

CERTIFICATION OF ENROLLMENT

SUBSTITUTE HOUSE BILL 2348

52nd Legislature
1992 Regular Session

Passed by the House February 18, 1992
Yeas 98 Nays 0

**Speaker of the
House of Representatives**

Passed by the Senate March 6, 1992
Yeas 43 Nays 5

President of the Senate

Approved

Governor of the State of Washington

CERTIFICATE

I, Alan Thompson, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is SUBSTITUTE HOUSE BILL 2348 as passed by the House of Representatives and the Senate on the dates hereon set forth.

Chief Clerk

FILED

**Secretary of State
State of Washington**

SUBSTITUTE HOUSE BILL 2348

Passed Legislature - 1992 Regular Session

State of Washington 52nd Legislature 1992 Regular Session

By House Committee on Judiciary (originally sponsored by Representatives Sheldon, Belcher, Brough, Riley, Broback, Ludwig, Vance, Wineberry, Beck, Forner, Locke, Fraser, P. Johnson, Inslee, Ebersole, Scott, Bowman, H. Myers, D. Sommers, Paris, Rasmussen, Prentice, Mielke, R. Johnson, Neher, Dorn, Cooper, Franklin, Rayburn, G. Fisher, Heavey, Roland, G. Cole, J. Kohl, Mitchell, Brekke, Orr, Spanel, May, Ogden, Leonard, Silver, Sprenkle, O'Brien and Appelwick)

Read first time 02/07/92.

1 AN ACT Relating to the confidentiality of victim-identifying
2 information in cases of child victims of sexual abuse; amending RCW
3 7.69A.020, 7.69A.030, 13.40.140, and 13.50.050; adding a new section to
4 chapter 7.69A RCW; adding a new section to chapter 42.17 RCW; adding a
5 new section to chapter 10.97 RCW; adding a new section to chapter 10.52
6 RCW; creating a new section; and prescribing penalties.

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

8 NEW SECTION. **Sec. 1.** The legislature recognizes that the
9 cooperation of child victims of sexual assault and their families is
10 integral to the successful prosecution of sexual assaults against
11 children. The legislature finds that release of information
12 identifying child victims of sexual assault may subject the child to
13 unwanted contacts by the media, public scrutiny and embarrassment, and
14 places the child victim and the victim's family at risk when the

1 assailant is not in custody. Release of information to the press and
2 the public harms the child victim and has a chilling effect on the
3 willingness of child victims and their families to report sexual abuse
4 and to cooperate with the investigation and prosecution of the crime.
5 The legislature further finds that public dissemination of the child
6 victim's name and other identifying information is not essential to
7 accurate and necessary release of information to the public concerning
8 the operation of the criminal justice system. Therefore, the
9 legislature intends to assure child victims of sexual assault and their
10 families that the identities and locations of child victims will remain
11 confidential.

12 **Sec. 2.** RCW 7.69A.020 and 1985 c 394 s 2 are each amended to read
13 as follows:

14 Unless the context clearly requires otherwise, the definitions in
15 this section apply throughout this chapter.

16 (1) "Crime" means an act punishable as a felony, gross misdemeanor,
17 or misdemeanor under the laws of this state or equivalent federal or
18 local law.

19 (2) "Child" means any living child under the age of eighteen years.

20 (3) "Victim" means a living person against whom a crime has been
21 committed.

22 (4) "Witness" means a person who has been or is expected to be
23 summoned to testify for the prosecution in a criminal action, or who by
24 reason of having relevant information is subject to call or likely to
25 be called as a witness for the prosecution, whether or not an action or
26 proceeding has been commenced.

27 (5) "Family member" means child, parent, or legal guardian.

1 (6) "Advocate" means any person, including a family member not
2 accused of a crime, who provides support to a child victim or child
3 witness during any legal proceeding.

4 (7) "Court proceedings" means any court proceeding conducted during
5 the course of the prosecution of a crime committed against a child
6 victim, including pretrial hearings, trial, sentencing, or appellate
7 proceedings.

