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FAQ on the Youth Opportunities Act (HB 1651) “Automatic” Sealing of Juvenile Records

Date: 04/08/14

Summary:

- ✓ Requires courts to automatically seal most juvenile court records after an individual turns 18 and successfully completes community supervision, is released from confinement or parole, and pays all legal financial obligations.
- ✓ Requires courts to immediately seal the juvenile court record after an acquittal or dismissal of charges.

The language of the final bill can be found [here](#) and the final bill report can be found [here](#).

When does it become law? The effective date is June 12, 2014. Thus, the new process only applies to juvenile offenses where the disposition (also known as the sentencing or adjudication) is on or after June 12, 2014. It also applies to non-adjudication records (such as records resulting in acquittals) that are created on or after June 12, 2014. **Records created before that date can still be sealed through the previous (“existing”) process.** For more information on what records can be sealed and how to seal through the existing process, see Teamchild’s website [here](#).

How will the new sealing process work? At disposition of a case on an eligible charge, the court will schedule a “regular sealing hearing” for a future date to be held after:

- The youth turns 18; and
- The anticipated completion date of community supervision or parole; or
- The anticipated release date from detention.

At this regular 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. The court will also not seal the record of an individual who has not completed his/her terms of disposition, has not paid off financial obligations, or has been adjudicated of one of the “exempted offenses” (see chart at the end of this document).

What does an individual have to do to be eligible for automatic sealing? The individual has to successfully complete the terms of disposition prior to the hearing, including financial obligations, to be eligible for the regular automatic sealing process.

What makes an individual's record ineligible for automatic sealing? If the individual has not paid his/her financial obligations *or*, as any part of his or her record, has an adjudication for one of the *exempted offenses* (see the chart at the end of this document). The exempted offenses include "most serious offenses," "sex offenses," and certain felony drug charges.

Can anyone object to the automatic sealing? Yes, anyone can object – even a newspaper or a TV station can object. But just because there is an objection, the Court will still seal the record unless it is "inappropriate" to do so.

Does the individual have to appear at the sealing hearing? No, the individual does not have to appear at either an administrative (automatic) hearing or a contested judicial hearing. If there is an objection to automatic 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".

If an individual has not complied with all of the terms of the disposition by the time of the automatic hearing, can it be rescheduled? For an individual to have an automatic 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 automatic sealing hearing, the court *may* but does not have to reschedule an individual's sealing date so that they can come into compliance.

If a record is not automatically 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 "old" process, they can still do so. The "old" process requires waiting 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.

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.

What happens if the individual is convicted of an offense after 18? 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.

Can law enforcement, prosecutors, judges and the individual's attorney get access to a sealed record? Yes.

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

Can records ever be destroyed? Yes, under existing law, in two circumstances an individual can petition for destruction of their juvenile record: 1) an individual who is over 18 and whose record consists entirely of one diversion; 2) an individual over 23 years old whose record consists only of referrals for diversion. Some courts may routinely destroy these records.

When do Credit Reporting Agencies have to remove all juvenile record information? Credit Reporting Agencies must clear juvenile records (whether sealed or not) from their reports once the individual reaches age 21.

Can an employee's sealed juvenile record be used against an employer in a lawsuit for misconduct by the employee? No. Since the employer should not be getting the sealed record, and the employee can lawfully deny the existence of the adjudication, the record cannot be used against the employer. The record can be used against the employer if the employer actually knew of the record based on a background check that (inappropriately) contained the information.

For more information or comments: Casey Trupin, Columbia Legal Services, at casey.trupin@columbialegal.org or 206-287-9665.

Chart 1. Offenses NOT SEALABLE under the automatic sealing procedure

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

1. "Most Serious Offense" is defined in [RCW 9.94A.030](#) and includes the following felonies or a felony attempt to commit the following felonies:
 - 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; or
 - any out-of-state conviction for a felony offense with a finding of sexual motivation if the minimum sentence was 10 years or more.
2. Sex offense is defined in [Chapter 9A.44 RCW](#).
3. A "drug offense" as defined by [RCW 9.94A.030](#) 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.