

The Records Privacy Act of 2011 (SB 5019, HB 1235)

THE PROBLEM: RELEASE OF NON-CONVICTION RECORDS IS PREVENTING GOOD PEOPLE FROM BECOMING FULLY CONTRIBUTING MEMBERS OF SOCIETY.

Many records may misleadingly imply guilt where there is none. People who have been arrested or charged without a conviction face serious barriers preventing them from:

- gaining employment
- gaining housing
- gaining a professional license
- volunteering
- coaching sports teams
- obtaining security clearances

There is little legitimate public interest in a stale arrest record which did not result in a conviction. Accordingly, most states do at least one of the following:

- refuse to automatically disseminate their non-conviction data to the public or require that the non-conviction records remain private;
- have amended their privacy statutes to protect privacy in the electronic age;
- give courts authority to remove non-conviction data from public access; or
- require physical destruction of court documents upon expungement.

The criminal records portion of Washington's Privacy Act (RCW 10. 97.060) has not been amended since 1977 and it provides none of these protections. Because it was created before the ready dissemination of records via the Internet, it is badly outdated and needs to be amended to protect individuals.

EXAMPLES OF THE HARM CAUSED:

A single mother was falsely accused of rape of a child while fleeing her abusive relationship. Though acquitted of all charges, record of the false accusation of rape continues to show up when she applies for jobs.

A man was placed on temporary leave by his employer after discovery of a ten year old criminal accusation. He lost work and pay for two months he was able to obtain the records to show that the case had been dismissed.

19 years ago, a man was arrested in Washington on a misdemeanor charge that was later dismissed. Even though he is now a successful businessman who lives in New York, this ancient record causes him problems with international travel and housing.

BACKGROUND:

In Washington, nearly *half* of the cases filed in district and municipal court, and almost one-quarter of cases filed in superior court, are later dismissed (in many cases due to actual innocence, lack of evidence, or misunderstandings). But after the charges are dismissed, the permanent record of the case lives on. These records are automatically available to any person who runs a search of the court's electronic databases or requests the physical file from the court.

When the Criminal Records Privacy Act was adopted in 1977, it protected the privacy of people who were arrested — but never convicted — by allowing them to request “deletion” of the

record. The Act applied to records of all criminal justice agencies — except the courts — because at the time court records were not easily accessible to the public.

There has been a shift in how records are accessed. Just a decade ago in most jurisdictions, viewing public documents required a visit to the local records clerk who maintained paper files in a cabinet. Today, the electronic nature of many public records allows instantaneous and global dissemination of the smallest record generated by local police, county jails and courthouses. The protections put into place 30 years ago have been left behind.

What used to take hours pawing through paper records in 39 courthouses across the state now takes seconds with the click of a mouse. Computerized databases compile and distribute “records” that may contain errors or that may be misinterpreted – records accessed without the human presence in the process to help understand what is being seen.

The rule regarding sealing court records (GR 15) will not solve this problem because the party seeking to seal the records cannot meet their burden (to overcome the presumption of openness) until they have already been harmed. GR 15’s stringent requirements are difficult to meet without the assistance of a lawyer, thus creating an access-to-justice problem for those who most need their records to be sealed. Finally, if an order to seal is obtained, certain identifying information remains available to the public. At times the mystery behind a sealed record can be more harmful than the record itself.

Because the law did not keep up with technology, Washington residents are continually haunted by court records for years after the citizen was exonerated or never charged at all. But Courts defer to the legislature on how to dispose of criminal records. Without a statutory grant of authority these records will remain available to the public. The law must be changed.

THE SOLUTION : THE RECORDS PRIVACY ACT OF 2011

- Requires Courts, upon the request of the individual named in the records, to keep qualifying non-conviction records confidential.
- Restores the effect of the Criminal Records Privacy Act of 1977 to that originally intended, by allowing people with arrests that do not lead to convictions to request that those records no longer be publicly disseminated.
- Mitigates the undue collateral consequences that come from unlimited public dissemination of non-conviction data.
- Ensures that misunderstanding of a court record will not create a bar to one’s ability to make positive contributions to their community.
- Preserves a complete record of that data so that it is still available to court personnel, judicial officers, law enforcement, prosecuting agencies, the individual named in the record, and his/her attorney.

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