

**Joint Legislative Task Force on Juvenile Record Sealing**

Proposal for Draft Legislation

November 15, 2011 (DRAFT)

1 AN ACT Relating to access to juvenile offender records;

2

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

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6 **Sec. 1.** RCW 13.40.127 and 2009 c 236 s 1 are each amended to read  
7 as follows:

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

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

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

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

13 (d) Has two or more adjudications.

14 (2) The juvenile court may, upon motion at least fourteen days  
15 before commencement of trial and, after consulting the juvenile's  
16 custodial parent or parents or guardian and with the consent of the  
17 juvenile, continue the case for disposition for a period not to exceed  
18 one year from the date the juvenile is found guilty. The court shall

19

1 consider whether the offender and the community will benefit from a  
2 deferred disposition before deferring the disposition.

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

4 (a) Stipulate to the admissibility of the facts contained in the  
5 written police report;

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

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

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

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

16 (5) Any juvenile granted a deferral of disposition under this  
17 section shall be placed under community supervision. The court may  
18 impose any conditions of supervision that it deems appropriate  
19 including posting a probation bond. Payment of restitution under RCW  
20 13.40.190 shall be a condition of community supervision under this  
21 section.

22 The court may require a juvenile offender convicted of animal  
23 cruelty in the first degree to submit to a mental health evaluation to  
24 determine if the offender would benefit from treatment and such  
25 intervention would promote the safety of the community. After  
26 consideration of the results of the evaluation, as a condition of  
27 community supervision, the court may order the offender to attend  
28 treatment to address issues pertinent to the offense.

29 (6) A parent who signed for a probation bond has the right to  
30 notify the counselor if the juvenile fails to comply with the bond or  
31 conditions of supervision. The counselor shall notify the court and  
32 surety of any failure to comply. A surety shall notify the court of  
33 the juvenile's failure to comply with the probation bond. The state  
34 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, except that a conviction under RCW 16.52.205  
16 shall not be vacated.

17 (10)(a) Any time the court vacates a conviction pursuant to  
18 subsection (9), if the juvenile is eighteen years of age or older the  
19 court shall enter a written order sealing the case. Any time the  
20 court vacates a conviction pursuant to subsection (9), if the juvenile  
21 is not eighteen years of age or older, the court shall schedule an  
22 administrative sealing hearing to take place no later than 30 days  
23 after the respondent's eighteenth birthday, at which time the court  
24 shall enter a written order sealing the case. The respondent's  
25 presence at the administrative sealing hearing is not required. Any  
26 deferred disposition vacated prior to the effective date of this  
27 amendment section, is not subject to sealing under this subsection.

28 ~~((Records of deferred disposition cases vacated under subsection (9)~~  
29 ~~of this section shall be sealed no later than thirty days after the~~  
30 ~~juvenile's eighteenth birthday provided that the juvenile does not~~  
31 ~~have any charges pending at that time. If a juvenile has already~~  
32 ~~reached his or her eighteenth birthday before July 26, 2009, and does~~  
33 ~~not have any charges pending, he or she may request that the court~~  
34 ~~issue an order sealing the records of his or her deferred disposition~~

1 ~~cases vacated under subsection (9) of this section, and this request~~  
2 ~~shall be granted.))~~

3 )) (b) Nothing in this subsection shall preclude a juvenile from  
4 petitioning the court to have the records of his or her deferred  
5 dispositions sealed under RCW 13.50.050 (11) and (12).

6 ~~(b)~~ (c) Records sealed under this provision shall have the same  
7 legal status as records sealed under RCW 13.50.050.

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9 **Sec. 2.** RCW 13.50.050 and 2011 c 338 s 4 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.))~~ confidential, except as  
16 provided by RCW 13.50.010(8), unless:

17 (a) The juvenile has been charged by information with a serious  
18 violent offense, as defined by RCW 9.94A.030, in which case, the  
19 official juvenile court file shall be open to the public; or

20 (b) The juvenile court has ordered that the official juvenile  
21 court file be open to public inspection, either in its entirety, or in  
22 part, as provided in subsection (6) of this section.

