

HOUSE BILL REPORT

SHB 1298

As Passed House:
March 4, 2013

Title: An act relating to implementing recommendations of the sunshine committee.

Brief Description: Implementing the recommendations of the sunshine committee.

Sponsors: House Committee on Government Operations & Elections (originally sponsored by Representatives Springer, Hunt, Ryu and Pollet; by request of Public Records Exemptions Accountability Committee).

Brief History:

Committee Activity:

Government Operations & Elections: 2/5/13, 2/14/13 [DPS].

Floor Activity:

Passed House: 3/4/13, 97-0.

Brief Summary of Substitute Bill

- Clarifies what information resulting from background checks of a guardian ad litem may and may not be disclosed to the parties in a parent-child termination action.
- Makes changes to exemptions from public inspection and copying related to personal information contained in agency files, and examination reports obtained by the Washington Pollution Liability Insurance Program.
- Changes the exemption from disclosure relating to the identifying information of child victims of sexual assault to be inclusive.
- Adds an exemption from disclosure for information contained in a local or regionally maintained gang database.

HOUSE COMMITTEE ON GOVERNMENT OPERATIONS & ELECTIONS

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 11 members: Representatives Hunt, Chair; Bergquist, Vice Chair; Buys, Ranking Minority Member; Taylor, Assistant Ranking Minority Member; Alexander, Carlyle, Fitzgibbon, Kristiansen, Manweller, Orwall and Van De Wege.

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.

Staff: Marsha Reilly (786-7135).

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

Guardian Ad Litem.

Under any proceeding related to terminating a parent-child relationship, the courts must appoint a guardian ad litem for any child. A guardian ad litem is an individual appointed by the court to represent the best interests of a child or incapacitated person involved in a case in superior court. Persons wishing to be a guardian ad litem must apply to the guardian ad litem program in each county. Counties must maintain information for each guardian ad litem in the program, which is updated annually, including, but not limited to:

- level of formal education;
- general training related to the guardian ad litem's duties;
- specific training related to issues potentially faced by children in the dependency system;
- specific training or education related to child disability or developmental issues;
- number of years' experience as a guardian ad litem;
- number of appointments as a guardian ad litem and the county or counties of appointment;
- the names of any counties in which the person was removed from a guardian ad litem registry pursuant to a grievance action, and the name of the court and the number of any case in which the court has removed the person for cause;
- founded allegations of abuse or neglect;
- results of a background check through the Washington State Criminal Records Privacy Act, the Washington State Patrol criminal identification system, and the Federal Bureau of Investigation; and
- criminal history for the period covering 10 years prior to the appointment.

The background information must be provided to the parties or their attorneys involved in the action. The portion of the background information record containing the results of the criminal background check and the criminal history may not be disclosed to the parties or their attorneys, and may not include background information that includes identifying information that may be used to harm the guardian ad litem.

Personal Information.

Certain personal information contained in the files of an agency is exempt from public inspection and copying under the PRA:

- credit card numbers, debit card numbers, electronic check numbers, card expiration dates, or bank or other financial account numbers, except when disclosure is expressly required by or governed by other law;
- applications for public employment, including the names of applicants, resumes, and other related materials;

- the names, residential addresses, residential telephone numbers, and other individually identifiable records relating to a vanpool, carpool, or other ride-sharing program or service, except to other persons who apply for ride-matching services and need the information for purposes of ride-sharing; and
- personally identifying information of persons who acquire and use transit passes or other fare payment media, except to entities responsible for payment of the cost of acquiring or using a transit pass or other fare payment media for the purpose of preventing fraud or to the news media when reporting on public transportation or public safety.

Proprietary Information.

All examination and proprietary reports and information obtained by the Washington Pollution Liability Insurance Program related to soliciting bids from insurers and in monitoring the insurer are not disclosable.

Investigative and Law Enforcement Information.

Certain information relating to investigative, law enforcement, and crime victims is exempt from public inspection and copying, including:

- information revealing the identity of child victims of sexual assault. Identifying information is stated as the child victim's name, address, location, photograph, and in cases in which the child victim is a relative or stepchild of the alleged perpetrator, identification of the relationship between the child and the alleged perpetrator; and
- information contained in the statewide gang database.

Summary of Substitute Bill:

Guardian Ad Litem.

The background information that may and may not be disclosed to the parties or their attorneys in an action is clarified. The results of the background check conducted through the Washington State Patrol criminal identification system may be provided. The results of the criminal background check and the criminal history from the Federal Bureau of Investigation may not be disclosed.

Personal Information.