8 (8) "Identifying information" means the child's name, address,
9 location, and photograph, and in cases in which the child is a relative
10 or stepchild of the alleged perpetrator, identification of the
11 relationship between the child and the alleged perpetrator.

12 NEW SECTION. Sec. 3. A new section is added to chapter 7.69A RCW
13 to read as follows:

14 A child victim of sexual assault has a right to not have
15 identifying information disclosed to the public. Accordingly, unless
16 the child victim or the child victim's legal guardian consents to
17 dissemination of identifying information:

18 (1) Except as necessary to conduct the investigation or preparation
19 of the case, no law enforcement agency, prosecutor's office, or defense
20 attorney may disclose any identifying information of a child victim of
21 sexual assault to anyone other than another law enforcement agency,
22 prosecutor, judge, defense attorney, or governmental agency that
23 provides services to the child victim or to a family member of the
24 child victim.

25 (2) The court shall prohibit dissemination to the public of any
26 identifying information revealed during court proceedings involving the
27 sexual assault of a child victim. The court shall condition a person's
28 or press attendance at court proceedings on an agreement not to
29 disseminate to the public or the press identifying information obtained

1 at court proceedings. The court shall prohibit the press or any person
2 who refuses to comply with the condition from attending any court
3 proceeding in which information identifying the child victim may be
4 revealed. If the press or another person violates the court-ordered
5 condition, the court shall make all orders necessary to prevent further
6 dissemination of identifying information obtained at the court
7 proceeding. The court may not prohibit the press from disseminating
8 identifying information obtained from a source other than the court
9 proceedings.

10 (3) Portions of court records, transcripts, or recordings of court
11 proceedings that contain identifying information are confidential and
12 not open to public inspection. The court shall order that those records
13 shall be sealed unless the identifying information is deleted.

14 (4) If a member of the press releases to the public identifying
15 information that the press member obtained solely through attendance at
16 a court proceeding to which the press member had conditional access,
17 the press member shall be subject to a fine of not less than one
18 hundred dollars and not more than five hundred dollars. In addition,
19 the child victim may pursue any other civil remedy available under
20 existing law.

21 **Sec. 4.** RCW 7.69A.030 and 1985 c 394 s 3 are each amended to read
22 as follows:

23 In addition to the rights of victims and witnesses provided for in
24 RCW 7.69.030, there shall be every reasonable effort made by law
25 enforcement agencies, prosecutors, and judges to assure that child
26 victims and witnesses are afforded the rights enumerated in this
27 section. Except as provided in section 3 of this act regarding child
28 victims of sexual assault, the enumeration of rights shall not be
29 construed to create substantive rights and duties, and the application

1 of an enumerated right in an individual case is subject to the
2 discretion of the law enforcement agency, prosecutor, or judge. Child
3 victims and witnesses have the following rights:

4 (1) To have explained in language easily understood by the child,
5 all legal proceedings and/or police investigations in which the child
6 may be involved.

7 (2) To be provided, whenever possible, a secure waiting area during
8 court proceedings and to have an advocate or support person remain with
9 the child prior to and during any court proceedings.

10 (3) To not have the names, addresses, nor photographs of the living
11 child victim or witness disclosed by any law enforcement agency,
12 prosecutor's office, or state agency without the permission of the
13 child victim, child witness, parents, or legal guardians to anyone
14 except another law enforcement agency, prosecutor, defense counsel, or
15 private or governmental agency that provides services to the child
16 victim or witness.

17 (4) To allow an advocate to make recommendations to the prosecuting
18 attorney about the ability of the child to cooperate with prosecution
19 and the potential effect of the proceedings on the child.

20 (5) To allow an advocate to provide information to the court
21 concerning the child's ability to understand the nature of the
22 proceedings.

23 (6) To be provided information or appropriate referrals to social
24 service agencies to assist the child and/or the child's family with the
25 emotional impact of the crime, the subsequent investigation, and
26 judicial proceedings in which the child is involved.

