office of the family and children's ombudsman,
37 the department of social and health services and its contracting

1 agencies, schools; persons or public or private agencies having
2 children committed to their custody; and any placement oversight
3 committee created under RCW 72.05.415;

4 (b) "Official juvenile court file" means the legal file of the
5 juvenile court containing the petition or information, motions,
6 memorandums, briefs, findings of the court, and court orders;

7 (c) "Records" means the official juvenile court file, the social
8 file, and records of any other juvenile justice or care agency in the
9 case;

10 (d) "Social file" means the juvenile court file containing the
11 records and reports of the probation counselor.

12 (2) Each petition or information filed with the court may include
13 only one juvenile and each petition or information shall be filed under
14 a separate docket number. The social file shall be filed separately
15 from the official juvenile court file.

16 (3) It is the duty of any juvenile justice or care agency to
17 maintain accurate records. To this end:

18 (a) The agency may never knowingly record inaccurate information.
19 Any information in records maintained by the department of social and
20 health services relating to a petition filed pursuant to chapter 13.34
21 RCW that is found by the court to be false or inaccurate shall be
22 corrected or expunged from such records by the agency;

23 (b) An agency shall take reasonable steps to assure the security of
24 its records and prevent tampering with them; and

25 (c) An agency shall make reasonable efforts to insure the
26 completeness of its records, including action taken by other agencies
27 with respect to matters in its files.

28 (4) Each juvenile justice or care agency shall implement procedures
29 consistent with the provisions of this chapter to facilitate inquiries
30 concerning records.

31 (5) Any person who has reasonable cause to believe information
32 concerning that person is included in the records of a juvenile justice
33 or care agency and who has been denied access to those records by the
34 agency may make a motion to the court for an order authorizing that
35 person to inspect the juvenile justice or care agency record concerning
36 that person. The court shall grant the motion to examine records
37 unless it finds that in the interests of justice or in the best

1 interests of the juvenile the records or parts of them should remain
2 confidential.

3 (6) A juvenile, or his or her parents, or any person who has
4 reasonable cause to believe information concerning that person is
5 included in the records of a juvenile justice or care agency may make
6 a motion to the court challenging the accuracy of any information
7 concerning the moving party in the record or challenging the continued
8 possession of the record by the agency. If the court grants the
9 motion, it shall order the record or information to be corrected or
10 destroyed.

11 (7) The person making a motion under subsection (5) or (6) of this
12 section shall give reasonable notice of the motion to all parties to
13 the original action and to any agency whose records will be affected by
14 the motion.

15 (8) The court may permit inspection of records by, or release of
16 information to, any clinic, hospital, or agency which has the subject
17 person under care or treatment. The court may also permit inspection
18 by or release to individuals or agencies, including juvenile justice
19 advisory committees of county law and justice councils, engaged in
20 legitimate research for educational, scientific, or public purposes.
21 ~~((The court may also permit inspection of, or release of information
22 from, records which have been sealed pursuant to RCW 13.50.050(12).))~~
23 The court shall release to the sentencing guidelines commission records
24 needed for its research and data-gathering functions under RCW
25 9.94A.850 and other statutes. Access to records or information for
26 research purposes shall be permitted only if the anonymity of all
27 persons mentioned in the records or information will be preserved.
28 Each person granted permission to inspect juvenile justice or care
29 agency records for research purposes shall present a notarized
30 statement to the court stating that the names of juveniles and parents
31 will remain confidential.

32 (9) Juvenile detention facilities shall release records to the
33 sentencing guidelines commission under RCW 9.94A.850 upon request. The
34 commission shall not disclose the names of any juveniles or parents
35 mentioned in the records without the named individual's written
36 permission.

37 (10) Requirements in this chapter relating to the court's authority

1 to compel disclosure shall not apply to the legislative children's
2 oversight committee or the office of the family and children's
3 ombudsman.

4 (11) For the purpose of research only, the administrative office of
5 the courts shall maintain an electronic research copy of all records in
6 the judicial information system related to juveniles. Access to the
7 research copy is restricted to the Washington state center for court
8 research. The Washington state center for court research shall
9 maintain the confidentiality of all confidential records and shall
10 preserve the anonymity of all persons identified in the research copy.
11 The research copy may not be subject to any records retention schedule
12 and must include records destroyed or removed from the judicial
13 information system pursuant to RCW 13.50.050 (17) and (18) and
14 13.50.100(3).

15 (12) The court shall release to the Washington state office of
16 public defense records needed to implement the agency's oversight,
17 technical assistance, and other functions as required by RCW 2.70.020.
18 Access to the records used as a basis for oversight, technical
19 assistance, or other agency functions is restricted to the Washington
20 state office of public defense. The Washington state office of public
21 defense shall maintain the confidentiality of all confidential
22 information included in the records.

23 **Sec. 4.** RCW 13.04.011 and 1997 c 338 s 6 are each amended to read
24 as follows:

25 For purposes of this title:

26 (1) "Adjudication" has the same meaning as "conviction" in RCW
27 9.94A.030, (~~(and the terms must be construed identically and used~~
28 ~~interchangeably)) but only for the purposes of sentencing under chapter
29 9.94A RCW;~~

30 (2) Except as specifically provided in RCW 13.40.020 and chapter
31 13.24 RCW, "juvenile," "youth," and "child" mean any individual who is
32 under the chronological age of eighteen years;

33 (3) "Juvenile offender" and "juvenile offense" have the meaning
34 ascribed in RCW 13.40.020;

35 (4) "Court" when used without further qualification means the
36 juvenile court judge(s) or commissioner(s);

1 (5) "Parent" or "parents," except as used in chapter 13.34 RCW,
2 means that parent or parents who have the right of legal custody of the
3 child. "Parent" or "parents" as used in chapter 13.34 RCW, means the
4 biological or adoptive parents of a child unless the legal rights of
5 that person have been terminated by judicial proceedings;

6 (6) "Custodian" means that person who has the legal right to
7 custody of the child.

Passed by the Senate March 9, 2010.

Passed by the House March 2, 2010.

Approved by the Governor March 22, 2010.

Filed in Office of Secretary of State March 22, 2010.