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## Judiciary Committee

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### ESSB 6700

**Title:** An act relating to limiting publication of personal information of law enforcement-related and court-related employees.

**Brief Description:** Limiting publication of personal information of law enforcement, corrections officers, or court employees.

**Sponsors:** Senate Committee on Judiciary (originally sponsored by Senators Finkbeiner, Roach, Oke and McAuliffe).

#### Brief Summary of Engrossed Substitute Bill

- Prohibits a person or organization, with intent to harm or intimidate, from disseminating certain personal information of law enforcement, corrections, and court employees or volunteers without the permission of the employee or volunteer, unless the person or organization provides the person's or organization's full name and residential and business address and telephone number.
- Authorizes a prosecutor or person harmed by a violation to bring an action to enjoin the violation.
- Establishes a cause of action for damages for a law enforcement, corrections, or court employee or volunteer who is harmed by a violation.

**Hearing Date:** 2/25/02

**Staff:** Edie Adams (786-7180).

#### Background:

Both the state and federal constitutions and state statutory and common law protect an individual's right to privacy. The constitutional right to privacy generally applies only in the context of governmental invasions of privacy and does not address a person's right to be free of the invasion of privacy by another person. Under state tort law, a person may bring a cause of action against another person for an invasion of the right to privacy. In order to establish a claim of invasion of privacy, the person must show that the information made public would be highly offensive to a reasonable person and is not of legitimate concern to

the public.

The federal and state constitutions also protect the right to freedom of speech. The freedom of speech, however, is not absolute. The constitutional permissibility of a regulation affecting speech will depend upon a number of factors, including: the type of regulation imposed; the type of speech regulated; the forum in which the speech is regulated; whether the government has a legitimate or compelling reason for the regulation; and whether the regulation imposes a prior restraint on speech. In general, regulations that impose content-based restrictions on speech are presumptively unconstitutional and will only be upheld if the regulation is necessary to serve a compelling governmental interest and narrowly tailored to serve that interest. Prior restraints on speech are suspect under the federal constitution and are per se unconstitutional under the state constitution. Some forms of speech are not protected by the First Amendment and the content of the speech may be regulated or prohibited, such as speech that presents a clear and present danger of imminent lawless action, true threats, obscenity, fighting words, defamation, and false advertising.

Recently, a person established a web site that was critical of law enforcement personnel and that contained a list of the names, addresses, birthdates, telephone numbers, social security numbers (SSNs), and other personal information about law enforcement personnel and their relatives. The City of Kirkland filed suit requesting the superior court to issue a preliminary and permanent injunction prohibiting the publication of these lists. In May, 2001, in *Kirkland v. Sheehan*, the superior court denied the temporary injunction of the continued dissemination of the list, except for the listing of SSNs, on the grounds that the information is speech protected by the First Amendment. The court did issue an injunction directing the removal of all SSNs from the web site because there is a compelling interest in keeping SSNs private, the disclosure of SSNs is highly offensive to a reasonable person, and disclosure is not of legitimate concern to the public.

In a recent Ninth Circuit Court of Appeals case, *Planned Parenthood v. American Coalition of Life Activists (ACLA)*, the court addressed the question of injunctive relief and monetary damages against an anti-abortion organization that ran a website that published the photographs, addresses, and other personal information of abortion doctors, politicians, judges, and other abortion rights supporters. The Ninth Circuit overturned the lower court's award of damages and injunctive relief against ACLA, finding that the First Amendment protects their right to engage in such speech. The court stated that political speech may not be punished because it makes it more likely that someone will be harmed in the future by an unrelated third party.

The Ninth Circuit in *ACLA* did not decide whether the First Amendment would protect the ACLA from a suit for invasion of privacy since the plaintiffs did not make a claim based solely on the publication of their addresses and telephone numbers. Case law that has analyzed the balance between the right to privacy and the First Amendment has developed a fact-specific analysis and weighing of the competing rights in each particular context.

### **Summary of Bill:**

A person or organization may not, with intent to harm or intimidate, sell, trade, give, publish, distribute, or otherwise release the residential address or telephone number,

birthdate, or social security number of any law enforcement-related, corrections officer-related, or court-related employee or volunteer, if categorized as such, without the permission of the employee or volunteer, unless the person or organization distributing the information also discloses their own full name, residential and business address, and residential and business telephone number.

The prosecuting attorney or a person harmed by a violation of this provision may initiate a civil action to enjoin the violation. The court may issue a permanent injunction against the person or organization engaged in the violation and may retain jurisdiction of the case for the purpose of enforcing its order.

A law enforcement-related, corrections officer-related, or court-related employee or volunteer who suffers damages as a result of a violation may bring an action against the person or organization for actual damages, attorneys' fees, and costs.

**Appropriation:** None.

**Fiscal Note:** Not Requested.

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