The exemption pertaining to personal information contained in the files of an agency are expanded and clarified. Financial information is exempted from disclosure and includes information identifiable to the individual that concerns the amount and conditions of an individual's assets, liabilities, or credit, including account numbers and balances, transactional information concerning an account, and codes, passwords, social security numbers, tax identification numbers, driver's license or permit numbers, state identicaid numbers issued by the Department of Licensing, and other information held for the purpose of account access or transaction initiation.

The disclosure of information allowed in a ride-sharing program to individuals who apply for ride sharing is limited to the participants' names, general locations, and electronic mail addresses.

Personally identifying information of persons who acquire and use transit passes or other fare payment media is no longer disclosable to the news media.

Proprietary Information.

Examination reports obtained by the Washington Pollution Liability Insurance Program are no longer exempt from disclosure.

Investigative and Law Enforcement Information.

The identifying information of child victims of sexual assault exempt from disclosure is changed from exclusive to the child victim's name, address, location, and photograph, to inclusive. Information contained in a local or regionally maintained gang database is exempt from disclosure.

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) The bill represents the work of the Sunshine Committee (Committee) which looks at exemptions that exist in current law. The process was very deliberate and the Committee came to a majority decision. There are more than 500 exemptions from public disclosure. The Committee has a wide range of people with different backgrounds, and the process is a deliberate process. The only recommendations that come to the Legislature are those with a majority approval of amending or repealing an exemption. Personal information, such as social security numbers (SSN), should be private. The bill clarifies that SSNs are exempt for purposes of financial information, and should not be released. Applications for executive level positions should be made available after the finalists have been selected and before selection has been made. Information made available in ride-share programs is limited to the names, general locations, and electronic mail addresses of participants. Examination reports of the OIC may be disclosed five days after acceptance of the report. The Pollution Liability Insurance Program proprietary reports are exempt, but the examination reports prepared by the program's director are not considered proprietary. Information for guardian ad litem is amended to provide some disclosure regarding background information. Current exemption for identifying information of child victims of sexual assault is clarified to exempt all identifying information, including but not limited to, the identifying information included in the current definition. The statewide gang database is solely a law enforcement tool and may not be available to the public. However, local or regional databases that comply with the same federal requirements should also be exempt. Information regarding closed claims of medical malpractice has been unavailable when and where citizens need it most. That exemption is repealed in its entirety. Releasing information regarding applications for public employment has been controversial. The exemption applies to such positions as city managers and the highest person in an agency, not board members. It is not necessary to look at the entire pool, but information on the finalists should be disclosed. After five days, the reports should be disclosed. A company may get an

injunction if it does not want the information released. A clarification is made that examination reports provided to the Pollution Liability Insurance Program are reported by private companies and are exempt. However, the reports made by civil servants should be available to the public for oversight.

Release of information contained in gang databases could result in the death of some people. Not enough information about guardian ad litem is given to the parties. More information is needed in order to know who is making the decision for the child. Some background materials should be released.

(With concerns) The definition of "employment" for purposes of applications to highest management position is of concern. Release of employment applications would have a chilling impact to applications for these positions. At the highest levels of employment, there is usually a public process, and the candidates are meeting the public. The provision is too broad and is capturing more than the chief executive. The disclosure of market conduct examination reports is of concern. The current policy allows for discretionary withholding and allows agencies to work with prosecutors for purposes of financial malfeasance and fraud. The final outcomes may result in financial solvency issues that could cause issues with the companies involved. The insurance code regarding malfeasance can be viewed under the purview of the superior court. Note that the information that is required regarding medical malpractice is not confined to information in the court record. Economic and noneconomic factors contained in a settlement includes where claimants live. Release of this information can touch upon attorney-client privilege and may allow for collection of personally identifying information. Some of the entities that report will decline to do so in the future and will result in decreasing quality and quantity of reports. The provision for release of closed claim reports for medical malpractice was not passed unanimously by the Committee and was contentious. There are multiple issues. Release of the information would be a violation of a court decision regarding medical malpractice. Part of the agreement was to keep information confidential. It will have a negative effect on the information shared by insurance entities. Those companies will not continue to share this information if the information is disclosed. The report will be of no value. There is possible conflict regarding patient rights under the Health Insurance Portability and Accountability Act. It is after a battle over tort reform that brought the parties together to craft the medical malpractice legislation. The reporting of medical malpractice claims, including information on patients and attorney-client information, resulted in passing that bill. The ability of the OIC to get pertinent information will be impacted. Release of the information violates federal law.

(Opposed) None.

Persons Testifying: (In support) Representative Springer, prime sponsor; Lynn Kessler; Frank Garred; and Rowland Thompson, Sunshine Committee.

(With concerns) Candice Bock, Association of Washington Cities; Drew Bouton, Office of the Insurance Commissioner; and James McMahan, Washington Association of County Officials.

Persons Signed In To Testify But Not Testifying: None.