23 (3) Access to the confidential official juvenile court file of any  
24 alleged or proven juvenile offender shall be limited to the court,  
25 prosecuting attorney, the parties and their attorneys, and, only as  
26 provided in subsection (4), juvenile justice or care agencies.

27 (4) A juvenile justice or care agency shall have access to the  
28 confidential official juvenile court file only when an investigation  
29 or case involving the juvenile in question is being pursued by the  
30 juvenile justice or care agency or when the juvenile justice or care  
31 agency is assigned the responsibility for supervising the juvenile.

32 (5) The official juvenile court file of any alleged or proven  
33 juvenile offender which is initially open to public inspection  
34 pursuant to subsection (2)(a) shall remain open to public inspection

1 without regard to later amendment of the charge. The official  
2 juvenile court of any alleged or proven juvenile offender shall become  
3 open to public inspection if amended upward to a serious violent  
4 offense as defined by RCW 9.94A.030, from a lesser offense which  
5 previously required it to be confidential. The official juvenile  
6 court file of any alleged or proven juvenile offender, containing  
7 multiple charges, one of which is a serious violent offense, shall be  
8 open to public inspection in its entirety.

9 (6) Upon application of any interested party, after a hearing with  
10 notice to all parties, the juvenile court may order that the  
11 confidential official juvenile court file of any alleged or proven  
12 juvenile offender shall be opened to the public in part or in its  
13 entirety upon making written findings that:

14 (a) The proponent of opening the court file to public inspection  
15 has made a showing that there are not identified compelling  
16 circumstances which establish a need for continued confidentiality of  
17 the juvenile court record;

18 (b) Anyone present when the motion is made had an opportunity to  
19 address the motion to open the juvenile court file to public  
20 inspection;

21 (c) The court has analyzed whether continued confidentiality would  
22 be the least restrictive means available and effective in protecting  
23 the interests of the juvenile which may be threatened by opening the  
24 official juvenile court file to public inspection;

25 (d) The court has weighed the competing privacy interests of the  
26 juvenile and the public's right to open court records, as they apply  
27 to the specific court record; and

28 (e) The order of the court is no broader in its application or  
29 duration than necessary to service its purpose.

30 (7) When weighing the competing privacy interests of the juvenile  
31 and the public's right to open court records, the court shall  
32 consider, but is not limited to considering, the following factors:

33 (a) The impact of the juvenile offense to any victim(s), any  
34 victim(s)'s family and to the community;

1 (b) Whether the current alleged or proven juvenile offense(s)  
2 involved multiple victims or multiple incidents per victim;

3 (c) Whether the current alleged or proven juvenile offense  
4 involved attempted or actual monetary loss greater than typical for  
5 the offense;

6 (d) Whether the alleged or proven current juvenile offense was a  
7 violent offense, as defined in RCW 9.94A.030;

8 (e) Whether the alleged or proven juvenile offense was a criminal  
9 street gang-related offense, as defined in RCW 9.94A.030;

10 (f) Any prior history of juvenile offenses;

11 (g) The age of the alleged or proven juvenile offender.

12 ~~(3)~~ (8) All records retained or produced, which are not part of  
13 ((other than)) the official juvenile court file, are confidential and  
14 may be released only as provided in this section, RCW 13.50.010,  
15 13.40.215, and 4.24.550.

16 ~~(4)~~ (9) Except as otherwise provided in this section and RCW  
17 13.50.010, records retained or produced by any juvenile justice or  
18 care agency may be released to other participants in the juvenile  
19 justice or care system only when an investigation or case involving  
20 the juvenile in question is being pursued by the other participant or  
21 when that other participant is assigned the responsibility for  
22 supervising the juvenile.

