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ENGROSSED HOUSE BILL 1728

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State of Washington

65th Legislature

2017 Regular Session

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

Read first time 01/27/17. Referred to Committee on Judiciary.

1 AN ACT Relating to protecting minors from sexual exploitation;  
2 amending RCW 10.27.170; adding a new chapter to Title 10 RCW; and  
3 creating a new section.

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

5 NEW SECTION. **Sec. 1.** The legislature must continue to act to  
6 aid law enforcement in their efforts to prevent the unthinkable acts  
7 of sexual abuse of children and the horrendous social and emotional  
8 trauma experienced by victims of child pornography by expanding the  
9 tools available for law enforcement. The legislature finds that the  
10 expansion of the internet and computer-related technologies have led  
11 to a dramatic increase in the production and availability of child  
12 pornography by simplifying how it can be created, distributed, and  
13 collected. Between 2005 and 2009, the national center for missing and  
14 exploited children's child victim identification program has seen a  
15 four hundred thirty-two percent increase in child pornography films  
16 and files submitted for identification of the children depicted. The  
17 United States department of justice estimates that pornographers have  
18 recorded the abuse of more than one million children in the United  
19 States alone. Furthermore, there is a direct correlation between  
20 individuals who possess, download, and trade graphic images of child  
21 pornography and those who molest children. A well-known study

1 conducted by crimes against children research center for the national  
2 center for missing and exploited children concluded that an estimated  
3 forty percent of those who possess child pornography have also  
4 directly victimized a child and fifteen percent have attempted to  
5 entice a child over the internet.

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

12 Investigators and prosecutors report serious challenges with  
13 combating child pornography because offenders can act anonymously on  
14 the internet. Investigators track the trading of child pornography by  
15 using internet protocol addresses, which are unique identifiers that  
16 each computer is assigned when it accesses the internet. Under  
17 federal law, if an internet service provider is presented with a  
18 subpoena and an internet protocol address by law enforcement, the  
19 provider must turn over the names and addresses of account holders  
20 matched to it. Access to such information allows investigators to  
21 efficiently evaluate investigative leads and determine whether to  
22 request a warrant for a specific internet user. The legislature finds  
23 that in investigations of child exploitation, the use of a special  
24 inquiry judge is the appropriate process for obtaining subpoenas for  
25 the production of records from electronic communications providers  
26 under a less than probable cause standard while maintaining judicial  
27 oversight.

28 NEW SECTION. **Sec. 2.** (1) In a criminal investigation of an  
29 offense involving the sexual exploitation of children under chapter  
30 9.68A RCW, the prosecuting attorney shall use the special inquiry  
31 judge process established under chapter 10.27 RCW when the  
32 prosecuting attorney determines it is necessary to the investigation  
33 to subpoena a provider of electronic communication services or remote  
34 computing services to obtain records relevant to the investigation,  
35 including, but not limited to, records or information that provide  
36 the following subscriber or customer information: (a) Name and  
37 address; (b) local and long distance telephone connection records, or  
38 records of session times and durations; (c) length of service and  
39 types of service utilized; (d) telephone or instrument number or

1 other subscriber number or identity, including any temporarily  
2 assigned network address; and (e) means and source of payment for  
3 such service, including any credit card or bank account number.

4 (2) A provider who receives a subpoena for records as provided  
5 under subsection (1) of this section may not disclose the existence  
6 of the subpoena to the subscribers or customers whose records or  
7 information are requested or released under the subpoena.

8 (3) For the purposes of this section:

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

12 (b) "Provider" means a provider of electronic communication  
13 services or remote computing services.

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

17 **Sec. 3.** RCW 10.27.170 and 1971 ex.s. c 67 s 17 are each amended  
18 to read as follows:

19 (1) When any public attorney, corporation counsel or city  
20 attorney has reason to suspect crime or corruption, within the  
21 jurisdiction of such attorney, and there is reason to believe that  
22 there are persons who may be able to give material testimony or  
23 provide material evidence concerning such suspected crime or  
24 corruption, such attorney may petition the judge designated as a  
25 special inquiry judge pursuant to RCW 10.27.050 for an order directed  
26 to such persons commanding them to appear at a designated time and  
27 place in said county and to then and there answer such questions  
28 concerning the suspected crime or corruption as the special inquiry  
29 judge may approve, or provide evidence as directed by the special  
30 inquiry judge.

31 (2) Upon petition of a prosecuting attorney for the establishment  
32 of a special inquiry judge proceeding in an investigation of sexual  
33 exploitation of children under section 2 of this act, the court shall  
34 establish the special inquiry judge proceeding, if appropriate, as  
35 soon as practicable but no later than seventy-two hours after the  
36 filing of the petition.

1        NEW SECTION.    **Sec. 4.**    Section 2 of this act constitutes a new  
2 chapter in Title 10 RCW.

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