HOUSE BILL REPORT
E2SSB 5564

As Reported by House Committee On:
Early Learning & Human Services

Title: An act relating to decreasing the barriers to successful community participation for individuals involved with the juvenile justice system.

Brief Description: Concerning the sealing of juvenile records and fines imposed in juvenile cases.

Sponsors: Senate Committee on Ways & Means (originally sponsored by Senators O'Ban, Darneille, Miloscia, Hargrove, Kohl-Welles, Fain, Jayapal, Brown, Habib, Dammeier, Frockt, Litzow, Warnick, Hasegawa and McAuliffe).

Brief History:
Committee Activity:
Early Learning & Human Services: 3/18/15, 3/26/15 [DPA].

Brief Summary of Engrossed Second Substitute Bill
(As Amended by Committee)

- Allows courts to seal juvenile records if the person has paid the full amount of restitution owing to the individual victim named in the restitution order.
- Eliminates various legal financial obligations and other fees for juveniles, except the DNA collection fee and the victim penalty assessment for most serious offenses and sex offenses.
- Eliminates interest for legal financial obligations for juveniles.

HOUSE COMMITTEE ON EARLY LEARNING & HUMAN SERVICES

Majority Report: Do pass as amended. Signed by 10 members: Representatives Kagi, Chair; Walkinshaw, Vice Chair; Walsh, Ranking Minority Member; Scott, Assistant Ranking Minority Member; Dent, Kilduff, McCaslin, Ortiz-Self, Sawyer and Senn.

Minority Report: Do not pass. Signed by 1 member: Representative Hawkins.

Staff: Luke Wickham (786-7146).

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Background:

Sealing Juvenile Records.
Since 1977 juvenile offender records have been public unless sealed. Records of non-offender juvenile cases, such as dependency or adoption records, are not open to public inspection.

There are two methods by which individuals may seal their juvenile records:

1. An individual may make a motion to seal the official juvenile court record, the social file, and records of the court and any other agency in the case.
2. An individual may have their record sealed during regularly held sealing hearings.

Once a juvenile record is sealed, the proceedings in the case must be treated as if they never occurred. Any subsequent criminal adjudication or adult felony charge unseals the case.

Regular Sealing Hearings.
At the disposition hearing of a juvenile offender, courts must schedule an administrative sealing hearing after that offender turns 18 years old and is anticipated to have completed any probation and confinement. Courts shall seal the individual's juvenile court record if none of the offenses for which the court is entering disposition are a most serious offense, a sex offense under chapter 9A.44 RCW, or a felony drug offense. Respondents must also have completed the terms and conditions of disposition, including financial obligations, to seal a record during a regular sealing hearing.

Motions to Seal Juvenile Records.
An individual may also file a motion requesting that the court seal his or her juvenile record. An individual is eligible to have his or her record sealed under this process after remaining in the community without further conviction for a period of time and paying any restitution associated with the case. For class A felonies, an individual must remain in the community without conviction for five years. For class B felonies, class C felonies, and all misdemeanors, an individual must remain in the community without conviction for two years.

Individuals convicted of Rape in the first degree, Rape in the second degree, and Indecent Liberties by Forcible Compulsion are not eligible for record sealing. Other sex offenses are eligible for sealing, but an individual must be relieved of the obligation to register as a sex offender.

Legal Financial Obligations.
When an individual is adjudicated as a juvenile offender, the court may impose Legal Financial Obligations (LFOs) as part of the disposition. The LFOs include victim restitution, crime victims' compensation fees, costs associated with the offender's prosecution and sentence, fines, penalties, and assessments.

Interest Rate on Legal Financial Obligations.
Legal Financial Obligation judgments bear interest from the date of judgment at the same rate that applies to civil judgments. The rate of interest generally applicable to civil judgments is the greater of 12 percent or four points above the 26-week treasury bill rate. As

a result of low treasury bill rates, 12 percent has been the interest rate on LFOs for over two decades.

Interest that accrues on restitution is paid to the victim of the offense. All other accrued interest is split between the state and county as follows: 25 percent goes to the state General Fund, 25 percent goes to the Judicial Information System Account, and 50 percent goes to the county, 25 percent of which must be used to fund local courts.

Summary of Amended Bill:

Sealing Juvenile Records.
Courts shall seal the juvenile records of individuals who have paid the full amount of restitution owing to the individual victim named in the restitution order, excluding insurance providers, and meet the existing criteria for sealing records.

"Good faith effort to pay" is defined as paying the principal amount in full, having made at least 80 percent of the value of full monthly payments within the period from disposition until the time the restitution is under review, or a showing of good cause as to why less than 80 percent has been paid.