23 ~~(5)~~ (10) Except as provided in RCW 4.24.550, information not in an  
24 official juvenile court file concerning a juvenile or a juvenile's  
25 family may be released to the public only when that information could  
26 not reasonably be expected to identify the juvenile or the juvenile's  
27 family.

28 ~~(6)~~ (11) Notwithstanding any other provision of this chapter, the  
29 release, to the juvenile or his or her attorney, of law enforcement  
30 and prosecuting attorneys' records pertaining to investigation,  
31 diversion, and prosecution of juvenile offenses shall be governed by  
32 the rules of discovery and other rules of law applicable in adult  
33 criminal investigations and prosecutions.

34

1       ~~(7)~~ (12) Upon the decision to arrest or the arrest, law  
2 enforcement and prosecuting attorneys may cooperate with schools in  
3 releasing information to a school pertaining to the investigation,  
4 diversion, and prosecution of a juvenile attending the school. Upon  
5 the decision to arrest or the arrest, incident reports may be released  
6 unless releasing the records would jeopardize the investigation or  
7 prosecution or endanger witnesses. If release of incident reports  
8 would jeopardize the investigation or prosecution or endanger  
9 witnesses, law enforcement and prosecuting attorneys may release  
10 information to the maximum extent possible to assist schools in  
11 protecting other students, staff, and school property.

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

23       ~~(9)~~ (14) Upon request of the victim of a crime or the victim's  
24 immediate family, the identity of an alleged or proven juvenile  
25 offender alleged or found to have committed a crime against the victim  
26 and the identity of the alleged or proven juvenile offender's parent,  
27 guardian, or custodian and the circumstance of the alleged or proven  
28 crime shall be released to the victim of the crime or the victim's  
29 immediate family.

30       ~~(10)~~ (15) Subject to the rules of discovery applicable in adult  
31 criminal prosecutions, the juvenile offense records of an adult  
32 criminal defendant or witness in an adult criminal proceeding shall be  
33 released upon request to prosecution and defense counsel after a  
34 charge has actually been filed. The juvenile offense records of any

1 adult convicted of a crime and placed under the supervision of the  
2 adult corrections system shall be released upon request to the adult  
3 corrections system.

4 ~~(11)~~ (16) In any case in which an information has been filed  
5 pursuant to RCW 13.40.100 or a complaint has been filed with the  
6 prosecutor and referred for diversion pursuant to RCW 13.40.070, the  
7 person the subject of the information or complaint may file a motion  
8 with the court to have the court vacate its order and findings, if  
9 any, and, subject to subsection (~~(23)~~) (28) of this section, order  
10 the sealing of the official juvenile court file, the social file, and  
11 records of the court and of any other agency in the case.

12 ~~(12)~~ (17) (a) The court shall not grant any motion to seal records  
13 for class A offenses made pursuant to subsection (~~(11)~~) (16) of this  
14 section that is filed on or after July 1, 1997, unless:

15 (i) Since the last date of release from confinement, including  
16 full-time residential treatment, if any, or entry of disposition, the  
17 person has spent five consecutive years in the community without  
18 committing any offense or crime that subsequently results in an  
19 adjudication or conviction;

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

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

24 (iv) The person is no longer required to register as a sex  
25 offender under RCW 9A.44.130 or has been relieved of the duty to  
26 register under RCW 9A.44.143 if the person was convicted of a sex  
27 offense;

28 (v) The person has not been convicted of rape in the first degree,  
29 rape in the second degree, or indecent liberties that was actually  
30 committed with forcible compulsion; (~~and~~)

31 (vi) Full restitution has been paid; and

32 (vii) The person is eligible to seal all juvenile records  
33 pertaining to them and the motion requests sealing of all such  
34 records.

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

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

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

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

13 (iv) The person is no longer required to register as a sex  
14 offender under RCW 9A.44.130 or has been relieved of the duty to  
15 register under RCW 9A.44.143 if the person was convicted of a sex  
16 offense; (~~and~~)

17 (v) Full restitution has been paid; and

18 (vi) The person is eligible to seal all juvenile records  
19 pertaining to them and the motion requests sealing of all such  
20 records.

