

HOUSE BILL REPORT

EHB 1728

As Passed Legislature

Title: An act relating to protecting minors from sexual exploitation.

Brief Description: Protecting minors from sexual exploitation.

Sponsors: Representatives Sawyer, Smith, Caldier, Jinkins, Fey, Kloba, Ortiz-Self, Stanford and Frame.

Brief History:

Committee Activity:

Judiciary: 2/7/17, 2/16/17 [DP].

Floor Activity:

Passed House: 3/1/17, 98-0.

Passed Senate: 4/5/17, 48-0.

Passed Legislature.

Brief Summary of Engrossed Bill

- Provides that in an investigation of an offense involving the sexual exploitation of children, the prosecuting attorney must use the special inquiry judge process when it is necessary to the investigation to subpoena a provider of electronic communication services or remote computing services for production of subscriber or customer records relevant to the investigation.
- Prohibits a provider of electronic communication services or remote computing services from disclosing the existence of a subpoena to the subscribers or customers whose records or information are requested or released under the subpoena.
- Upon petition of a prosecuting attorney, requires a court to establish a special inquiry judge proceeding, if appropriate, within 72 hours after the petition is filed.

HOUSE COMMITTEE ON JUDICIARY

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.

Majority Report: Do pass. Signed by 12 members: Representatives Jinkins, Chair; Kilduff, Vice Chair; Rodne, Ranking Minority Member; Muri, Assistant Ranking Minority Member; Frame, Goodman, Graves, Haler, Hansen, Kirby, Klippert and Orwall.

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

Staff: Edie Adams (786-7180).

Background:

Federal Stored Communications Act.

Under a federal law known as the Stored Communications Act, a provider of electronic communication services or remote computing services must disclose certain information about a subscriber or customer to a governmental entity when requested by an administrative subpoena authorized under either federal or state statute. Disclosable information includes only the following subscriber information, and not content of communications: name and address; local and long distance telephone connection records, or records of session times and durations; length and types of service; telephone or instrument number or other subscriber number or identity, including any temporarily assigned network address; and means and source of payment, including any credit card or bank account number.

Special Inquiry Judge Proceedings.

Special inquiry judge (SIJ) proceedings were established in 1971 with a stated intent of providing law enforcement with an investigatory tool in combating crime and corruption. A "special inquiry judge" is a superior court judge designated by a majority of the superior court judges of a county to hear and receive evidence of crime and corruption. An SIJ proceeding may be initiated by petition of the prosecuting attorney. In an SIJ proceeding, the SIJ may issue subpoenas for records and testimony relevant to an investigation when there is reason to suspect crime or corruption, which is a lower standard than probable cause. Special inquiry judge proceedings are secret and confidential, and records from the proceeding are available only to the attorney that instituted the proceeding, except as otherwise ordered by the court. An SIJ proceeding may be used only during criminal investigations and may not be used to gather evidence once a crime has been charged. An SIJ may not issue an indictment and may not act as a judge in any subsequent court proceeding arising from the investigation.

Sexual Exploitation of Children.

Washington criminal laws addressing the sexual exploitation of children establish a number of specific crimes, including:

- Sexual Exploitation of a Minor;
- Dealing in Depictions of a Minor Engaged in Sexually Explicit Conduct;
- Sending or Bringing into State Depictions of a Minor Engaged in Sexually Explicit Conduct;
- Possession of Depictions of a Minor Engaged in Sexually Explicit Conduct;
- Viewing Depictions of a Minor Engaged in Sexually Explicit Conduct;
- Communication with a Minor for Immoral Purposes;
- Commercial Sexual Abuse of a Minor;
- Promoting Commercial Sexual Abuse of a Minor;

- Promoting Travel for Commercial Sexual Abuse of a Minor; and
- Permitting Commercial Sexual Abuse of a Minor.

Summary of Engrossed Bill:

In any criminal investigation of an offense involving the sexual exploitation of children, the prosecuting attorney must use the SIJ process when the prosecuting attorney determines it is necessary to the investigation to subpoena a provider of electronic communication services or remote computing services for production of records relevant to the investigation. Records of information that may be obtained under the subpoena include, but are not limited to, the following subscriber or customer information:

- name and address;
- local and long distance telephone connection records, or records of session times and durations;
- length of service and types of service utilized;
- telephone or instrument number or other subscriber number or identity, including any temporarily assigned network address; and
- means and source of payment for such service, including any credit card or bank account number.

A provider of electronic communication services or remote computing services that receives a subpoena for subscriber or customer records may not disclose the existence of the subpoena to the subscribers or customers whose records or information are requested or released under the subpoena.

"Electronic communication service" means any service that provides users the ability to send or receive wire or electronic communications. "Remote computing service" means the provision to the public of computer storage or processing services by means of an electronic communications system.

Upon petition of a prosecuting attorney for the establishment of a SIJ proceeding in an investigation of sexual exploitation of children, the court shall establish the SIJ proceeding, if appropriate, as soon as practicable but no later than 72 hours after the filing of the petition.

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) Washington leads the nation in the number of images of child rape that are downloaded. There is a real need for expediency in order to protect kids from sexual exploitation. Investigators are up against the clock to recover evidence because the providers hold on to the information for short time periods. It is common to have a provider that subcontracts out services, which requires law enforcement investigators to repeatedly restart

the process of obtaining a judicial subpoena to get the records needed to identify where the activity is occurring, and more importantly, where the evidence is held. The time it takes to get a warrant can mean that the information is lost. Investigators are up against this issue more and more as technology continues to advance and more and more entities are operating inside the space in a more complex manner. This bill allows prosecutors to move more efficiently and effectively to get a records preservation hold. Investigators would still have to go before a judge to get a search warrant.

(Opposed) Aggressive and effective investigation of crimes against children is important. Washington has a long and proud history of protecting children but also of protecting the privacy of its citizens. Traditionally in this state we require a finding of individualized suspicion by a neutral judicial officer who is independent and outside of the enforcement process before we allow an intrusion on the privacy of citizens. We already have a special inquiry judge process that allows for the issuance of a subpoena on a lower standard, but that retains the role of a neutral judicial officer. It is not too time consuming and burdensome to go to a judge for these subpoenas.

Persons Testifying: (In support) Representative Sawyer, prime sponsor; and Mike Edwards, Seattle Police Department and Washington State Internet Crimes Against Children Task Force.

(Opposed) David Donnan, Washington Defender Association and Washington Association of Criminal Defense Lawyers.

Persons Signed In To Testify But Not Testifying: None.