

HOUSE BILL REPORT

SSB 5545

As Reported by House Committee On:
Public Safety & Emergency Preparedness

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: Senate Committee on Human Services & Corrections (originally sponsored by Senators Delvin, Kohl-Welles, Hargrove, Stevens, Fraser, Swecker, Chase, McAuliffe, White, Eide, Roach, Shin and Regala).

Brief History:

Committee Activity:

Public Safety & Emergency Preparedness: 3/15/11, 3/22/11 [DPA].

**Brief Summary of Substitute Bill
(As Amended by House)**

- 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: Do pass as amended. 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.

Minority Report: Do not pass. Signed by 1 member: Representative Appleton.

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 the officer obtains authorization from a judge and 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 the officer obtains authorization from the chief law enforcement officer or designee, there is probable cause to believe the communication involves a drug offense, and 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 of the authorization, but not of the evidence. 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 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 an 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, agrees to pay, or requests to pay a fee to engage in sexual conduct with a minor. 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 Amended 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 Communication with a Minor for Immoral Purposes, Commercial Sexual Abuse of a Minor, Promoting Commercial Sexual Abuse of a Minor, or Promoting Travel for Commercial Sexual Abuse if the minor is the alleged victim and: (1) the aid is limited to telephone or electronic communications; or (2) the investigation is authorized by the one-party consent laws. The minor must be advised of the risk that the perpetrator may learn of his or her participation.

Amended Bill Compared to Substitute Bill:

The amended bill restores current law providing that a judge shall make an ex parte review of the authorization, but not of the evidence. It deletes language stating that evidence obtained as a result of the recording need not be submitted to the judge.

The amended bill deletes language exempting cases where the confidential informant was a minor or victim from the requirement that the non-consenting party receive notice if there was no probable cause.

The amended bill adds the requirement that if a minor assists in an investigation, that he or she be advised of the risk that the perpetrator may learn of his or her participation. It also adds Promoting Commercial Sexual Abuse of a Minor and Promoting Travel for Commercial Sexual Abuse of a Minor to the offenses for which law enforcement and prosecutors may not use a minor to aid an investigation unless the minor is the victim and the investigator is

authorized by the one-party consent laws or only involves telephone or electronic communication.

Appropriation: None.

Fiscal Note: Not requested.

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

Staff Summary of Public Testimony:

(In support) This bill creates a narrowly focused tool for investigating exploitation of minors and for recovering young people from a life of abuse and exploitation. Time is a factor in these investigations. Law enforcement has up to half an hour, depending on the length of the encounter and the amount of time before the pimp checks in. The current law cannot be used in these investigations, because of the time it takes to write a warrant, find a judge, prepare a script, and obtain equipment. A recording of the defendant's words and tone of voice may corroborate or refute a victim's claims and reduce the potential for witness intimidation. The Washington Supreme Court has determined that one-party consent does not violate the state Constitution. Law enforcement has an excellent track record of using the one-party consent laws. The standard for the judge and the officer is probable cause at the time of the determination, not based on the evidence that is obtained.

(With concerns) If judges do not review the evidence, it is hard to know whether the process has been abused. Narrow exceptions to two-party consent have been upheld, but an exception has not been considered in these circumstances. One-party consent makes more sense in drug cases, where the defendant obtains a benefit. An adult can say no to law enforcement, but there is a different power dynamic present in these cases.

(Opposed) Judicial oversight in the form of a warrant should be required before law enforcement uses victims to obtain evidence.

Persons Testifying: (In support) Senator Delvin, prime sponsor; Senator Kohl-Welles; Ryan Long, Seattle Police Department; Lonnie Johns-Brown, Washington Coalition of Sexual Assault Programs; Tim Heffer, The Justice and Mercy Foundation; Rose Gundersen, Washington Anti-Trafficking Engagement; Don Pierce, Washington Association of Sheriffs and Police Chiefs; and Dannie McQueen.

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

(Opposed) Amy Muth, Washington Criminal Defense Lawyers and Washington Defender Association.

Persons Signed In To Testify But Not Testifying: None.