

HOUSE BILL REPORT

SHB 1874

As Amended by the Senate

Title: An act relating to police investigations of commercial sexual exploitation of children and human trafficking.

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

Sponsors: House Committee on Public Safety & Emergency Preparedness (originally sponsored by Representatives Dickerson, Hurst, Klippert, Pearson, Parker, Shea, Kenney, Angel, Kristiansen, Stanford, McCune and Ormsby).

Brief History:

Committee Activity:

Public Safety & Emergency Preparedness: 2/15/11, 2/16/11 [DPS].

Floor Activity:

Passed House: 3/7/11, 87-9.

Senate Amended.

Passed Senate: 4/8/11, 49-0.

Brief Summary of Substitute 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.

HOUSE COMMITTEE ON PUBLIC SAFETY & EMERGENCY PREPAREDNESS

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 10 members: Representatives Hurst, Chair; Ladenburg, Vice Chair; Pearson, Ranking Minority Member; Klippert, Assistant Ranking Minority Member; Armstrong, Goodman, Hope, Kirby, Moscoso and Ross.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

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 with one-party consent if: (1) the officer obtains authorization from a judge; and (2) there is probable cause to believe that the non-consenting party has committed, is engaged in, or is about to commit a felony. An authorization under these circumstances is limited to seven days.

Drug Investigations: As part of a criminal investigation, law enforcement may record a communication with one-party consent 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, 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. If the consenting party is a confidential informant, his or her name need not be divulged. 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 the 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. If the judge determines there was no probable cause, the judge must send a notice to the non-consenting party six months after the determination is made. Law enforcement may obtain six-month extensions of the notice if an active, ongoing criminal investigation would be jeopardized.

Law enforcement may also record a communication (other than a telephone conversation) concerning a drug offense with one-party consent 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 a minor to aid in an 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 Substitute Bill:

One-Party Consent.

As part of a criminal investigation, law enforcement may record a communication with one-party consent 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 for review by a judge.

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 aid in an investigation of the following offenses if the minor is the alleged victim and the aid is limited to telephone or electronic communications or the investigation is authorized by the one-party consent laws: Communication with a Minor for Immoral Purposes, Commercial Sexual Abuse of a Minor, Promoting Commercial Sexual Abuse of a Minor, and Promoting Travel for Commercial Sexual Abuse of a Minor. The minor must be advised of the risk that the perpetrator may learn of his or her participation.

EFFECT OF SENATE AMENDMENT(S):

The Senate amendment deletes the phrase "but not of the evidence" from current law, which requires a judge to make an ex parte review of the authorization, but not of the evidence. It provides that evidence obtained as a result of a recording with one-party consent need not be submitted to a judge for review.

The amendment exempts cases where the confidential informant was a minor at the time of the recording or an alleged victim of commercial child sexual abuse from the requirement that the non-consenting party receive notice of the recording if a judge determines there was no probable cause.

It removes the requirement that a minor aiding in an investigation be advised of the risk that the perpetrator may learn of his or her participation.

It also makes technical corrections to update a cross-reference and to clarify that a recording may be made with one-party consent if the communication concerns a drug offense or Commercial Sexual Abuse of a Minor.

Appropriation: None.

Fiscal Note: Not requested.

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

Staff Summary of Public Testimony:

(In support) There is an epidemic of victimization of child prostitutes in Washington. Law enforcement does not have the tools to effectively investigate these cases. The only way to successfully investigate these crimes is to use the help of minors. One-party consent for drug investigations has proven to be a significant help in investigations of drug crimes, and law enforcement has exercised good stewardship of the authority. The rights of the children outweigh the civil liberties of their pimps.

(In support with concerns) Some minors are traumatized and may not be in a condition to decide whether to help an investigation. There should be safeguards, such as disclosure to the minor that the perpetrator may learn that he or she is helping in the investigation, and a 24-hour period for the victim to consider the decision.

(Opposed) All parties should be required to consent to any recording in Washington. However, these crimes are heinous, so the solution may be to increase judicial oversight by allowing judges to review the authorization for probable cause.

Persons Testifying: (In support) Representative Dickerson, prime sponsor; Rose Gundersen, Washington Anti-Trafficking Engagement; Tim Heffer, The Justice and Mercy Foundation; and Don Pierce, Washington Association of Sheriffs and Police Chiefs.

(In support with concerns) Karla Salp, Washington Coalition of Crime Victim Advocates.

(Opposed) Shankar Narayan, American Civil Liberties Union of Washington.

Persons Signed In To Testify But Not Testifying: None.