

HOUSE BILL REPORT

ESHB 1041

As Passed House:
January 21, 2022

Title: An act relating to sunshine committee recommendations regarding juveniles.

Brief Description: Concerning sunshine committee recommendations regarding juveniles.

Sponsors: House Committee on State Government & Tribal Relations (originally sponsored by Representatives Springer, Cody, Ortiz-Self, Gregerson, Frame and Jacobsen).

Brief History:

Committee Activity:

State Government & Tribal Relations: 1/13/21, 1/28/21 [DPS].

Floor Activity:

Passed House: 3/2/21, 97-0.

Passed House: 1/21/22, 96-1.

Brief Summary of Engrossed Substitute Bill

- Expands public disclosure exemptions for living child victims and witnesses to include additional personal/contact information.
- Modifies the requirements for disclosing incident reports related to offenses committed by juveniles to schools.
- Creates an exemption from public disclosure for records in an ongoing child protective service investigation in conjunction with an early learning licensing complaint inspection.
- Permits the public disclosure of certain personal information of children that is otherwise exempt from disclosure if the child's parent or guardian provides written consent.

HOUSE COMMITTEE ON STATE GOVERNMENT & TRIBAL RELATIONS

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 7 members: Representatives Valdez, Chair; Lekanoff, Vice Chair; Volz, Ranking Minority Member; Walsh, Assistant Ranking Minority Member; Dolan, Graham and Gregerson.

Staff: Jason Zolle (786-7124).

Background:

The Public Records Act and the Sunshine Committee.

The Public Records Act (PRA) generally requires state and local governmental entities to make many government records available to the public upon request. There are, however, over 500 statutory exemptions for certain records or information contained in records.

The Public Records Exemption Accountability Committee, known as the Sunshine Committee, periodically reviews these exemptions and provides recommendations as to whether specific exemptions should be continued, modified, or terminated. The Sunshine Committee meets in public and considers input from interested parties. By November 15 of each year, the Sunshine Committee provides a report to the Governor, the Attorney General, and the Legislature with its annual recommendations.

In its 2018 and 2019 annual reports, the Sunshine Committee made several recommendations related to exemptions for records with information about child victims and witnesses, as well as records related to juvenile offenders.

Child Victim, Witness, and Offender Records.

Certain investigative, law enforcement, and crime victim information is exempt from disclosure under the PRA and other statutes. As relevant here:

- For living child victims and witnesses, the name, address, and photographs of the victim or witness may not be disclosed by any law enforcement agency, prosecutor's office, or state agency without permission.
- For alleged or proven child victims of sexual assault, the victim's name, address, location, photographs, and contact information, and the relationship between the victim and the alleged perpetrator (if the alleged perpetrator is related to the child), may not be disclosed without permission.

For offenses committed by juveniles, incident reports may be released after a decision to arrest is made, unless the release would jeopardize the case or endanger witnesses, in which case the information in the reports may be released to the maximum extent possible while still protecting other students, staff, and school property. Law enforcement and prosecuting attorneys may also release information to the school pertaining to the investigation, prosecution, and diversion of a student.

Personal Information of Children.

Certain personal information for children is exempt from public disclosure under the PRA in RCW 42.56.230. This includes:

- personal information in any files maintained for students in public school;
- personal information in any files maintained by the Department of Children, Youth, and Families (DCYF) for children enrolled in licensed child care; and
- personal information for a child enrolled in early learning, parks and recreation, youth development, or similar programs.

Summary of Engrossed Substitute Bill:

Child Victim, Witness, and Offender Records.

The exemptions from disclosure for living child victims and witnesses are expanded to include the child's telephone number, email address, social media identifier, and image, as well as the surname of the child's parent if it is the same as the child's and the parent is not the alleged perpetrator. The exemptions from disclosure for child victims of sexual assault are modified to match these provisions, except that they continue to include an exemption for the relationship between the victim and the alleged perpetrator if the alleged perpetrator is a relative or step-relative of the child.

For offenses committed by juveniles, the provision allowing law enforcement and prosecuting attorneys to release information to the school pertaining to the investigation, prosecution, and diversion of a student is removed. However, law enforcement and prosecuting attorneys may still release unredacted incident reports of such offenses to schools, unless redaction is necessary to avoid jeopardizing the case or endangering witnesses, other students, staff, or school property.

An exemption is created for records of the DCYF in an ongoing child protective services (CPS) investigation in conjunction with an early learning licensing complaint inspection. These records are exempt from disclosure during the course of the CPS investigation. At the conclusion of the CPS investigation, the records are disclosable.

Personal Information of Children.

The personal information of children in public school, the DCYF, or youth program records that is exempt from disclosure in RCW 42.56.230 may be disclosed with the written consent of the child's parent or guardian.

Appropriation: None.

Fiscal Note: Available.

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 bill reflects the Sunshine Committee recommendations from a couple of years ago. Sunshine Committee recommendations are made on a consensus basis if a great preponderance of people are in support. There is a little confusion because there are two separate bills introduced. This bill contains only Sunshine Committee recommendations, while the other one includes an exemption for a child's voice that was discussed by the Sunshine Committee but consensus was not reached. Rather than have an additional hearing on that bill, the Legislature should add those exemptions into this bill. The need for a voice exemption stems from an incident in 2018 when a young girl was murdered while on a 911 call, and national media sought copies of the 911 recordings that contained the child's last words. This provision is important on behalf of the next victim and survivors. The Legislature should not add provisions to Sunshine Committee bills that the Sunshine Committee did not agree on.

(Opposed) The rules of discovery dictate when records are disclosed to a juvenile and juvenile's attorney. They provide a lot of protection and guidance, and some guardrails for when items should not be disclosed or should have protections. This bill does away with those rules. There could be a situation with child pornography in which the minor victim's information would be provided to not just the attorney but to the juvenile and guardians, and there is no restriction on how the information is used or for how long. The Sunshine Committee should review this provision and change it.

(Other) Broadcasters oppose legislation that restricts the release of 911 calls, as such release is needed for a check and balance on public officials and law enforcement. They are neutral on this bill so long as it is not amended to include an exemption of a child's voice.

Persons Testifying: (In support) Representative Springer, prime sponsor; Katherine George and Rowland Thompson, Sunshine Committee; and Michael Gulizia.

(Opposed) Russell Brown, Washington Association of Prosecuting Attorneys.

(Other) Keith Shipman, Washington State Association of Broadcasters.

Persons Signed In To Testify But Not Testifying: None.