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**HOUSE BILL 1728**

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**State of Washington 65th Legislature 2017 Regular Session**

**By** Representatives Sawyer, Smith, Caldier, Jinkins, Fey, Kloba, Ortiz-Self, Stanford, and Frame

AN ACT Relating to protecting minors from sexual exploitation; adding a new chapter to Title 10 RCW; and prescribing penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

NEW SECTION. **Sec.**  The legislature must continue to act to aid law enforcement in their efforts to prevent the unthinkable acts of sexual abuse of children and the horrendous social and emotional trauma experienced by victims of child pornography by expanding the tools available for law enforcement. The legislature finds that the expansion of the internet and computer-related technologies have led to a dramatic increase in the production and availability of child pornography by simplifying how it can be created, distributed, and collected. Between 2005 and 2009, the national center for missing and exploited children's child victim identification program has seen a four hundred thirty-two percent increase in child pornography films and files submitted for identification of the children depicted. The United States department of justice estimates that pornographers have recorded the abuse of more than one million children in the United States alone. Furthermore, there is a direct correlation between individuals who possess, download, and trade graphic images of child pornography and those who molest children. A well-known study conducted by crimes against children research center for the national center for missing and exploited children concluded that an estimated forty percent of those who possess child pornography have also directly victimized a child and fifteen percent have attempted to entice a child over the internet.

Victims of child pornography often experience severe and lasting harm from the permanent memorialization of the crimes committed against them. Child victims endure depression, withdrawal, anger, and other psychological disorders. Each and every time such an image is viewed, traded, printed, or downloaded, the child in that image is victimized again.

Investigators and prosecutors report serious challenges with combating child pornography because offenders can act anonymously on the internet. Investigators track the trading of child pornography by using internet protocol addresses, which are unique identifiers that each computer is assigned when it accesses the internet. Under federal law, if an internet service provider is presented with a subpoena and an internet protocol address by law enforcement, the provider must turn over the names and addresses of account holders matched to it. Access to such information allows investigators to efficiently evaluate investigative leads and determine whether to request a warrant for a specific internet user. However, investigators in Washington have not been able to utilize this federal law due to the absence of statutory administrative subpoena authority in state law.

The legislature hereby authorizes law enforcement to utilize the limited use of administrative subpoena authority contained within this act for the sole purpose of investigating crimes involving the sexual exploitation of children. The subpoena authority is restricted to customer and subscriber information that providers are already required to release under federal law. The subpoena authority is not a replacement for or a means of bypassing warrant procedures. The subpoena authority strikes a balance between the need to efficiently address the horrific practices of child abuse and child pornography and the need to protect the constitutional right to privacy of citizens.

NEW SECTION. **Sec.**  The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Electronic communication service" means any service that provides to users the ability to send or receive wire or electronic communications.

(2) "Provider" means a provider of electronic communication services or remote computing services.

(3) "Remote computing service" means the provision to the public of computer storage or processing services by means of an electronic communications system.

NEW SECTION. **Sec.**  (1) In any criminal investigation of an offense involving the sexual exploitation of children under chapter 9.68A RCW, the attorney general or a prosecuting attorney may issue in writing and cause to be served a subpoena to a provider requiring the production of relevant records where the attorney general or the prosecuting attorney has reason to suspect a crime involving the sexual exploitation of children has been committed.

(2) A subpoena issued under this section must describe the information or records required to be produced and specify a return date within a reasonable period of time within which the information or records can be assembled and made available.

(3) A subpoena issued under this section may not require a provider to produce any customer or subscriber records or information other than the following:

(a) Name;

(b) Address;

(c) Local and long distance telephone connection records, or records of session times and durations;

(d) Length of service and types of service utilized;

(e) Telephone or instrument number or other subscriber number or identity, including any temporarily assigned network address; and

(f) Means and source of payment for such service, including any credit card or bank account number.

(4) A provider may not disclose the existence of a subpoena to the subscribers or customers whose records or information are requested or released under the subpoena for ninety days from the date of receipt of the subpoena.

NEW SECTION. **Sec.**  At any time before the return date specified in the subpoena, the provider to whom a subpoena under this chapter is directed may petition the superior court for an order modifying or quashing the subpoena on the grounds that it is oppressive or unreasonable. A petition may be filed: (1) In the county of the prosecuting attorney, if the subpoena was issued by a prosecuting attorney; (2) in Thurston county superior court, if the subpoena was issued by the attorney general; or (3) in the county where the person subject to the subpoena resides, is found, or carries on business.

NEW SECTION. **Sec.**  The attorney general or a prosecuting attorney may seek an injunction from the superior court to compel compliance with a subpoena. The court may issue an order requiring the subpoenaed person to appear before the attorney general or prosecuting attorney to produce the information or records. A person who neglects or refuses to comply with a subpoena issued under this chapter may be punished for contempt of the court. An injunction may be filed: (1) In the county of the prosecuting attorney, if the subpoena was issued by a prosecuting attorney; (2) in Thurston county superior court, if the subpoena was issued by the attorney general; or (3) in the county where the person subject to the subpoena resides, is found, or carries on business.

NEW SECTION. **Sec.**  (1) A governmental entity receiving records or information under this subsection is not required to provide notice to a subscriber or customer whose information or records are obtained as a result of a subpoena under this chapter.

(2) A provider disclosing records or information is not required to provide notice to a subscriber or customer whose information or records are disclosed to a governmental entity as a result of a subpoena under this chapter.

NEW SECTION. **Sec.**  Any person, including his or her officers, agents, and employees, receiving a subpoena under this chapter, who complies in good faith with the subpoena and produces the materials sought, may not be liable to any customer or other person for such production or for nondisclosure of that production to the customer.

NEW SECTION. **Sec.**  If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. **Sec.**  Service of subpoenas under this chapter must comply with the procedures of chapter 4.28 RCW.

NEW SECTION. **Sec.**  Sections 1 through 9 of this act constitute a new chapter in Title 10 RCW.

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