

HOUSE BILL REPORT

ESHB 2700

As Passed Legislature

Title: An act relating to the handling of child forensic interview and child interview digital recordings.

Brief Description: Concerning the handling of child forensic interview and child interview digital recordings.

Sponsors: House Committee on Early Learning & Human Services (originally sponsored by Representatives Valdez, Smith, Stonier, Sawyer, Jinkins, Ortiz-Self and Kagi).

Brief History:

Committee Activity:

Early Learning & Human Services: 1/23/18, 1/26/18 [DPS].

Floor Activity:

Passed House: 2/7/18, 98-0.

Senate Amended.

Passed Senate: 2/28/18, 49-0.

House Concurred.

Passed House: 3/3/18, 96-0.

Passed Legislature.

Brief Summary of Engrossed Substitute Bill

- Exempts audio and video recordings of child forensic interviews that depict or describe allegations of child abuse, child neglect, or exposure to violence from the Public Records Act except by court order upon a showing of good cause and notice to the child's guardian.
- Requires that audio and video recordings of child interviews disclosed in a criminal or civil proceedings are subject to a protective order unless the court finds good cause that the interview should not be subject to such order; a violation of this order is subject to a civil penalty up to \$10,000.
- Defines the term "child forensic interview."

HOUSE COMMITTEE ON EARLY LEARNING & HUMAN SERVICES

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.

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 12 members: Representatives Kagi, Chair; Senn, Vice Chair; Dent, Ranking Minority Member; McCaslin, Assistant Ranking Minority Member; Eslick, Frame, Goodman, Griffey, Kilduff, Lovick, Muri and Ortiz-Self.

Minority Report: Do not pass. Signed by 1 member: Representative Klippert.

Staff: Luke Wickham (786-7146).

Background:

Disclosure of Public Records.

The Public Records Act (PRA) requires state and local agencies to make all public records available for public inspection and copying, unless a record falls within an exemption in the PRA or another statute that exempts or prohibits disclosure of specific information or records. To the extent required to prevent an unreasonable invasion of personal privacy interests, an agency must delete identifying details when it makes a public record available. A person's right to privacy is violated only if disclosure would be highly offensive to a reasonable person and is not of legitimate concern to the public. The PRA is liberally construed and its exemptions narrowly construed. If the PRA conflicts with any other law, the provisions of the PRA govern.

The PRA provides exemptions from disclosure for certain investigative, law enforcement, and crime victim information including information revealing the identity of child victims of sexual assault who are under age 18.

Child Sexual Abuse Investigation Protocol.

Each county must develop a written protocol for handling criminal child sexual abuse investigations. The protocol must address the coordination of child sexual abuse investigations between the prosecutor's office, law enforcement, Child Protective Services, children's advocacy centers, local advocacy groups, community sexual assault programs, and any other local agency involved in the criminal investigation of child sexual abuse.

A community sexual assault program means a community-based social service agency that is qualified to provide and provides core services to victims of sexual assault.

A children's advocacy center is a child-focused facility in good standing with the Children's Advocacy Centers of Washington and coordinates a multidisciplinary process for the investigation, prosecution, and treatment of sexual and other types of child abuse. Children's advocacy centers provide a location for forensic interviews and coordinate access to services such as, but not limited to, medical evaluations, advocacy, therapy, and case review by multidisciplinary teams.

Summary of Engrossed Substitute Bill:

Child Forensic Interview.

The term "child forensic interview" is defined as a developmentally sensitive and legally sound method of gathering factual information regarding allegations of child abuse, child

neglect, or exposure to violence. The interview is conducted by a competently trained, neutral professional utilizing techniques informed by research and best practice as part of a larger investigative process.

Public Records Act Exemption.

Any and all audio and video recordings of child forensic interviews are exempt from disclosure under the Public Records Act (PRA) and may only be disclosed pursuant to a court order entered upon a showing of good cause and with advance notice to the child's parent, guardian, or legal custodian. Notice must also be provided to an emancipated minor or minor who has reached the age of majority.

Failure to disclose an audio or video recording of a child forensic interview is not grounds for penalties under the PRA or related to denial of records relating to a declaration of dependency or termination of the parent-child relationship requested by a party to such proceeding.

