

FINAL BILL REPORT

SHB 2348

PARTIAL VETO

C 188 L 92

Brief Description: Protecting the privacy of child victims of sexual abuse.

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).

House Committee on Judiciary
Senate Committee on Law & Justice

Background: The press usually does not publish names or other information that identify child victims of sexual assault. However, individual editors make the decision whether to disseminate identifying information. No statute expressly prohibits the press from disseminating identifying information or specifically restricts press and public access to identifying information. Other statutes encourage law enforcement agents to refrain from disseminating identifying information to the public or press, but the statutes do not create a substantive right to have identifying information remain confidential.

Restricting the press from disseminating truthful information that is obtained through regular investigatory techniques implicates the First Amendment. In addition, restricting public and press access to public trials implicates the adult defendant's right to a public trial under the Sixth Amendment. Attempts to directly restrict the media from disseminating truthful information lawfully obtained are generally invalidated as violations of the First Amendment. In addition, mandatory closures of any trial that involve a rape victim are also impermissible.

However, courts have indicated that government officials and officers of the court that have access to identifying information about a victim as a result of their official status and not as members of the public may be directed to refrain from disseminating that information to the press.

Courts have further indicated that release of identifying information may not unduly restrict the public's right to know about the criminal justice system's operation. Courts have also held that the public's right to attend trials is not absolute and may be abridged under certain circumstances. Closure of public trials under certain circumstances has been upheld against constitutional challenge to protect rape victims.

Summary: The Legislature finds that cooperation of child victims and their families is integral to successful prosecution of sex offenses against children and that releasing information identifying the victim has a chilling effect on the victim's willingness to report sexual assaults and to cooperate with prosecution.

"Children" are defined as persons under age 18.

"Identifying information" means the child victim's name, address, location, photograph, and identification of the relationship between the child and the alleged abuser in cases in which the child is a relative or stepchild of the alleged abuser.

Several statutes that concern maintenance of records in the criminal justice system are amended. Portions of records that contain information that identifies a child victim are confidential and are not subject to disclosure to the press or public unless the child victim or the child's legal guardian consents to the disclosure. Criminal justice personnel may disclose the identifying information to others as necessary to investigate the case. Records that contain identifying information must be sealed unless identifying information is deleted.

The court may not prohibit the press from disseminating truthful information lawfully obtained through regular investigatory techniques. If the press obtains the information from court records because the criminal justice agents did not delete the information from the record, the court may not restrict the press from disseminating the material.

The court may condition press and public attendance at a trial involving a child victim of sexual abuse on an agreement not to disseminate identifying information to the public or the press. Court proceedings include pretrial hearings, trial, sentencing, and appellate proceedings. The court may make further orders to prevent further dissemination of identifying information if the press violates the agreement. The press is subject to a fine of not less than \$100 or more than \$500 for a violation. In

addition, the child victim may pursue other civil remedies available under existing law.

A severability clause is included.

Votes on Final Passage:

House	98	0
Senate	43	5

Effective: June 11, 1992

Partial Veto Summary: The governor vetoed a provision which imposed an explicit affirmative obligation upon law enforcement, prosecutors, and defense attorneys to refrain from disseminating identifying information to the press and public and which required the court to condition the attendance of the public and press at trial upon an agreement not to publish identifying information obtained at trial. That vetoed section also provided for imposition of a fine if the press violates the agreement. Another provision which gave victims an explicit substantive right of confidentiality and removed law enforcement personnel's discretion to decide whether to release identifying information was also vetoed. However, other provisions in the bill that were not vetoed provide that identifying information in records is confidential and not subject to release.