

HB 1728 - H AMD 148

By Representative Shea

ADOPTED 03/01/2017

1 Strike everything after the enacting clause and insert the
2 following:

3
4 "NEW SECTION. **Sec. 1.** The legislature must continue to act to
5 aid law enforcement in their efforts to prevent the unthinkable acts
6 of sexual abuse of children and the horrendous social and emotional
7 trauma experienced by victims of child pornography by expanding the
8 tools available for law enforcement. The legislature finds that the
9 expansion of the internet and computer-related technologies have led
10 to a dramatic increase in the production and availability of child
11 pornography by simplifying how it can be created, distributed, and
12 collected. Between 2005 and 2009, the national center for missing
13 and exploited children's child victim identification program has
14 seen a four hundred thirty-two percent increase in child pornography
15 films and files submitted for identification of the children
16 depicted. The United States department of justice estimates that
17 pornographers have recorded the abuse of more than one million
18 children in the United States alone. Furthermore, there is a direct
19 correlation between individuals who possess, download, and trade
20 graphic images of child pornography and those who molest children. A
21 well-known study conducted by crimes against children research
22 center for the national center for missing and exploited children
23 concluded that an estimated forty percent of those who possess child
24 pornography have also directly victimized a child and fifteen
25 percent have attempted to entice a child over the internet.

26 Victims of child pornography often experience severe and lasting
27 harm from the permanent memorialization of the crimes committed

1 against them. Child victims endure depression, withdrawal, anger,
2 and other psychological disorders. Each and every time such an image
3 is viewed, traded, printed, or downloaded, the child in that image
4 is victimized again.

5 Investigators and prosecutors report serious challenges with
6 combating child pornography because offenders can act anonymously on
7 the internet. Investigators track the trading of child pornography by
8 using internet protocol addresses, which are unique identifiers that
9 each computer is assigned when it accesses the internet. Under federal
10 law, if an internet service provider is presented with a subpoena and
11 an internet protocol address by law enforcement, the provider must
12 turn over the names and addresses of account holders matched to it.
13 Access to such information allows investigators to efficiently
14 evaluate investigative leads and determine whether to request a
15 warrant for a specific internet user. The legislature finds that in
16 investigations of child exploitation, the use of a special inquiry
17 judge is the appropriate process for obtaining subpoenas for the
18 production of records from electronic communications providers under a
19 less than probable cause standard while maintaining judicial
20 oversight.

21

22 NEW SECTION. **Sec. 2.** (1) In a criminal investigation of an
23 offense involving the sexual exploitation of children under chapter
24 9.68A RCW, the prosecuting attorney shall use the special inquiry
25 judge process established under chapter 10.27 RCW when the
26 prosecuting attorney determines it is necessary to the investigation
27 to subpoena a provider of electronic communication services or
28 remote computing services to obtain records relevant to the
29 investigation, including, but not limited to, records or information
30 that provide the following subscriber or customer information: (a)
31 Name and address; (b) local and long distance telephone connection
32 records, or records of session times and durations; (c) length of
33 service and types of service utilized; (e) telephone or instrument
34 number or other subscriber number or identity, including any

1 temporarily assigned network address; and (f) means and source of
2 payment for such service, including any credit card or bank account
3 number.

4 (2) A provider who receives a subpoena for records as provided
5 under subsection (1) of this section may not disclose the existence
6 of the subpoena to the subscribers or customers whose records or
7 information are requested or released under the subpoena.

8 (3) For the purposes of this section:

9 (a) "Electronic communication service" means any service that
10 provides to users the ability to send or receive wire or electronic
11 communications.

12 (b) "Provider" means a provider of electronic communication
13 services or remote computing services.

14 (c) "Remote computing service" means the provision to the public
15 of computer storage or processing services by means of an electronic
16 communications system.

17

18 **Sec. 3.** RCW 10.27.170 and 1971 ex.s. c 67 s 17 are each amended
19 to read as follows:

20 (1) When any public attorney, corporation counsel or city
21 attorney has reason to suspect crime or corruption, within the
22 jurisdiction of such attorney, and there is reason to believe that
23 there are persons who may be able to give material testimony or
24 provide material evidence concerning such suspected crime or
25 corruption, such attorney may petition the judge designated as a
26 special inquiry judge pursuant to RCW 10.27.050 for an order
27 directed to such persons commanding them to appear at a designated
28 time and place in said county and to then and there answer such
29 questions concerning the suspected crime or corruption as the
30 special inquiry judge may approve, or provide evidence as directed
31 by the special inquiry judge.

32 (2) Upon petition of a prosecuting attorney for the
33 establishment of a special inquiry judge proceeding in an
34 investigation of sexual exploitation of children under section 2 of

1 this act, the court shall establish the special inquiry judge
2 proceeding, if appropriate, as soon as practicable but no later than
3 seventy-two hours after the filing of the petition.

4

5 NEW SECTION. **Sec. 4.** Section 2 of this act constitutes a new
6 chapter in Title 10 RCW."

7

8 Correct the title.

EFFECT: Strikes the substantive provisions of the bill authorizing a prosecutor or the Attorney General to issue administrative subpoenas without judicial review to providers of electronic communications services or remote computing services to obtain certain subscriber information in investigations involving sexual exploitation of children.

Provides instead that in investigations of child sexual exploitation, the prosecuting attorney must use the use the existing special inquiry judge (SIJ) process under chapter 10.27 RCW when the prosecuting attorney determines it is necessary to the investigation to subpoena a provider of electronic communication services or remote computing services to obtain records relevant to the investigation, including records or information that provide the following customer or subscriber information: (a) Name and address; (b) local and long distance telephone connection records, or records of session times and durations; (c) length of service and types of service utilized; (e) telephone or instrument number or other subscriber number or identity, including any temporarily assigned network address; and (f) means and source of payment for such service, including any credit card or bank account number.

Provides that a provider that receives a subpoena for the productions of customer or subscriber information may not disclose the existence of the subpoena to the subscribers or customers whose records or information are requested or released under the subpoena.

Requires the court to establish an SIJ proceeding for a child sexual exploitation investigation, if appropriate, as soon as practicable but no later than 72 hours after the prosecuting attorney files the petition for the SIJ proceeding.

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