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## Public Safety & Emergency Preparedness Committee

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### HB 1874

**Brief Description:** Addressing police investigations of commercial sexual exploitation of children and human trafficking.

**Sponsors:** Representatives Dickerson, Hurst, Klippert, Pearson, Parker, Shea, Kenney, Angel, Kristiansen, Stanford, McCune and Ormsby.

#### Brief Summary of Bill

- Permits law enforcement to record a communication with one party's consent if there is probable cause to believe the communication involves Commercial Sexual Abuse of a Minor, Promoting Commercial Sexual Abuse of a Minor, or Promoting Travel for Commercial Sexual Abuse of a Minor.
- Permits law enforcement to employ a minor in investigating certain sex offenses when the minor's aid is limited to telephone or electronic communication or when an investigation is authorized by the one-party consent laws.

**Hearing Date:** 2/15/11

**Staff:** Alexa Silver (786-7190).

#### Background:

##### ***One-Party Consent.***

Under Washington's privacy laws, it is generally unlawful to record a private conversation without the consent of all parties to the communication. However, there are exceptions for recordings by law enforcement when one party consents to the recording.

*Judicial Authorization:* Law enforcement may record a communication where a law enforcement officer is a party to the communication or where one party consents if: (1) the officer obtains authorization from a judge; and (2) there is probable cause to believe that the non-

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consenting party has committed, is engaged in, or is about to commit a felony. An authorization under these circumstances is limited to seven days. If the communication concerns a drug offense, the judge may authorize the recording even if the true name of the non-consenting party or the time and place is not known, so long as the authorization describes the person and subject matter with reasonable certainty. An authorization under these circumstances is limited to 14 days.

*Drug Investigations:* As part of a criminal investigation, law enforcement may record a communication where one party consents if: (1) the officer obtains authorization from the chief law enforcement officer or designee; (2) there is probable cause to believe the communication involves a drug offense; and (3) the officer completes a written report. The report must include: the circumstances, the names of the authorizing and consenting parties (except confidential informants), the names of the officers who may record the communication, the identity of the person who may have committed the offense, the details of the offense, and whether there has been an attempt to obtain judicial authorization. An authorization under these circumstances is limited to 24 hours and may not be extended more than twice. Within 15 days, the law enforcement agency must submit a report to a judge for review. If the authorization was made without probable cause and without a reasonable suspicion that the communication would involve a drug offense, the law enforcement agency is liable for \$25,000 in exemplary damages.

Law enforcement may also record a communication (other than a telephone conversation) concerning a drug offense where one party consents if a police commander or officer above the rank of first line supervisor has reasonable suspicion that the safety of the consenting party is in danger. Such a recording may be made for the sole purpose of protecting the safety of the consenting party.

### ***Offenses Related to Commercial Sexual Abuse of a Minor.***

Law enforcement and prosecutors may not employ minors to aid in the investigation of Communication with a Minor for Immoral Purposes or Commercial Sexual Abuse of a Minor.

A person is guilty of Commercial Sexual Abuse of a Minor if he or she pays or agrees to pay a fee to engage in sexual conduct with a minor or requests that a minor engage in sexual conduct for a fee. It is a class B felony with a seriousness level of VIII.

A person is guilty of Promoting Commercial Sexual Abuse of a Minor if he or she knowingly advances Commercial Sexual Abuse of a Minor or profits from a minor engaged in sexual conduct. It is a class A felony with a seriousness level of XII.

A person is guilty of Promoting Travel for Commercial Sexual Abuse of a Minor if he or she knowingly sells travel services that facilitate travel for engaging in Commercial Sexual Abuse of a Minor or Promoting Commercial Sexual Abuse of a Minor, if occurring in Washington. It is an unranked class C felony.

### **Summary of Bill:**

#### ***One-Party Consent.***

As part of a criminal investigation, law enforcement may record a communication where one party consents if: (1) the officer obtains authorization from the chief law enforcement officer or

designee; (2) there is probable cause to believe the communication involves Commercial Sexual Abuse of a Minor, Promoting Commercial Sexual Abuse of a Minor, or Promoting Travel for Commercial Sexual Abuse of a Minor; and (3) the officer completes a written report.

The name of the confidential informant need not be divulged in the report to the judge where the confidential informant is an unknown alleged victim of certain offenses (Commercial Sexual Abuse of a Minor or Tampering with a Fire Alarm or Firefighting Equipment). (The bill appears to contain inaccurate cross-references.)

Law enforcement may also record a communication (other than a telephone conversation) concerning Commercial Sexual Abuse of a Minor, Promoting Commercial Sexual Abuse of a Minor, or Promoting Travel for Commercial Sexual Abuse where one party consents if a police commander or officer above the rank of first line supervisor has reasonable suspicion that the safety of the consenting party is in danger.

***Offenses Related to Commercial Sexual Abuse of a Minor.***

Law enforcement and prosecutors may employ a minor to facilitate an investigation of Communication with a Minor for Immoral Purposes or Commercial Sexual Abuse of a Minor if the minor is the alleged victim and the minor's aid involves only telephone or electronic communications or the investigation is authorized by the one-party consent laws.

**Appropriation:** None.

**Fiscal Note:** Not requested.

**Effective Date:** The bill takes effect on August 1, 2011.