

SENATE BILL REPORT

EHB 1728

As Passed Senate, April 5, 2017

Title: An act relating to protecting minors from sexual exploitation.

Brief Description: Protecting minors from sexual exploitation.

Sponsors: Representatives Sawyer, Smith, Caldier, Jinkins, Fey, Kloba, Ortiz-Self, Stanford and Frame.

Brief History: Passed House: 3/01/17, 98-0.

Committee Activity: Law & Justice: 3/14/17, 3/28/17 [DP].

Floor Activity:

Passed Senate: 4/05/17, 48-0.

Brief Summary of Bill

- Provides that in an investigation of an offense involving the sexual exploitation of children, the prosecuting attorney must use the special inquiry judge process when it is necessary to the investigation to subpoena a provider of electronic communication services or remote computing services for production of subscriber or customer records relevant to the investigation.
- Prohibits a provider of electronic communication services or remote computing services from disclosing the existence of a subpoena to the subscribers or customers whose records or information are requested or released under the subpoena.
- Requires a court to establish a special inquiry judge proceeding, if appropriate, within 72 hours after filing of a petition by a prosecuting attorney.

SENATE COMMITTEE ON LAW & JUSTICE

Majority Report: Do pass.

Signed by Senators Padden, Chair; O'Ban, Vice Chair; Pedersen, Ranking Minority Member; Angel, Darneille, Frockt and Wilson.

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: Aldo Melchiori (786-7439)

Background: Under the federal Stored Communications Act, a provider of electronic communication services or remote computing services must disclose certain information about a subscriber or customer to a governmental entity when requested by an administrative subpoena authorized under either federal or state statute. Disclosable information includes only the following subscriber information, and not content of communications: name and address; local and long distance telephone connection records, or records of session times and durations; length and types of service; telephone or instrument number or other subscriber number or identity, including any temporarily assigned network address; and means and source of payment, including any credit card or bank account number.

Special inquiry judge (SIJ) proceedings were established in 1971 with a stated intent of providing law enforcement with an investigatory tool in combating crime and corruption. A special inquiry judge is a superior court judge designated by a majority of the superior court judges of a county to hear and receive evidence of crime and corruption. An SIJ proceeding may be initiated by petition of the prosecuting attorney.

In an SIJ proceeding, the SIJ may issue subpoenas for records and testimony relevant to an investigation when there is reason to suspect crime or corruption. SIJ proceedings are secret and confidential, and records from the proceeding are available only to the attorney that instituted the proceeding, except as otherwise ordered by the court. An SIJ proceeding may be used only during criminal investigations and may not be used to gather evidence once a crime has been charged. An SIJ may not issue an indictment and may not act as a judge in any subsequent court proceeding arising from the investigation.

Washington sexual exploitation of children crimes include:

- Sexual Exploitation of a Minor;
- Dealing in Depictions of a Minor Engaged in Sexually Explicit Conduct;
- Sending or Bringing into State Depictions of a Minor Engaged in Sexually Explicit Conduct;
- Possession of Depictions of a Minor Engaged in Sexually Explicit Conduct;
- Viewing Depictions of a Minor Engaged in Sexually Explicit Conduct;
- Communication with a Minor for Immoral Purposes;
- Commercial Sexual Abuse of a Minor;
- Promoting Commercial Sexual Abuse of a Minor;
- Promoting Travel for Commercial Sexual Abuse of a Minor; and
- Permitting Commercial Sexual Abuse of a Minor.

Summary of Bill: In any criminal investigation of an offense involving the sexual exploitation of children, the prosecuting attorney must use the SIJ process when the prosecuting attorney determines it is necessary to the investigation to subpoena a provider of electronic communication services or remote computing services for production of records relevant to the investigation. Upon petition of a prosecuting attorney for the establishment of an SIJ proceeding in an investigation of sexual exploitation of children, the court must establish the SIJ proceeding, if appropriate, no later than 72 hours after the filing of the petition.

A provider of electronic communication services or remote computing services that receives a subpoena for subscriber or customer records may not disclose the existence of the subpoena to the subscribers or customers whose records or information are requested or released under the subpoena. Records of information that may be obtained under the subpoena include, but are not limited to, the following subscriber or customer information:

- name and address;
- local and long distance telephone connection records, or records of session times and durations;
- length of service and types of service utilized;
- telephone or instrument number or other subscriber number or identity, including any temporarily assigned network address; and
- means and source of payment for such service, including any credit card or bank account number.

An electronic communication service is any service that provides users the ability to send or receive wire or electronic communications. Remote computing service means the provision to the public of computer storage or processing services by means of an electronic communications system.

Appropriation: None.

Fiscal Note: Not requested.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: Washington is one of the top two states for frequency of downloading pornographic internet material. The justice system needs to keep pace with the development of technology. This process must be quick because some companies have very short record retention policies. By the time the warrants are obtained, the information is often no longer available. The provisions comport with the federal act. This will help prevent a grave risk to many children.

Persons Testifying: PRO: Representative Sawyer, Prime Sponsor; Captain Mike Edwards, WA ICAC Task Force, Seattle Police Department; Cecelia Gregson, King County Prosecutor's Office.

Persons Signed In To Testify But Not Testifying: No one.