The Department of Licensing (DOL) may only release sealed juvenile records to the extent necessary to comply with federal law and regulation. The contents of a driving abstract must not include any information related to sealed juvenile records unless required by federal law or regulation. The Washington State Patrol must ensure that the Washington State Identification System provides criminal justice agencies access to sealed juvenile record information. Persons and agencies that obtain sealed juvenile records may communicate about them with the respondent, but may not disseminate or be compelled to release the information to any person or agency not specifically granted access to sealed juvenile records.

Sealed juvenile social files are available to juvenile justice and care agencies when an investigation or case involving the juvenile is being prosecuted or when an agency is responsible for supervising the juvenile. Juvenile records, whether sealed or not, may be provided without personal identifiers to researchers conducting legitimate research so long as the information is not used to identify an individual with a juvenile record.

Clerks are authorized to interact or correspond with the respondent, his or her parents, and any holders of potential assets or wages of the respondent for purposes of collecting an outstanding LFO after a juvenile court record is sealed.

Restitution.
If a court determines that a juvenile has insufficient funds to pay restitution, and upon agreement of the victim, the court may order community service in place of a monetary penalty. The court must allow the victim to determine the nature of the community service when practicable and appropriate.

Courts may either order joint and several restitution or may divide restitution equally among the respondents.

When a court considers whether to relieve a respondent of the requirement to pay full or partial restitution to an insurance provider based on the respondent's inability to pay, the court is no longer required to consider whether the individual could acquire the means to pay over a 10 year period.

When a court considers a petition to modify a restitution order, the court may modify the restitution order for good cause, including inability to pay.

The county clerk must make restitution disbursements to victims prior to payments to an insurance provider.

Interest on restitution is eliminated for juveniles.

Juvenile Legal Financial Obligations or Other Fees Modified or Eliminated.
The following LFOs or other fees are eliminated for juveniles:

- fines for gross misdemeanors related to pet animals;
- fines for the crime of selling a stolen pet animal to a research institution;
- penalties for cheating crimes;
- deferred prosecution or sentence fees;
- fees for the crime of Commercial Sexual Abuse of a Minor involving an internet advertisement;
- general fines for felonies and misdemeanors;
- fines for interference with a health care facility;
- fines for the crime of Unlawful Issuance of a Bank Check;
- fines for the crime of Theft of Livestock;
- fines for the crimes of Indecent Exposure and Prostitution;
- fines after impoundment of a vehicle upon arrest for Prostitution related and Commercial Sexual Abuse of a Minor crimes;
- appellate costs;
- interest on financial obligations;
- penalty assessments for crimes involving domestic violence;
- juvenile diversion fines;
- clerk's collection fees;
- conviction fees;
- sheriffs fees;
- crime lab analysis fees;
- fees for crimes including Driving Under the Influence, Physical Control of a Vehicle Under the Influence, and Vehicular Homicide or Assault;
- fees for crimes listed in the Uniform Controlled Substances Act;
- fines for the crime of intent to manufacture controlled substances;
- criminal wildlife penalty assessments for the crime of Unlawful Hunting of Big Game; and
- public defense costs.

In addition to the elimination of those LFOs, cities, towns, and counties may not impose any LFOs for juveniles without express statutory authority.

The crime laboratory analysis (DNA collection) fee may not be imposed on juvenile offenders if the state has previously collected the juvenile's DNA. The juvenile penalty assessment may only be imposed if there is an actual victim in the case.

Respondents may petition the court for modification or relief from legal financial obligations and interest on those obligations for good cause shown, including inability to pay.

Amended Bill Compared to Engrossed Second Substitute Bill:

The amended bill replaces the requirement to pay full restitution to an individual victim named in a charging document with the requirement to pay full restitution owed to an individual victim named in a restitution order, excluding restitution owed to an insurance provider.

The amended bill allows persons and agencies that obtain sealed juvenile records information to communicate about this information with the respondent, but prohibits them from disseminating or releasing the information to any person or agency not specifically granted access to sealed juvenile records.

The amended bill allows respondents to petition the court for modification or relief from LFOs other than restitution, the victim penalty assessment, and the crime laboratory analysis fee and interest accrued on those obligations.

The amended bill requires that the court allow a victim to determine the nature of community restitution ordered in lieu of financial restitution when it is practicable and appropriate to do so.

The amended bill limits imposition of the juvenile victim penalty assessment to most serious offenses and sex offenses. For all other juvenile offenses that have a victim, the court shall order up to seven hours of community service unless the court finds that this would not be practicable.