27 (7) To allow an advocate to be present in court while the child
28 testifies in order to provide emotional support to the child.

29 (8) To provide information to the court as to the need for the
30 presence of other supportive persons at the court proceedings while the

1 child testifies in order to promote the child's feelings of security
2 and safety.

3 (9) To allow law enforcement agencies the opportunity to enlist the
4 assistance of other professional personnel such as child protection
5 services, victim advocates or prosecutorial staff trained in the
6 interviewing of the child victim.

7 **Sec. 5.** RCW 13.40.140 and 1981 c 299 s 11 are each amended to read
8 as follows:

9 (1) A juvenile shall be advised of his or her rights when appearing
10 before the court.

11 (2) A juvenile and his or her parent, guardian, or custodian shall
12 be advised by the court or its representative that the juvenile has a
13 right to be represented by counsel at all critical stages of the
14 proceedings. Unless waived, counsel shall be provided to a juvenile
15 who is financially unable to obtain counsel without causing substantial
16 hardship to himself or herself or the juvenile's family, in any
17 proceeding where the juvenile may be subject to transfer for criminal
18 prosecution, or in any proceeding where the juvenile may be in danger
19 of confinement. The ability to pay part of the cost of counsel does
20 not preclude assignment. In no case may a juvenile be deprived of
21 counsel because of a parent, guardian, or custodian refusing to pay
22 therefor. The juvenile shall be fully advised of his or her right to
23 an attorney and of the relevant services an attorney can provide.

24 (3) The right to counsel includes the right to the appointment of
25 experts necessary, and the experts shall be required pursuant to the
26 procedures and requirements established by the supreme court.

27 (4) Upon application of a party, the clerk of the court shall
28 issue, and the court on its own motion may issue, subpoenas requiring
29 attendance and testimony of witnesses and production of records,

1 documents, or other tangible objects at any hearing, or such subpoenas
2 may be issued by an attorney of record.

3 (5) All proceedings shall be transcribed verbatim by means which
4 will provide an accurate record.

5 (6) The general public and press shall be permitted to attend any
6 hearing unless the court, for good cause, orders a particular hearing
7 to be closed. The presumption shall be that all such hearings will be
8 open. As provided in section 3 of this act, a child victim of sexual
9 assault is entitled to have information identifying the child victim
10 remain confidential unless the child victim or the child victim's
11 legal guardian consents to the disclosure. The court shall ensure that
12 victim-identifying information is not disseminated as provided in
13 section 3 (2) and (3) of this act. Dissemination of information
14 identifying a child victim of sexual assault in violation of section 3
15 of this act constitutes good cause for closing the hearing.

16 (7) In all adjudicatory proceedings before the court, all parties
17 shall have the right to adequate notice, discovery as provided in
18 criminal cases, opportunity to be heard, confrontation of witnesses
19 except in such cases as this chapter expressly permits the use of
20 hearsay testimony, findings based solely upon the evidence adduced at
21 the hearing, and an unbiased fact-finder.

22 (8) A juvenile shall be accorded the same privilege against self-
23 incrimination as an adult. An extrajudicial statement which would be
24 constitutionally inadmissible in a criminal proceeding may not be
25 received in evidence at an adjudicatory hearing over objection.
26 Evidence illegally seized or obtained may not be received in evidence
27 over objection at an adjudicatory hearing to prove the allegations
28 against the juvenile if the evidence would be inadmissible in an adult
29 criminal proceeding. An extrajudicial admission or confession made by
30 the juvenile out of court is insufficient to support a finding that the

1 juvenile committed the acts alleged in the information unless evidence
2 of a corpus delicti is first independently established in the same
3 manner as required in an adult criminal proceeding.

4 (9) Waiver of any right which a juvenile has under this chapter
5 must be an express waiver intelligently made by the juvenile after the
6 juvenile has been fully informed of the right being waived.

