

HOUSE BILL REPORT

HB 2348

*As Reported By House Committee on:
Judiciary*

Title: An act relating to the confidentiality of victim-identifying information in cases of child victims of sexual abuse.

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

Sponsor(s): 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.

Brief History:

Reported by House Committee on:
Judiciary, February 4, 1992, DPS.

**HOUSE COMMITTEE ON
JUDICIARY**

Majority Report: *The substitute bill be substituted therefor and the substitute bill do pass.* Signed by 18 members: Representatives Appelwick, Chair; Ludwig, Vice Chair; Padden, Ranking Minority Member; Paris, Assistant Ranking Minority Member; Belcher; Broback; Forner; Hargrove; Inslee; Locke; Mielke; H. Myers; Riley; Scott; D. Sommers; Tate; Vance; and Wineberry.

Staff: Pat Shelledy (786-7149).

Background: The press generally does not publish names or other information that identify child victims of sexual assault. However, the decision whether to disseminate identifying information is made by individual editors. No statute exists that expressly prohibits the press from disseminating that information. A number of statutes regarding maintenance of information in criminal records exists, but none of those statutes specifically restrict access to identifying information of an alleged child victim of sexual assault. Other statutes encourage law enforcement

agents to maintain the confidentiality of child victims and not disseminate that 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 obviously 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 struck down in violation of the First Amendment. In addition, mandatory closures of any trial that involve a rape victim are also impermissible.

However, the courts have indicated that the government and officers of the court that have access to identifying information about a victim as a result of their status as officers of the court and not as members of the public may be directed to refrain from disseminating that information to the press in the first place. Further, the courts have indicated the release of identifying information may not unduly restrict the right of the public to know about the criminal justice system's operation. Further, the court has held that the right of the public and press 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 of Substitute Bill:

A. LEGISLATIVE FINDINGS. The Legislature finds that cooperation of child victims and their families is integral to the successful prosecution of sex offenses against children. The Legislature further finds that releasing information identifying the child to the public has a chilling effect on the willingness of the victims and their families to report sexual assaults and to cooperate with the prosecution.

"Children" are children 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.

B. RECORDS. A number of statutes that concern the maintenance of records in the criminal justice system are

amended to provide that portions of records that contain information that identifies the 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 shall be sealed unless the identifying information is deleted from the document.

B. COURT PROCEEDINGS. The court may condition the attendance of the press or public at a trial of an adult or juvenile accused of sexually assaulting a child on their agreement not to disseminate identifying information to the public or the press. Court proceedings include pretrial hearings, trial, sentencing, and appellate proceedings.

C. SANCTIONS. Sanctions are as follows:

The court may not prohibit the press from disseminating truthful information lawfully obtained from sources obtained through regular investigatory techniques. The court may only: a) condition press attendance at a court proceeding upon the press's agreement not to disseminate the identifying information; and b) make further orders to prevent further dissemination of the information if the press violates the agreement and disseminates identifying information obtained only at the court proceeding. The press shall be subject to a fine of not less than \$100 or more than \$500 for disseminating the identifying information in violation of the court order granting conditional access to the court proceedings. In addition, the child victim may pursue other civil remedies available under existing law.

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 further dissemination of the material.

A severability clause is included.

Substitute Bill Compared to Original Bill: The definition of "identifying information" is changed to specify what constitutes identifying information. The definition is also expanded to include identification of the relationship between the child and the alleged perpetrator when the abuser and abused are related. The restriction on dissemination of identifying information by criminal justice personnel is modified to provide that they may disseminate the information when necessary to conduct their

investigation. A provision is removed that would have allowed the court to categorically deny press attendance at all future sexual assault cases involving children if the press violated the court order in one case not to reveal identifying information. The penalty provisions that applied to criminal justice personnel who release identifying information are removed. Instead, the press may be fined but only if the press violates the court order not to disseminate identifying information that the press obtained by conditional access to the court proceedings and did not obtain the information through another regular investigatory mechanism.

Fiscal Note: Available.

Effective Date of Substitute Bill: Ninety days after adjournment of session in which bill is passed.

Testimony For: (Original Bill): Release of victim identifying information about a child who has been sexually abused especially when accompanied by the graphic details of the sexual abuse has a chilling effect on victims' and their families' willingness to report crimes of sexual abuse and to cooperate with the prosecution. Children are retraumatized by the press coverage of the intimate details of the abuse, are teased by their friends, and may be more afraid of the ramifications of press coverage than of the trial itself. Some victims and their families are refusing to prosecute because of the newspaper's policy to release the names and details of the abuse.

Testimony Against: (Original Bill): The bill violates the First Amendment and may infringe on the defendant's Sixth Amendment right to a public trial. The policy of printing the names of the victims ensures fair reporting on both sides of the issue. Refusing to report the alleged victim's name creates the impression that the defendant is guilty. The press has a duty to uphold the presumption of innocence. Reporting the names of the victim may result in lessening the stigma of sexual abuse.

Witnesses: Representative Sheldon, prime sponsor; Gary Martzall, Shelton Police Department; Leauri Grindeland, counselor at Recovery; Brenda Plews, counselor at Recovery; a parent of an abuse victim who requested to remain anonymous; Dawn Larsen, Washington Coalition of Sexual Assault Victims; Victoria Meadows, Deputy Prosecutor, Mason County; and Lonnie Johns-Brown, Washington State National Organization for Women (all in favor); Stephanie Carter, Washington Association of Prosecuting Attorneys (in favor, but with concerns). Jerry Sheehan, American Civil Liberties Union; Roland Thompson, Allied Daily Newspapers of

Washington; and Charles Gay, Managing Editor, Shelton
Journal (all opposed).