The amended bill eliminates the application of the act to juvenile offender cases filed after the act's effective date.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Amended Bill: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) Everyone wants a fresh start. The juvenile offender system provides a different response than the adult criminal justice system. Sealing juvenile records for non-serious offenses and eliminating some of the barriers to allow juveniles to have a fresh start is necessary if these youth are to become employed or find housing. This bill still requires youth to serve their sentences and focuses their efforts on making the victim whole. It is important that juvenile offenders repay the full amount of restitution. When it is not possible for youth to do so, community service will be an option if the victim is in agreement. This bill allows juvenile offenders the opportunity to fully integrate back into the community.

This bill represents a good compromise. This bill speaks to individuals being made whole. The large amounts that are owed to insurance companies will still allow for the sealing of a juvenile record. There should be a change in the language around allowing youth to seal juvenile records if individuals named in the restitution order, excluding insurance companies, are repaid.

The imposition of LFOs should not be a life sentence for juveniles. This bill represents an example of a lot of people working together to produce a good product. This is a great bill because LFO issues are sweeping the nation. The Washington State Supreme Court in *State v. Blazina* held that courts must make an individualized inquiry into a defendant's current and future ability to pay before imposing LFOs. This bill concerns LFOs for youth. There are many youth who cannot get an apartment because of their juvenile record. There are crimes that do not have a victim, such as drinking in public and drug possession offenses. One of the greatest institutions that we have is a court hearing, and the discretion that this bill provides in relation to juvenile offender restitution extends that institution.

This bill has two goals: (1) helping youth of all backgrounds to seal juvenile records; and (2) making victims whole in the process. The goals of the bill have not changed, and there has been input from many different sources. Now, full restitution payments to actual victims must be made before a juvenile record may be sealed. Law enforcement will now have access to sealed juvenile records. The first version of the bill would not have required payment of the juvenile penalty assessment, but now that penalty must be paid if there is an actual victim. There was also a Washington State Supreme Court decision since this bill was filed indicating the harm caused by LFOs. A juvenile record can have actual consequences on employment and housing. Most importantly, this bill eliminates 22 LFOs from statute so that offenders can focus their payments on restitution and making the victim whole.

There are individuals who have made mistakes as juveniles resulting in an adjudication. The records from these offenses often prevent individuals from finding housing and employment. Individuals are rejected from employment opportunities because of these records. This bill will open the path for employment and housing for many individuals.

There are individuals who owe over $100,000 in restitution, which can make it very difficult to move forward in life. That high amount of restitution can seem like an insurmountable obstacle. The stigma of a juvenile record prevents individuals from making payments to victims. This bill will help many people who are struggling financially to become productive members of society. This bill gives many people a fighting chance. Many juvenile offenders have worked hard while incarcerated to work off restitution, gain work experience, and

further their education. This bill allows those individuals who are working hard to address these issues an opportunity to move on.

The safeguards in the bill will likely allow the state to come out ahead because of the reduced workload on counties and the state regarding LFO collection efforts. This bill will also maximize the amount of money paid directly to victims.

The purpose behind this bill was to address the barriers to the sealing of juvenile records.

(In support with amendment(s)) When the committee originally heard this bill, there was opposition from the Washington Association of Prosecuting Attorneys. However, the current proposal is a good compromise that allows victims to be made whole while supporting the goal of juvenile rehabilitation. Various places in the bill indicate that full restitution must be paid to individual victims before a juvenile record is sealed. Individual victims can be in as dire straits as the offenders. The large restitution amounts are almost always obligations owed to insurance providers. It is encouraged that the committee adopt an amendment indicating that individuals must pay full restitution to individual victims named in the restitution order, excluding insurance providers. With the changes that have been made and that minor technical change, there is great support for this bill.

(Opposed) None.

(Other) The concern among law enforcement has been access to the sealing of juvenile records. Based on the current language and the proposed language, we no longer have a concern about the bill.

Persons Testifying: (In support) Senator O'Ban, prime sponsor; Steve Warning, Superior Court Judges Association; Larry Jefferson and Hilary Madsen, Columbia Legal Services; Thomas O'Ban, University of Washington Legal Clinic; Sonya Watkins; Austin Kennish, Antonio Vasquez, Preston Meza, and Solinuu Leae, Green Hill United Youth Council; and Steve Lindstrom, Capitol Classroom.

(In support with amendment(s)) Tom McBride, Wasington Association of Prosecuting Attorneys.

(Other) James McMahan, Washington Association of Sheriffs and Police Chiefs.

Persons Signed In To Testify But Not Testifying: None.