

SENATE BILL REPORT

SHB 2348

AS REPORTED BY COMMITTEE ON LAW & JUSTICE, FEBRUARY 28, 1992

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

SPONSORS: 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

Majority Report: Do pass.

Signed by Senators Nelson, Chairman; Thorsness, Vice Chairman; Erwin, M. Kreidler, Madsen, and Rasmussen.

Staff: Susan Carlson (786-7418)

Hearing Dates: February 28, 1992

BACKGROUND:

The press generally does not publish names or other information that identifies child victims of sexual assault. However, the decision whether to disseminate identifying information is made by individual editors since no statute exists that expressly prohibits the press from disseminating that information. A number of statutes regarding maintenance of information in criminal records exist, 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 for violating the First Amendment. In

addition, mandatory closures of all trials that involve a rape victim are impermissible.

The courts have indicated that persons who 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 court has held that the right of the public and press to attend trials is not absolute and may be abridged under certain circumstances. The decision to close public trials made on a case-by-case basis has been upheld against constitutional challenge to protect rape victims.

SUMMARY:

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. Court records that contain identifying information are required to be sealed unless the identifying information is deleted from the document. Criminal justice personnel may disclose the identifying information to others only as necessary to investigate or prepare the case.

C. Court Proceedings. Court proceedings include pretrial hearings, trial, sentencing, and appellate proceedings. The court must 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 obtained at the court proceedings to the public or the press. Any person who refuses to comply with this condition must be prohibited by the court from attending the court proceeding. If the condition is violated, the court must make all orders necessary to prevent further dissemination of the identifying information. In juvenile court, dissemination of information identifying a child victim of sexual assault constitutes good cause for closing the hearing.

The court may not prohibit the press from disseminating identifying information obtained from a source other than the court proceedings.

D. Sanctions. If a member of the press releases to the public identifying information obtained solely through attendance at a court proceeding to which the press member had conditional access, the press member is subject to a fine of not less than \$100 and not more than \$500. In addition, the child victim may pursue other civil remedies available under existing law.

A severability clause is included.

Appropriation: none

Revenue: none

Fiscal Note: available

TESTIMONY FOR:

The publication of the names of child sexual abuse victims has had a chilling effect on the willingness of these victims and their families to pursue prosecution.

TESTIMONY AGAINST: None

TESTIFIED: Representative Sheldon, prime sponsor