7 (10) Whenever this chapter refers to waiver or objection by a
8 juvenile, the word juvenile shall be construed to refer to a juvenile
9 who is at least twelve years of age. If a juvenile is under twelve
10 years of age, the juvenile's parent, guardian, or custodian shall give
11 any waiver or offer any objection contemplated by this chapter.

12 NEW SECTION. **Sec. 6.** A new section is added to chapter 42.17 RCW
13 to read as follows:

14 Information revealing the identity of child victims of sexual
15 assault who are under age eighteen is confidential and not subject to
16 public disclosure. Identifying information means the child victim's
17 name, address, location, photograph, and in cases in which the child
18 victim is a relative or stepchild of the alleged perpetrator,
19 identification of the relationship between the child and the alleged
20 perpetrator.

21 **Sec. 7.** RCW 13.50.050 and 1990 c 3 s 125 are each amended to read
22 as follows:

23 (1) This section governs records relating to the commission of
24 juvenile offenses, including records relating to diversions.

25 (2) The official juvenile court file of any alleged or proven
26 juvenile offender shall be open to public inspection, unless sealed
27 pursuant to subsection (11) of this section.

1 (3) All records other than the official juvenile court file are
2 confidential and may be released only as provided in this section, RCW
3 13.50.010, 13.40.215, and 4.24.550.

4 (4) Except as otherwise provided in this section and RCW 13.50.010,
5 records retained or produced by any juvenile justice or care agency may
6 be released to other participants in the juvenile justice or care
7 system only when an investigation or case involving the juvenile in
8 question is being pursued by the other participant or when that other
9 participant is assigned the responsibility for supervising the
10 juvenile.

11 (5) Except as provided in RCW 4.24.550, information not in an
12 official juvenile court file concerning a juvenile or a juvenile's
13 family may be released to the public only when that information could
14 not reasonably be expected to identify the juvenile or the juvenile's
15 family.

16 (6) Notwithstanding any other provision of this chapter, the
17 release, to the juvenile or his or her attorney, of law enforcement and
18 prosecuting attorneys' records pertaining to investigation, diversion,
19 and prosecution of juvenile offenses shall be governed by the rules of
20 discovery and other rules of law applicable in adult criminal
21 investigations and prosecutions.

22 (7) The juvenile court and the prosecutor may set up and maintain
23 a central record-keeping system which may receive information on all
24 alleged juvenile offenders against whom a complaint has been filed
25 pursuant to RCW 13.40.070 whether or not their cases are currently
26 pending before the court. The central record-keeping system may be
27 computerized. If a complaint has been referred to a diversion unit,
28 the diversion unit shall promptly report to the juvenile court or the
29 prosecuting attorney when the juvenile has agreed to diversion. An
30 offense shall not be reported as criminal history in any central

1 record-keeping system without notification by the diversion unit of the
2 date on which the offender agreed to diversion.

3 (8) Upon request of the victim of a crime or the victim's immediate
4 family, the identity of an alleged or proven juvenile offender alleged
5 or found to have committed a crime against the victim and the identity
6 of the alleged or proven juvenile offender's parent, guardian, or
7 custodian and the circumstance of the alleged or proven crime shall be
8 released to the victim of the crime or the victim's immediate family.

9 (9) Subject to the rules of discovery applicable in adult criminal
10 prosecutions, the juvenile offense records of an adult criminal
11 defendant or witness in an adult criminal proceeding shall be released
12 upon request to prosecution and defense counsel after a charge has
13 actually been filed. The juvenile offense records of any adult
14 convicted of a crime and placed under the supervision of the adult
15 corrections system shall be released upon request to the adult
16 corrections system.

17 (10) In any case in which an information has been filed pursuant to
18 RCW 13.40.100 or a complaint has been filed with the prosecutor and
19 referred for diversion pursuant to RCW 13.40.070, the person the
20 subject of the information or complaint may file a motion with the
21 court to have the court vacate its order and findings, if any, and,
22 subject to subsection (24) of this section, order the sealing of the
23 official juvenile court file, the social file, and records of the court
24 and of any other agency in the case.

