



WASHINGTON STATE
ASSOCIATION OF
COUNTY CLERKS

Betty J. Gould, President
Thurston County Clerk
2000 Lakeridge Drive SW
Olympia, WA 98502
360-786-5549
Gouldb@co.thurston.wa.us

Background Information on Confidential/Sealed Superior Court Case Records

- County Clerks (AKA Superior Court Clerks) are the keepers of the record at the Superior Court
- Clerks also manage access/inspection of the records
- Highly accessed records – civil, criminal, family law, juvenile, probate, guardianship, involuntary commitment
- Types of juvenile court records:
 - Offender which are open to public
 - Dependency/Termination, Becca cases, including Truancy, At Risk Youth and Child in Need of Services: By statute, in these categories all records are confidential. Hearings are open.
- Multiple confusing statutes now related to sealing/expunging juvenile offender records.
- Unique statute language re: sealing a juvenile record: *“Thereafter, the proceedings in the case shall be treated as if they never occurred, and the subject of the records may reply accordingly to any inquiry about the events, records of which are sealed. Any agency shall reply to any inquiry concerning confidential or sealed records that records are confidential, and no information can be given about the existence or nonexistence of records concerning an individual.”*
- Washington State General Court Rule GR 15 dictates different policy for sealed court records.
- Judges individually order documents or court files to be sealed, after hearing. There is much recent case law regarding sealing, in addition to strict provisions of GR 15
- County Clerk files the order and performs the mechanics of sealing, pursuant to court rule GR 15
- Court order for sealing is a traditional model; Courts and clerks have always worked in this model;
- State law dictating confidential categories of records are another traditional model
- There is no such thing as automatic sealing, other than moving to a model where the category of offender cases are deemed restricted from public view. This potentially conflicts with the Washington State Constitution provision, but addresses the many concerns of advocates and the work load issues associated with sealing.
- Sealing Court records is akin to granting an exception to public disclosure: should be done very carefully



WASHINGTON STATE
ASSOCIATION OF
COUNTY CLERKS

Betty J. Gould, President
Thurston County Clerk
2000 Lakeridge Drive SW
Olympia, WA 98502
360-786-5549
Gouldb@co.thurston.wa.us

Juvenile Record Sealing and the Implementation of HB 1954, RCW 13.40.127:

(10)(a) Records of deferred disposition cases vacated under subsection (9) of this section shall be sealed no later than thirty days after the juvenile's eighteenth birthday provided that the juvenile does not have any charges pending at that time. If a juvenile has already reached his or her eighteenth birthday before July 26, 2009, and does not have any charges pending, he or she may request that the court issue an order sealing the records of his or her deferred disposition cases vacated under subsection (9) of this section, and this request shall be granted. Nothing in this subsection shall preclude a juvenile from petitioning the court to have the records of his or her deferred dispositions sealed under RCW [13.50.050](#) (11) and (12).

Concerns with the law

1. Traditionally the legislature develops laws that restrict access to categories of cases: involuntary commitment, adoption, parentage, dependency. Traditionally judges make decisions about sealing specific cases or specific documents. This law mixes the two situations.
2. The law intended to make sealing automatic in order to relieve the burden on the offenders, but it resulted in a significant work load increase to clerks/prosecutors/juvenile court staff. This sealing is not "automatic" due to the conditions in the law, and the work to implement it falls on local government without funding for the significant added work.
3. No group is specifically assigned the job of sealing the records; it is done differently in different counties, though primarily it has fallen to the County Clerks related to their role as custodian of court records. However, the "Records of deferred disposition cases" language potentially relates to files held by many organizations.
4. The law contains no provisions to provide notice of the sealing to the Washington State Patrol, the prosecutor, defense, probation, or even the offender. There is no provision for crime victim notice. Giving notice to the appropriate stakeholders would dramatically increase the local expense of this law. Not giving notice results in conflicting records and confusion.
5. There is no clarity in the law on who has access to the record after the sealing.
6. Defining the "charges pending" language is problematic; many counties are defining it narrowly to control the increased work of the law.
7. Access to the computer systems that contain "pending" charges, and information-sharing issues are significant problems with this component of the law. Interpreting what is "pending" has fallen to the clerks, though it is an inappropriate role for the clerks.
8. The law doesn't acknowledge that an offender may have had *convictions* since deferral; it only acknowledges *pending* charges. Unintended consequences result.
9. The law takes into account offenders who fit criteria and turned 18 prior to bill and offenders who meet criteria and turn 18 prospectively; doesn't speak to offenders who turn 18 and then meet the criteria after implementation of the law
10. The law is potentially in conflict with recent case law on sealing court records.
11. There is no process or capacity for the nullifying component of the law.
12. There are also issues with records sealing and destruction in RCW 13.50.050; class A felonies, up to and including Murder 1 may be sealed and removed from public accessibility.