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## FAQ on the YEAR Act (SB 5564)

### ----- “Administrative” Sealing of Juvenile Records -----

**Date: 07/24/15**

#### Definition of Sealing

In Washington, juvenile court records do not regularly disappear when you turn 18. In fact, almost all juvenile records remain open for the public to view, unless the court “seals” them. Certain requirements must be met for record sealing. The YEAR Act, which follows up on the Youth Opportunities Act, is the most significant reform in the juvenile justice system in decades. Now sealing will largely happen automatically during administrative hearings that are regularly scheduled after the youth turns 18.

#### Records Affected

**When is the effective date?** The effective date is July 24, 2015.

**Who does the law apply to?** Anyone charged with a criminal offense on or after July 24, 2015 will be able to take advantage of the law. In addition, anyone with **existing legal financial obligations and interest** (court costs, fees and fines) may now petition the courts for relief.

**If the new law does not apply, then can the record be sealed?** For more information on what records can be sealed and how to seal through the **existing process**, see Teamchild’s website ([www.teamchild.org](http://www.teamchild.org)).

#### Existing Sealing Process

**If a record is not administratively sealed, can it be sealed later on?** This law did not change anything about the existing sealing process. If someone is eligible to seal their record under the existing process, they can still do so. The existing process has a waiting period of two to five years after release, and requires payment of restitution. In some cases, this does and still will allow for sealing prior to age 18. For more information, see Teamchild’s website ([www.teamchild.org](http://www.teamchild.org)).

#### Dismissed Charges or Acquittals

**What if the individual is acquitted or the charges are dismissed?** The court must enter an order immediately sealing the juvenile court record after an acquittal or dismissal of charges.

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### Administrative Sealing Hearings Process

**When will the judge hold the administrative sealing hearing?** At disposition of a case on an eligible charge, the court will schedule an administrative sealing hearing for a future date to be held after: the youth turns 18; the anticipated completion date of community supervision or parole; or release date from detention.

**What will happen at the administrative sealing hearing?** At the administrative sealing hearing, the court will “administratively” (without a full hearing) seal the record **unless someone objects** or the court believes there is a compelling reason not to seal. If there is an objection, the court will set the matter for a contested, judicial hearing.

**Can anyone object to the administrative sealing?** Yes, anyone can object – even a newspaper or a TV station. But even if someone objects, the court will still seal the record unless it is “inappropriate” to do so.

**Does the individual have to appear at the administrative sealing hearing?** No, the individual does not have to appear at either an administrative sealing hearing or a contested judicial hearing. If there is an objection to sealing, the individual will be notified of the contested hearing at least **18 days beforehand**.

**What happens at a contested hearing?** Prior to the hearing, the individual can respond to the court, in writing, as to why the record should be sealed. The record must be sealed **unless** the court finds that sealing is “inappropriate”.

### Eligibility Considerations for Administrative Sealing Hearings

**Who is eligible?** The individual has to successfully complete the terms of disposition prior to the hearing, including paying restitution to victims, to be eligible for the administrative sealing process.

**Who is considered a “victim”?** The “victim” is the person(s) named in the restitution order, **not including insurance companies**.

**Who is not eligible?** The court will also not administratively seal the record of an individual who has not completed his/her terms of disposition, has not paid the full amount of restitution owed to victims, or has been adjudicated of one of the “exempted offenses.” The exempted offenses include “most serious offenses,” “sex offenses,” and certain felony drug offenses (**see chart at the end of this document**).

**If an individual has not complied with all of the terms of the disposition by the time of the regular hearing, can it be rescheduled?** For an individual to have an administrative sealing hearing, he or she must always have complied with the terms of probation and have been released from confinement. However, if the individual has not yet complied with the terms of disposition at the time of the hearing, the court **may but does not have to** reschedule an individual’s sealing date to give time to come into compliance.

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### Unsealing Records

**What happens if the individual is convicted of another offense?** Any adjudication of a juvenile offense or conviction of a crime after the sealing order results in nullifying the sealing order; however, the court can order the juvenile record resealed after disposition of the later offense if the case meets the sealing criteria.

### Access to Sealed Records

**If the record is unsealed, who can access the record?** Any adjudication of a juvenile offense or conviction of a crime after the sealing order results in nullifying the sealing order, which means the record will become public again. Even if the record becomes public, it may be possible to seal again under the existing process.