25 (11) The court shall grant the motion to seal records made pursuant
26 to subsection (10) of this section if it finds that:

27 (a) Two years have elapsed from the later of: (i) Final discharge
28 of the person from the supervision of any agency charged with
29 supervising juvenile offenders; or (ii) from the entry of a court order
30 relating to the commission of a juvenile offense or a criminal offense;

1 (b) No proceeding is pending against the moving party seeking the
2 conviction of a juvenile offense or a criminal offense; and

3 (c) No proceeding is pending seeking the formation of a diversion
4 agreement with that person.

5 (12) The person making a motion pursuant to subsection (10) of this
6 section shall give reasonable notice of the motion to the prosecution
7 and to any person or agency whose files are sought to be sealed.

8 (13) If the court grants the motion to seal made pursuant to
9 subsection (10) of this section, it shall, subject to subsection (24)
10 of this section, order sealed the official juvenile court file, the
11 social file, and other records relating to the case as are named in the
12 order. Thereafter, the proceedings in the case shall be treated as if
13 they never occurred, and the subject of the records may reply
14 accordingly to any inquiry about the events, records of which are
15 sealed. Any agency shall reply to any inquiry concerning confidential
16 or sealed records that records are confidential, and no information can
17 be given about the existence or nonexistence of records concerning an
18 individual.

19 (14) Inspection of the files and records included in the order to
20 seal may thereafter be permitted only by order of the court upon motion
21 made by the person who is the subject of the information or complaint,
22 except as otherwise provided in RCW 13.50.010(8) and subsection (24) of
23 this section.

24 (15) Any adjudication of a juvenile offense or a crime subsequent
25 to sealing has the effect of nullifying the sealing order. Any
26 conviction for any adult felony subsequent to the sealing has the
27 effect of nullifying the sealing order for the purposes of chapter
28 9.94A RCW for any juvenile adjudication of guilt for a class A offense
29 or a sex offense as defined in RCW 9.94A.030.

1 (16) In any case in which an information has been filed pursuant to
2 RCW 13.40.100 or a complaint has been filed with the prosecutor and
3 referred for diversion pursuant to RCW 13.40.070, the person who is the
4 subject of the information or complaint may file a motion with the
5 court to have the court vacate its order and findings, if any, and,
6 subject to subsection (24) of this section, order the destruction of
7 the official juvenile court file, the social file, and records of the
8 court and of any other agency in the case.

9 (17) The court may grant the motion to destroy records made
10 pursuant to subsection (16) of this section if it finds:

11 (a) The person making the motion is at least twenty-three years of
12 age;

13 (b) The person has not subsequently been convicted of a felony;

14 (c) No proceeding is pending against that person seeking the
15 conviction of a criminal offense; and

16 (d) The person has never been found guilty of a serious offense.

17 (18) A person eighteen years of age or older whose criminal history
18 consists of only one referral for diversion may request that the court
19 order the records in that case destroyed. The request shall be
20 granted, subject to subsection (24) of this section, if the court finds
21 that two years have elapsed since completion of the diversion
22 agreement.

23 (19) If the court grants the motion to destroy records made
24 pursuant to subsection (16) or (18) of this section, it shall, subject
25 to subsection (24) of this section, order the official juvenile court
26 file, the social file, and any other records named in the order to be
27 destroyed.

28 (20) The person making the motion pursuant to subsection (16) or
29 (18) of this section shall give reasonable notice of the motion to the

1 prosecuting attorney and to any agency whose records are sought to be
2 destroyed.

3 (21) Any juvenile to whom the provisions of this section may apply
4 shall be given written notice of his or her rights under this section
5 at the time of his or her disposition hearing or during the diversion
6 process.

