

SENATE BILL REPORT

ESHB 1041

As of February 16, 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: Passed House: 1/21/22, 96-1.

Committee Activity: State Government & Elections: 3/19/21, 3/24/21 [DP]; 2/16/22.

Brief Summary of Bill

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

SENATE COMMITTEE ON STATE GOVERNMENT & ELECTIONS

Staff: Samuel Brown (786-7470)

Background: The Public Records Act. The Public Records Act (PRA), enacted in 1972 as part of Initiative 276, requires all state and local government agencies to make all public records available for public inspection and copying unless certain statutory exemptions

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apply. Over 500 specific references in the PRA or other statutes remove certain information from application of the PRA, provide exceptions to the public disclosure and copying of certain information, or designate certain information as confidential. The provisions requiring public records disclosure must be interpreted liberally, while the exemptions are interpreted narrowly to effectuate the general policy favoring disclosure.

Child Victim and Witness Records. The name, address, and photographs of a living child victim or witness to any crime may not be disclosed by any law enforcement agency, prosecutor's office, or state agency without permission. The location, contact information, and the relationship between the victim and the alleged perpetrator, if the alleged perpetrator is related to the child, of child victims of sexual assault may not be disclosed without permission.

Child Offender Records. Incident reports for offenses committed by juveniles may be released only 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. The identity of a juvenile perpetrator and the perpetrator's parent, guardian, or custodian, and the circumstances of the crime must be released to a victim or victim's immediate family upon request.

Children's Personal Information. Personal information, in any files maintained for students in public school, by the Department of Children, Youth, and Families (DCYF) for children enrolled in licensed child care, and for children enrolled in early learning, parks and recreation, youth development, or similar programs is exempt from public disclosure requirements. The Washington Supreme Court has defined personal information as information peculiar or proper to private concerns, rather than any information about an individual.

Summary of Bill: Child Victim and Witness Records. The 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 of living child victims and witnesses are exempt from public disclosure requirements. The relationship between the child victim and a relative or step-relative who is the alleged perpetrator of a sexual assault is also exempt from public disclosure requirements.

Child Offender Records. Law enforcement and prosecuting attorneys may release unredacted incident reports of offenses committed by juveniles to schools unless redaction is necessary to avoid jeopardizing the case or endangering witnesses, other students, staff, or school property. Full incident reports must be released to the victim or victim's immediate family of an offense alleged to have been committed by a juvenile.

Investigative Records. DCYF records in an ongoing child protective services (CPS) investigation in conjunction with an early learning licensing complaint inspection are

exempt from disclosure during the course of the CPS investigation. At the conclusion of the CPS investigation, the records are disclosable.

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

Appropriation: None.

Fiscal Note: Available.

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 (Regular Session 2022): PRO: These were unanimous Sunshine Committee recommendations. We support the amendments in the House, which provide clarity and address an issue that didn't come up in Sunshine Committee deliberations.

OTHER: We support the intent of protecting juvenile privacy, and request an amendment to allow oral consent to release juvenile records. Many of the requests we receive are from people who are homeless or have difficulty accessing e-mail or getting to a DSHS office, but we always verify that we're talking to the correct person before accepting the consent and releasing records. We also request an amendment to resolve a conflict with another statute requiring consent of the individual if 14 or older before releasing certain records.

Persons Testifying: PRO: Rowland Thompson, Sunshine Committee.

OTHER: Ellen Nolan, DSHS.

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