

HOUSE BILL REPORT

HB 1449

As Reported by House Committee On:
Government Operations & Elections

Title: An act relating to making specific prosecution and defense documents and materials exempt from public inspection and copying.

Brief Description: Making specific prosecution and defense documents and materials exempt from public inspection and copying.

Sponsors: Representatives Bergquist, Hope, S. Hunt, Buys, Orwall, Manweller and Freeman.

Brief History:

Committee Activity:

Government Operations & Elections: 2/12/13, 2/21/13 [DP], 1/21/14, 1/22/14 [DP].

Brief Summary of Bill

- Exempts victim impact statements from disclosure under the Public Records Act.
- Exempts certain documents and other materials provided by the defense to the prosecution from disclosure under the Public Records Act.

HOUSE COMMITTEE ON GOVERNMENT OPERATIONS & ELECTIONS

Majority Report: Do pass. Signed by 10 members: Representatives S. Hunt, Chair; Bergquist, Vice Chair; Taylor, Ranking Minority Member; Young, Assistant Ranking Minority Member; Christian, Kretz, Manweller, Orwall, Robinson and Van De Wege.

Minority Report: Without recommendation. Signed by 1 member: Representative Carlyle.

Staff: Jasmine Vasavada (786-7301).

Background:

The Public Records Act (PRA) requires that all state and local government agencies make all public records available for public inspection and copying unless they fall within certain statutory exemptions. The provisions requiring public records disclosure must be interpreted

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liberally and the exemptions narrowly in order to effectuate a general policy favoring disclosure.

Certain information relating to investigative, law enforcement, and crime victims is exempt from public inspection and copying. This includes an exemption for specific investigative records compiled by law enforcement. Investigative records are not categorically exempt. Rather, they are exempt only if nondisclosure is essential either to effective law enforcement or for the protection of any person's privacy. In determining whether nondisclosure of a record is essential for the protection of privacy, the court applies a two-part test. Disclosure must be highly offensive to a reasonable person, and not of legitimate public concern.

A victim impact statement is a statement submitted to the court by the victim or a survivor, individually, or with the assistance of the prosecuting attorney. It may include, but is not limited to, information assessing the financial, medical, social, and psychological impact of the offense upon the victim or survivors. A special sex offender sentencing alternative evaluation is a document that may be submitted by the defense to the prosecution under statutes that govern alternative sentencing procedures.

Some lower courts in Washington have found that certain information in victim impact statements and other materials provided by the defense to the prosecution can qualify as exempt from disclosure under the PRA's investigative records exemption. Under certain circumstances, the investigative records themselves may still be disclosed, but specific information, such as a victim's name, would first be redacted. In September 2012 the Washington State Supreme Court ruled that neither a victim impact statement nor a psychosexual evaluation provided by the defendant to the prosecution during a sentencing proceeding qualified for the "investigative record" exemption. As a result, the PRA required disclosure.

Summary of Bill:

The following materials are exempt from public disclosure and copying under the PRA:

- victim impact statements;
- documents and other materials provided by the defense to the prosecution including, but not limited to, materials provided during communications or discussions described in alternative sentence proceeding statutes established for parents, drug offenders, and special sex offenders, and death penalty proceedings; and
- "similar exchanges or communications" described in court rules.

The exemptions are categorical and do not require a determination by the court about whether nondisclosure is essential to effective law enforcement or for the protection of any person's privacy.

Appropriation: None.

Fiscal Note: Not requested.

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

Staff Summary of Public Testimony:

(In support) This is an unusual case in which members of the defense bar, prosecutors, and victim advocacy groups are all advocating for the same change. The victim impact statements exempted from disclosure under this bill include intimate details about the victim, and exempting them from disclosure is essential to protecting personal privacy. This bill passed unanimously out of committee last year, and is a response to a state Supreme Court decision that held that documents in the hands of prosecutors were in the hands of the administrative branch and thus subject to the PRA. Previously, everyone assumed they were not subject to disclosure under the PRA. These documents are used to negotiate a plea agreement and the parties need to be able to talk openly with one another in order to allow parties to make the best available decisions. Statements victims make to prosecutors can be very detailed, very lurid, and the victim or defendant may not be willing to provide the documents if the person knows they will be subject to public disclosure. The court can decide to seal documents, but that is the court's decision.

(In support with amendment) It is important for these documents used in plea negotiations and sentencing to be exempt from disclosure while prosecutors and defendants are working through a case. However, it would be good to amend the bill to provide that once a document or report has been used as a basis for imposing a prison sentence, it becomes available to the public, subject to redaction. It is all a matter of timing.

(Opposed) This bill is addressing a case in which a parent was trying to establish and reach all records associated with the sexual molestation of his daughter by a step-parent. The parent wanted to see all the associated documents so he could be a better parent and support his daughter. Any parent would want to be able to get this information about an offender. It is critical to be able to see that prosecutors who are making negotiations are doing so correctly, that the prosecutor is working in the public's best interest, and that the documents are fully vetted. Most cases do not go to trial; they are negotiated settlements, and it is essential that citizens can see that they are being well-served. I know of no occasion in which these documents have been disclosed to the public while those negotiations are ongoing. A judge reviews these in making sentencing decisions, and it is also essential for the public to be able to see that the court acted properly. The current investigative records exemption is already expansive. However, under the existing law, a document in the prosecution's hands is not categorically exempt. Instead, sensitive information is redacted and then the document is released to the public. This same standard should be applied to victim statements and Sex Offender Special Sentence Alternative evaluations. These documents play a critical role in the negotiation of plea bargains and it is critical that the public be able to review whether justice is administered openly.

Persons Testifying: (In support) Representative Bergquist, prime sponsor; and Bob Cooper, Washington Association of Criminal Defense Lawyers.

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

(Opposed) Rowland Thompson, Allied Daily Newspapers; and Bill Will, Washington Newspaper Publishers Association and Washington Coalition for Open Government.

Persons Signed In To Testify But Not Testifying: None.