21 (c) Notwithstanding the requirements in subsections (17)(a) or  
22 (b), the court shall grant any motion to seal records of any deferred  
23 disposition previously vacated under RCW 13.40.127(9) if the person is  
24 eighteen years of age or older at the time of the motion.

25 ~~(13)~~ (18) The person making a motion pursuant to subsection  
26 ~~((11))~~ (16) of this section shall give reasonable notice of the  
27 motion to the prosecution and to any person or agency whose files are  
28 sought to be sealed.

29 ~~(14)~~ (19)(a) If the court grants the motion to seal made pursuant  
30 to subsection ~~((11))~~ (16) of this section, it shall, subject to  
31 subsection ~~((23))~~ (28) of this section, order sealed the official  
32 juvenile court file, the social file, and other records relating to  
33 the case as are named in the order. Thereafter, the proceedings in  
34 the case shall be treated as if they never occurred, and the subject

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

6 (b) In the event the subject of the juvenile records receives a  
7 full and unconditional pardon, the proceedings in the matter upon  
8 which the pardon has been granted shall be treated as if they never  
9 occurred, and the subject of the records may reply accordingly to any  
10 inquiry about the events upon which the pardon was received. Any  
11 agency shall reply to any inquiry concerning the records pertaining to  
12 the events for which the subject received a pardon that records are  
13 confidential, and no information can be given about the existence or  
14 nonexistence of records concerning an individual.

15 ~~(15)~~ (20) Inspection of the files and records included in the  
16 order to seal may thereafter be permitted only by order of the court  
17 upon motion made by the person who is the subject of the information  
18 or complaint, except as otherwise provided in RCW 13.50.010(8) and  
19 subsection (~~((23))~~) (16) of this section.

20 ~~(16)~~ (21) Any adjudication of a juvenile offense or a crime  
21 subsequent to sealing has the effect of nullifying the sealing order.  
22 Any charging of an adult felony subsequent to the sealing has the  
23 effect of nullifying the sealing order for the purposes of chapter  
24 9.94A RCW. The administrative office of the courts shall ensure that  
25 the superior court judicial information system provides prosecutors  
26 access to information on the existence of sealed juvenile records.

27 ~~(17)~~ (22)(a)(i) Subject to subsection (~~((23))~~) (28) of this  
28 section, all records maintained by any court or law enforcement  
29 agency, including the juvenile court, local law enforcement, the  
30 Washington state patrol, and the prosecutor's office, shall be  
31 automatically destroyed within ninety days of becoming eligible for  
32 destruction. Juvenile records are eligible for destruction when:

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

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

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

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

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

8 (ii) No less than quarterly, the administrative office of the  
9 courts shall provide a report to the juvenile courts of those  
10 individuals whose records may be eligible for destruction. The  
11 juvenile court shall verify eligibility and notify the Washington  
12 state patrol and the appropriate local law enforcement agency and  
13 prosecutor's office of the records to be destroyed. The requirement  
14 to destroy records under this subsection is not dependent on a court  
15 hearing or the issuance of a court order to destroy records.

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

19 (b) All records maintained by any court or law enforcement agency,  
20 including the juvenile court, local law enforcement, the Washington  
21 state patrol, and the prosecutor's office, shall be automatically  
22 destroyed within thirty days of being notified by the governor's  
23 office that the subject of those records received a full and  
24 unconditional pardon by the governor.

25 (c) A person eighteen years of age or older whose criminal history  
26 consists entirely of one diversion agreement or counsel and release  
27 entered prior to June 12, 2008, may request that the court order the  
28 records in his or her case destroyed. The request shall be granted,  
29 subject to subsection (~~((23))~~) (28) of this section, if the court  
30 finds that two years have elapsed since completion of the agreement or  
31 counsel and release.