The PRA exemption applies retroactively to all outstanding public records requests submitted before the bill is effective.

Protective Order.

Any and all audio and video recordings of child forensic interviews disclosed in a criminal or civil proceeding must be subject to a protective order, or other such order, unless the court finds good cause that the interview should not be subject to such an order.

The court issuing the protective order must provide that the recording:

- be used only for the purposes of conducting the party's side of the case, unless otherwise agreed by the parties or ordered by the court;
- not be copied, photographed, duplicated, or otherwise reproduced except as a written transcript that does not reveal the identity of the child;
- not be provided to a third party except as necessary at trial;
- remain in the exclusive custody of the attorneys, their employees, or agents, including expert witnesses, who shall be provided a copy of the protective order;
- not be given to a party who is not represented by an attorney, but the party will be given reasonable access to view the recording by the custodian of the recording; and
- be returned by attorneys upon termination of representation or disposition of the matter.

A violation of this court order is subject to a civil penalty up to \$10,000, in addition to any other appropriate sanction by the court.

Sexual Abuse Investigation Protocol.

The child sexual abuse investigation protocol required for counties must include the handling of child forensic interview audio and video recordings in a manner that complies with the protective order requirements.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: The bill contains an emergency clause and takes effect immediately, except for section 3, relating to the definition of a child forensic interview after the Department of Children, Youth, and Families assumes child welfare duties from the Department of Social and Health Services, which takes effect July 1, 2018.

Staff Summary of Public Testimony:

(In support) This bill protects kids that have already been through too much. It is the responsibility of the Legislature to respect the privacy of children and protect the inappropriate disclosure of these recordings. It is best practice to request a protective order in most cases, but it would be helpful to ensure statewide consistency.

The definition of child forensic interview is based on our best practices. Describing the abuse that a child has experienced is one of the most difficult things that a child can do. That is why this interview is recorded, so that children do not have to restate it over and over. While it is currently best practice to issue a protective order in these cases, there are some counties where this does not happen.

This bill has the support of many agencies including the Department of Social and Health Services Children's Administration and the Children's Advocacy Centers of Washington.

This Legislature required neutral interviewers in child interviews to prevent leading questions and lead to more credible evidence. Part of the county protocols related to child sexual abuse investigations is to request a protective order. Recently courts have begun questioning their authority to provide these orders. A child has a privacy interest in his or her audio or video recording describing sexual abuse.

Generally, a child will actually testify in open court and these recordings will not be played during a trial, but if the recording is played it would be in open court.

Some minor changes to the bill may be needed, but the intent of this bill is very good.

The children's advocacy center model should be standardized throughout the state. The public should finance the interviewing and forensic investigation process so that this process is standardized.

There are people in the audience and on this committee that have interviewed young persons about sexual abuse. When interviewers are recording these interviews, there is a relationship between the child and the interviewers. It is not up to third parties to decide what is right and what is wrong, that is the role of the court process.

This bill protects our child victims.

(Opposed) None.

(Other) Child sexual abuse cases are an area of great public interest and often denote a failure of institutions that care for children. There is no argument against the protections against distribution of these recordings, but the bill is troubling in that it limits the ability to monitor

the prosecution and the trial. There should be an explicit exemption from the protective order requirement that allows transcripts to be made available.

There should be a less onerous process for someone to go in to the prosecutor's office to view these recordings. It is unclear from a transcript whether leading questions are used, and we would hold that these interviews must be conducted by a neutral professional that is not law enforcement because they are part of the prosecution team. It is necessary for people to be able to view the recording to make a determination regarding whether these interviews are being conducted appropriately and hold institutions accountable.

Persons Testifying: (In support) Representative Valdez, prime sponsor; Byron Manering, Brigid Collins House and Children's Advocacy Centers of Washington; Tom McBride, Washington Association of Prosecuting Attorneys; Arthur West; and John Snaza, Thurston County Sheriff's Office.

(Other) Rowland Thompson, Allied Daily Newspapers of Washington.

Persons Signed In To Testify But Not Testifying: None.