**Can law enforcement, prosecutors, and judges get access to a sealed record?** Yes.

**Can the Department of Licensing (DOL) get access to a sealed record?** Yes. The DOL has access to sealed records and some employers may be able to access these records through the DOL. If a record has been sealed, an employer who gets the record from the DOL **cannot** use the record in a hiring decision without giving the individual a chance to explain the record has been sealed.

**Can researchers get access to data about sealed records?** Yes.

**When do Credit Reporting Agencies have to remove all juvenile record information?** By law Credit Reporting Agencies are **supposed** to clear all juvenile records once the individual reaches age 21.

### Legal Financial Obligations (Court Costs, Fees & Fines) and Restitution

**How can I get relief from existing legal financial obligations?** The YEAR Act allows an individual to petition the court for relief from existing LFOS and interest, except for the Victims Penalty Assessment and the DNA Collection fee for “good cause shown, including inability to pay.” The court must at least consider “...incarceration and a respondent's other debts, including restitution,” when determining ability to pay.

**How can I get relief from existing restitution?** Existing law allows individuals to petition for modification of restitution and interest. The YEAR Act explicitly provides that “inability to pay” is grounds for relief.

**What about the DNA Collection fee?** The DNA fee can only be charged once.

**What about the Victims’ Penalty Assessment?** The VPA can only be charged in cases involving: (1) “most serious offenses,” “sex offenses,” and certain felony drug offenses (**see chart at the end of this document**); and (2) or a victim. **The victim should be named in the restitution order.** When the offense involves a victim, the court can order up to seven hours of community restitution if community service is “practicable.”

**What about Interest?** Interest will no longer be charged on LFOs or restitution.

**What about other fees and fines?** Local or state agencies are prohibited from creating and imposing a fee or fine on any youth without statutory authority to do so.

**Can I do community service instead of paying money?** The court may order community service instead of money at the rate of the state minimum wage per hour. The victim is allowed to give input to determine the nature of the community service whenever practical and appropriate.

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## Joint & Several Liability

**What happens if there are multiple offenders involved in the offense?** The court has discretion to order independent rather than joint and several liability among offenders.

## Community Service

**Can I do community service instead of paying money?** The court may order community service instead of money at the rate of the state minimum wage per hour. The victim is allowed to determine the nature of the community service whenever practical and appropriate.

## Chart of Offenses

**Rule: "Most serious", "Sex", and certain "Drug" Offenses are excluded from regular sealing. However, most of these offenses are sealable under the existing legal procedure 2-5 years after release.**

**A "most serious" offense is defined by RCW 9.94A.030 and includes the following:**

- any class A felony or criminal solicitation of or criminal conspiracy to commit a class A felony;
- Assault in the second degree;
- Assault of a child in the second degree;
- Child Molestation in the second degree;
- Controlled Substance Homicide;
- Extortion in the first degree;
- Incest when committed against a child under age 14;
- Indecent Liberties;
- Kidnapping in the second degree;
- Leading Organized Crime;
- Manslaughter in the first degree;
- Promoting Prostitution in the first degree;
- Rape in the third degree;
- Robbery in the second degree;
- Sexual Exploitation;
- Vehicular Assault, when caused by the operation or driving of a vehicle by a person while under the influence of liquor or any drug or by the operation of a vehicle in a reckless manner;
- Vehicular Homicide, when proximately caused by the

driving of a vehicle by a person while under the influence of liquor or any drug, or by operation of any vehicle in a reckless manner;

- any class B felony offense with a finding of sexual motivation;
- any other felony with a deadly weapon finding;
- any felony offense in effect before December 2, 1983, that is comparable to a most serious offense defined here or any federal or out-of-state conviction for an offense under the laws of this state would be a felony classified as a most serious offense here; certain prior convictions for Indecent Liberties;
- any out-of-state conviction for a felony offense with a finding of sexual motivation if the minimum sentence was 10 years or more.

**A "sex offense" is defined in Chapter 9A.44 RCW.**

**A "drug offense" as defined by RCW 9.94A.030 and includes:**

- any felony controlled substance violation except possession of a controlled substance or forged prescription for a controlled substance
- any offense defined as a felony under federal law that relates to the possession, manufacture, distribution, or transportation of a controlled substance; or
- any out-of-state conviction for an offense that would constitute a felony controlled substance violation in this state except possession of a controlled substance or forged prescription for a controlled substance.

## More Questions?

**For more information or comments:** Casey Trupin, Columbia Legal Services, at [casey.trupin@columbialegal.org](mailto:casey.trupin@columbialegal.org) or 206-287-9665.