7 (22) Nothing in this section may be construed to prevent a crime
8 victim or a member of the victim's family from divulging the identity
9 of the alleged or proven juvenile offender or his or her family when
10 necessary in a civil proceeding.

11 (23) Any juvenile justice or care agency may, subject to the
12 limitations in subsection (24) of this section and subparagraphs (a)
13 and (b) of this subsection, develop procedures for the routine
14 destruction of records relating to juvenile offenses and diversions.

15 (a) Records may be routinely destroyed only when the person the
16 subject of the information or complaint has attained twenty-three years
17 of age or older, or is eighteen years of age or older and his or her
18 criminal history consists entirely of one diversion agreement and two
19 years have passed since completion of the agreement.

20 (b) The court may not routinely destroy the official juvenile court
21 file or recordings or transcripts of any proceedings.

22 (24) No identifying information held by the Washington state patrol
23 in accordance with chapter 43.43 RCW is subject to destruction or
24 sealing under this section. For the purposes of this subsection,
25 identifying information includes photographs, fingerprints, palmprints,
26 soleprints, toeprints and any other data that identifies a person by
27 physical characteristics, name, birthdate or address, but does not
28 include information regarding criminal activity, arrest, charging,
29 diversion, conviction or other information about a person's treatment
30 by the criminal justice system or about the person's behavior.

1 (25) Information identifying child victims under age eighteen who
2 are victims of sexual assaults by juvenile offenders is confidential
3 and not subject to release to the press or public without the
4 permission of the child victim or the child's legal guardian.
5 Identifying information includes the child victim's name, addresses,
6 location, photographs, and in cases in which the child victim is a
7 relative of the alleged perpetrator, identification of the relationship
8 between the child and the alleged perpetrator. Information identifying
9 a child victim of sexual assault may be released to law enforcement,
10 prosecutors, judges, defense attorneys, or private or governmental
11 agencies that provide services to the child victim of sexual assault.

12 NEW SECTION. Sec. 8. A new section is added to chapter 10.97 RCW
13 to read as follows:

14 Information identifying child victims under age eighteen who are
15 victims of sexual assaults is confidential and not subject to release
16 to the press or public without the permission of the child victim or
17 the child's legal guardian. Identifying information includes the child
18 victim's name, addresses, location, photographs, and in cases in which
19 the child victim is a relative or stepchild of the alleged perpetrator,
20 identification of the relationship between the child and the alleged
21 perpetrator. Information identifying the child victim of sexual
22 assault may be released to law enforcement, prosecutors, judges,
23 defense attorneys, or private or governmental agencies that provide
24 services to the child victim of sexual assault. Prior to release of any
25 criminal history record information, the releasing agency shall delete
26 any information identifying a child victim of sexual assault from the
27 information except as provided in this section.

1 NEW SECTION. **Sec. 9.** A new section is added to chapter 10.52 RCW
2 to read as follows:

3 Child victims of sexual assault who are under the age of eighteen,
4 have a right not to have disclosed to the public or press at any court
5 proceeding involved in the prosecution of the sexual assault, the child
6 victim's name, address, location, photographs, and in cases in which
7 the child victim is a relative or stepchild of the alleged perpetrator,
8 identification of the relationship between the child and the alleged
9 perpetrator. The court shall ensure that information identifying the
10 child victim is not disclosed to the press or the public and that in
11 the event of any improper disclosure the court shall make all necessary
12 orders to restrict further dissemination of identifying information
13 improperly obtained. Court proceedings include but are not limited to
14 pretrial hearings, trial, sentencing, and appellate proceedings. The
15 court shall also order that any portion of any court records,
16 transcripts, or recordings of court proceedings that contain
17 information identifying the child victim shall be sealed and not open
18 to public inspection unless those identifying portions are deleted from
19 the documents or tapes.

20 NEW SECTION. **Sec. 10.** If any provision of this act or its
21 application to any person or circumstance is held invalid, the
22 remainder of the act or the application of the provision to other
23 persons or circumstances is not affected.