
HOUSE BILL 1728

State of Washington

65th Legislature

2017 Regular Session

By Representatives Sawyer, Smith, Caldier, Jinkins, Fey, Kloba, Ortiz-Self, Stanford, and Frame

Read first time 01/27/17. Referred to Committee on Judiciary.

1 AN ACT Relating to protecting minors from sexual exploitation;
2 adding a new chapter to Title 10 RCW; and prescribing penalties.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

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 and
13 exploited children's child victim identification program has seen a
14 four hundred thirty-two percent increase in child pornography films
15 and files submitted for identification of the children depicted. The
16 United States department of justice estimates that pornographers have
17 recorded the abuse of more than one million children in the United
18 States alone. Furthermore, there is a direct correlation between
19 individuals who possess, download, and trade graphic images of child
20 pornography and those who molest children. A well-known study
21 conducted by crimes against children research center for the national

1 center for missing and exploited children concluded that an estimated
2 forty percent of those who possess child pornography have also
3 directly victimized a child and fifteen percent have attempted to
4 entice a child over the internet.

5 Victims of child pornography often experience severe and lasting
6 harm from the permanent memorialization of the crimes committed
7 against them. Child victims endure depression, withdrawal, anger, and
8 other psychological disorders. Each and every time such an image is
9 viewed, traded, printed, or downloaded, the child in that image is
10 victimized again.

11 Investigators and prosecutors report serious challenges with
12 combating child pornography because offenders can act anonymously on
13 the internet. Investigators track the trading of child pornography by
14 using internet protocol addresses, which are unique identifiers that
15 each computer is assigned when it accesses the internet. Under
16 federal law, if an internet service provider is presented with a
17 subpoena and an internet protocol address by law enforcement, the
18 provider must turn over the names and addresses of account holders
19 matched to it. Access to such information allows investigators to
20 efficiently evaluate investigative leads and determine whether to
21 request a warrant for a specific internet user. However,
22 investigators in Washington have not been able to utilize this
23 federal law due to the absence of statutory administrative subpoena
24 authority in state law.

25 The legislature hereby authorizes law enforcement to utilize the
26 limited use of administrative subpoena authority contained within
27 this act for the sole purpose of investigating crimes involving the
28 sexual exploitation of children. The subpoena authority is restricted
29 to customer and subscriber information that providers are already
30 required to release under federal law. The subpoena authority is not
31 a replacement for or a means of bypassing warrant procedures. The
32 subpoena authority strikes a balance between the need to efficiently
33 address the horrific practices of child abuse and child pornography
34 and the need to protect the constitutional right to privacy of
35 citizens.

36 NEW SECTION. **Sec. 2.** The definitions in this section apply
37 throughout this chapter unless the context clearly requires
38 otherwise.

1 (1) "Electronic communication service" means any service that
2 provides to users the ability to send or receive wire or electronic
3 communications.

4 (2) "Provider" means a provider of electronic communication
5 services or remote computing services.

6 (3) "Remote computing service" means the provision to the public
7 of computer storage or processing services by means of an electronic
8 communications system.

9 NEW SECTION. **Sec. 3.** (1) In any criminal investigation of an
10 offense involving the sexual exploitation of children under chapter
11 9.68A RCW, the attorney general or a prosecuting attorney may issue
12 in writing and cause to be served a subpoena to a provider requiring
13 the production of relevant records where the attorney general or the
14 prosecuting attorney has reason to suspect a crime involving the
15 sexual exploitation of children has been committed.

16 (2) A subpoena issued under this section must describe the
17 information or records required to be produced and specify a return
18 date within a reasonable period of time within which the information
19 or records can be assembled and made available.

20 (3) A subpoena issued under this section may not require a
21 provider to produce any customer or subscriber records or information
22 other than the following:

23 (a) Name;

24 (b) Address;

25 (c) Local and long distance telephone connection records, or
26 records of session times and durations;

27 (d) Length of service and types of service utilized;

28 (e) Telephone or instrument number or other subscriber number or
29 identity, including any temporarily assigned network address; and

30 (f) Means and source of payment for such service, including any
31 credit card or bank account number.

32 (4) A provider may not disclose the existence of a subpoena to
33 the subscribers or customers whose records or information are
34 requested or released under the subpoena for ninety days from the
35 date of receipt of the subpoena.

36 NEW SECTION. **Sec. 4.** At any time before the return date
37 specified in the subpoena, the provider to whom a subpoena under this
38 chapter is directed may petition the superior court for an order

1 modifying or quashing the subpoena on the grounds that it is
2 oppressive or unreasonable. A petition may be filed: (1) In the
3 county of the prosecuting attorney, if the subpoena was issued by a
4 prosecuting attorney; (2) in Thurston county superior court, if the
5 subpoena was issued by the attorney general; or (3) in the county
6 where the person subject to the subpoena resides, is found, or
7 carries on business.

8 NEW SECTION. **Sec. 5.** The attorney general or a prosecuting
9 attorney may seek an injunction from the superior court to compel
10 compliance with a subpoena. The court may issue an order requiring
11 the subpoenaed person to appear before the attorney general or
12 prosecuting attorney to produce the information or records. A person
13 who neglects or refuses to comply with a subpoena issued under this
14 chapter may be punished for contempt of the court. An injunction may
15 be filed: (1) In the county of the prosecuting attorney, if the
16 subpoena was issued by a prosecuting attorney; (2) in Thurston county
17 superior court, if the subpoena was issued by the attorney general;
18 or (3) in the county where the person subject to the subpoena
19 resides, is found, or carries on business.

20 NEW SECTION. **Sec. 6.** (1) A governmental entity receiving
21 records or information under this subsection is not required to
22 provide notice to a subscriber or customer whose information or
23 records are obtained as a result of a subpoena under this chapter.

24 (2) A provider disclosing records or information is not required
25 to provide notice to a subscriber or customer whose information or
26 records are disclosed to a governmental entity as a result of a
27 subpoena under this chapter.

28 NEW SECTION. **Sec. 7.** Any person, including his or her officers,
29 agents, and employees, receiving a subpoena under this chapter, who
30 complies in good faith with the subpoena and produces the materials
31 sought, may not be liable to any customer or other person for such
32 production or for nondisclosure of that production to the customer.

33 NEW SECTION. **Sec. 8.** If any provision of this act or its
34 application to any person or circumstance is held invalid, the
35 remainder of the act or the application of the provision to other
36 persons or circumstances is not affected.

1 NEW SECTION. **Sec. 9.** Service of subpoenas under this chapter
2 must comply with the procedures of chapter 4.28 RCW.

3 NEW SECTION. **Sec. 10.** Sections 1 through 9 of this act
4 constitute a new chapter in Title 10 RCW.

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