32 (d) A person twenty-three years of age or older whose criminal  
33 history consists of only referrals for diversion may request that the  
34 court order the records in those cases destroyed. The request shall

1 be granted, subject to subsection (~~((23))~~) (28) of this section, if  
2 the court finds that all diversion agreements have been successfully  
3 completed and no proceeding is pending against the person seeking the  
4 conviction of a criminal offense.

5 ~~(18)~~ (23) If the court grants the motion to destroy records made  
6 pursuant to subsection (~~((17))~~) (22) (c) or (d) of this section, it  
7 shall, subject to subsection (~~((23))~~) (28) of this section, order the  
8 official juvenile court file, the social file, and any other records  
9 named in the order to be destroyed.

10 ~~(19)~~ (24) The person making the motion pursuant to subsection  
11 (~~((17))~~) (22) (c) or (d) of this section shall give reasonable notice  
12 of the motion to the prosecuting attorney and to any agency whose  
13 records are sought to be destroyed.

14 ~~(20)~~ (25) Any juvenile to whom the provisions of this section may  
15 apply shall be given written notice of his or her rights under this  
16 section at the time of his or her disposition hearing or during the  
17 diversion process.

18 ~~(21)~~ (26) Nothing in this section may be construed to prevent a  
19 crime victim or a member of the victim's family from divulging the  
20 identity of the alleged or proven juvenile offender or his or her  
21 family when necessary in a civil proceeding.

22 ~~(22)~~ (27) Any juvenile justice or care agency may, subject to the  
23 limitations in subsection (~~((23))~~) (28) of this section and (a) and  
24 (b) of this subsection, develop procedures for the routine destruction  
25 of records relating to juvenile offenses and diversions.

26 (a) Records may be routinely destroyed only when the person the  
27 subject of the information or complaint has attained twenty-three  
28 years of age or older or pursuant to subsection (~~((17))~~) (22) (a) of  
29 this section.

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

32 ~~(23)~~ (28) Except for subsection (~~((17))~~) (22) (b) of this section,  
33 no identifying information held by the Washington state patrol in  
34 accordance with chapter 43.43 RCW is subject to destruction or sealing

1 under this section. For the purposes of this subsection, identifying  
2 information includes photographs, fingerprints, palmprints,  
3 soleprints, toeprints and any other data that identifies a person by  
4 physical characteristics, name, birthdate or address, but does not  
5 include information regarding criminal activity, arrest, charging,  
6 diversion, conviction or other information about a person's treatment  
7 by the criminal justice system or about the person's behavior.

8 ~~(24)~~ (29) Information identifying child victims under age eighteen  
9 who are victims of sexual assaults by juvenile offenders is  
10 confidential and not subject to release to the press or public without  
11 the permission of the child victim or the child's legal guardian.  
12 Identifying information includes the child victim's name, addresses,  
13 location, photographs, and in cases in which the child victim is a  
14 relative of the alleged perpetrator, identification of the  
15 relationship between the child and the alleged perpetrator.  
16 Information identifying a child victim of sexual assault may be  
17 released to law enforcement, prosecutors, judges, defense attorneys,  
18 or private or governmental agencies that provide services to the child  
19 victim of sexual assault.

20 (30) No juvenile offense records maintained by any court, law  
21 enforcement agency or state agency, including the juvenile court,  
22 local law enforcement, the Washington state patrol, and the county  
23 prosecutor's offices, may be published, distributed, or sold.

24  
25 NEW SECTION. Sec. 3. (1) Section 2 of this act takes effect April  
26 1, 2013. Upon its effective date, the provisions of Section 2 shall  
27 apply prospectively and shall also apply retroactively to all existing  
28 official juvenile court files of any alleged or proven juvenile  
29 offender.

30 (2) Any existing official juvenile court file containing a serious  
31 violent offense, as defined in RCW 9.94A.030, charged prior to the  
32 effective date of section 2 of this act shall, upon the effective date  
33 of section 2, be public.

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--- **END** ---