

HOUSE BILL REPORT

HB 1449

As Reported by House Committee On: Government Operations & Elections

Title: An act relating to making specific prosecution and defense documents and materials exempt from public inspection and copying.

Brief Description: Making specific prosecution and defense documents and materials exempt from public inspection and copying.

Sponsors: Representatives Bergquist, Hope, Hunt, Buys, Orwall, Manweller and Freeman.

Brief History:

Committee Activity:

Government Operations & Elections: 2/12/13, 2/21/13 [DP].

Brief Summary of Bill

- Exempts victim impact statements from disclosure under the Public Records Act.
- Exempts documents and other materials provided to the prosecution by the defense, including a defendant when acting pro se, from disclosure under the Public Records Act.

HOUSE COMMITTEE ON GOVERNMENT OPERATIONS & ELECTIONS

Majority Report: Do pass. Signed by 11 members: Representatives Hunt, Chair; Bergquist, Vice Chair; Buys, Ranking Minority Member; Taylor, Assistant Ranking Minority Member; Alexander, Carlyle, Fitzgibbon, Kristiansen, Manweller, Orwall and Van De Wege.

Staff: Jasmine Vasavada (786-7301).

Background:

The Public Records Act (PRA) requires that all state and local government agencies make all public records available for public inspection and copying unless they fall within certain statutory exemptions. The provisions requiring public records disclosure must be interpreted

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liberally and the exemptions narrowly in order to effectuate a general policy favoring disclosure.

Certain information relating to investigative records, law enforcement, and crime victims is exempt from public inspection and copying. This includes an exemption for specific investigative records compiled by law enforcement. Investigative records are exempt only if nondisclosure is essential either to effective law enforcement or for the protection of any person's privacy.

A victim impact statement is a statement submitted to the court by the victim or a survivor, individually, or with the assistance of the prosecuting attorney. It may include, but is not limited to, information assessing the financial, medical, social, and psychological impact of the offense upon the victim or survivors.

Some lower courts in Washington have found that certain information in victim impact statements and other materials provided by the defense to the prosecution can qualify as exempt from disclosure under the PRA's investigative records exemption. Under certain circumstances, the investigative records themselves may still be disclosed, but specific information, such as a victim's name, would first be redacted. In September 2012 the Washington State Supreme Court ruled that neither a victim impact statement nor a psychosexual evaluation provided by the defendant to the prosecution during a sentencing proceeding qualified for the "investigative record" exemption. As a result, the PRA required disclosure.

Summary of Bill:

Two new exemptions are expressly established under the PRA. Victim impact statements are exempt from public inspection and copying. Also exempt are documents and other materials provided by the defense to the prosecution. These materials include, but are not limited to, materials provided during plea negotiations and sentencing discussions.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) This is a rare instance where members of the defense bar, prosecutors, and victim's advocate groups are all arguing for the same thing. Victim impact statements may contain highly private, vivid details about the sexual health of the victim. In high profile cases about a school teacher, if a psychosexual evaluation is made public, it is easy for

members of the community to figure out who that individual is, even if the name is redacted. Exempting this information from disclosure is essential to protect personal privacy.

(In support with concerns) Prosecutors are in support of this bill, but would request an amendment to limit the exemption so that it applies only prior to sentencing. Prosecutors want the public to understand why a sentence was imposed. Prior to sentencing, this information should not be publicly available, but it can be made available after the sentencing.

(Opposed) These documents are used to inform the public when a case is over. Victim impact statements follow a criminal defendant all the way through the correctional system until the point when the defendant is released. During sentencing, these documents are submitted to the jury in open court and are part of court files, so they should be open to the public. The prosecutors should also be responsible to disclose these documents to the public, to demonstrate that they are acting in the public interest.

Persons Testifying: (In support) Representative Bergquist, prime sponsor; and Amy Muth, Washington Association of Criminal Defense Lawyers and Washington Defender Association.

(In support with concerns) Tom McBride, Washington Association of Prosecuting Attorneys.

(Opposed) Rowland Thompson, Allied Daily Newspapers.

Persons Signed In To Testify But Not Testifying: None.