

SENATE BILL REPORT

ESHB 2700

As Passed Senate - Amended, February 28, 2018

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: Passed House: 2/07/18, 98-0.

Committee Activity: Human Services & Corrections: 2/19/18, 2/21/18 [DPA].

Floor Activity:

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

Brief Summary of Bill

- Requires audio and video recordings of child forensic interviews disclosed in a criminal or civil proceeding to be subject to a protective order unless the court finds good cause the interview should not be subject to such an order.
- Exempts audio and video recordings of child forensic interviews depicting allegations for child abuse, child neglect, or exposure to violence from the Public Records Act (PRA) except by court order upon a showing of good cause and advance notice to the child's parent, guardian, or legal custodian, or to the child if the child is the age of majority or an emancipated minor.

SENATE COMMITTEE ON HUMAN SERVICES & CORRECTIONS

Majority Report: Do pass as amended.

Signed by Senators Darneille, Chair; Dhingra, Vice Chair; O'Ban, Ranking Member; Carlyle, Frockt and Miloscia.

Staff: Brandon Popovac (786-7465)

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.

Background: Child Protective Services in Washington. Child protective services are services provided by the Department of Social and Health Services (DSHS) designed to protect children from child abuse and neglect, safeguard such children from future abuse and neglect, and conduct investigations of child abuse and neglect reports. Investigations may be conducted regardless of the location of the alleged abuse or neglect. Child protective services includes a referral to services to ameliorate conditions that endanger the welfare of children; the coordination of necessary programs and services relevant to the prevention, intervention, and treatment of child abuse and neglect; and services to children to ensure that each child has a permanent home.

Investigation Protocols for Child Neglect, Abuse, and Fatality. The coordination of county-based protocols has been required for child sexual abuse investigations in Washington since 1999. County-based protocols have also been required for the investigation of child abuse, criminal child neglect, and child fatality. Protocols are intended to coordinate a multidisciplinary investigation by the various local entities responsible for responding to the abuse, neglect, or death of children, including city and county law enforcement, child protective services, county prosecutors, emergency medical personnel, and other local agencies and advocacy groups. County prosecutors are responsible for developing the protocols in collaboration with all other entities.

PRA. The PRA requires state and local agencies to make their written records available to the public for inspection and copying upon request, unless the information fits into one of the various specific exemptions in the PRA, or otherwise provided in law. The stated policy of the PRA favors disclosure and requires narrow application of the listed exemptions. Certain investigative, law enforcement, and crime victim information is exempt from disclosure, including information revealing the identity of persons who are witnesses to or victims of crime or who file complaints with investigative, law enforcement, and penology agencies as well as information revealing the identity of child victims of sexual assault under the age of 18.

Summary of Bill: 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.

Audio and video recordings of child forensic interviews or child interviews that are disclosed in a criminal or civil proceeding are subject to a protective order, unless the court finds good cause that the interview should not be subject to such an order. The protective order must provide that:

- the recording be used only to conduct the party's side of the case, unless otherwise agreed or ordered by the parties or court;
- the recording not be copied, photographed, duplicated, or otherwise reproduced, except as a written transcript that does not reveal the identity of the child;
- the recording not be shown or provided to a third party, except as necessary at trial and as a copy for the attorneys, the attorneys' employees, and expert witnesses retained by either party; and
- upon termination of representation or disposition of the matter at trial court, attorneys and other custodians return all copies of the recording.

A violation of the court order is subject to a penalty of up to \$10,000 and any other appropriate court sanction.

A party in a civil or criminal case not represented by an attorney must be given reasonable access to view the audio or video recording by the custodian of the recording.

Every county child sexual abuse investigation protocol must include the same protocols as listed under a court protective order.

Audio and video recordings of child forensic interviews as defined are exempt from the PRA except by court order upon a showing of good cause and with advance notice to the child's parent, guardian, or legal custodian, or to the child if the child attains the age of majority or is an emancipated minor. Such audio and video recordings are confidential under federal and state law, which governs the retention and release of records by juvenile justice or care agencies, and may only be disclosed under a court order entered on a showing of good cause and with advance notice to the child's parent, guardian, or legal custodian, or to the child if the child attains the age of majority or is an emancipated minor. A failure to disclose an audio or video recording of such child forensic interview is not grounds for certain penalties and sanctions under the PRA and state law, which provides a remedy for any qualifying party denied access to the records of a natural or adoptive child involved in a dependency or termination of the parent-child relationship proceeding.

The protective order requirements and PRA exemption do not restrict the ability of DSHS or law enforcement from sharing child welfare information as authorized or required under state or federal law.

The PRA exemption applies retroactively to all outstanding public records requests submitted before the effective date of the act.

Appropriation: None.

Fiscal Note: Not requested.

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

Effective Date: The bill contains an emergency clause and takes effect immediately, except for section 3, which takes effect on July 1, 2018.

Staff Summary of Public Testimony on Engrossed Substitute House Bill: *The committee recommended a different version of the bill than what was heard.* PRO: The bill offers protections for children subject to abuse or neglect. Child interviews are now recorded so that a child's story of abuse or neglect is only told once. The privacy of children and such recordings must be protected so that their stories do not end up on social media.

County protocols in handling child abuse cases have been around for 15 years as well as some form of a protective order to protect any interviews of the child. Problems have arisen in the last year or so with courts having to rule on such protective orders without legislative

direction. The interview process is voluntary, but prosecutors and defense counsel equally benefit from the details of the interview compared to a written report.

The bill has an emergency clause since there are current cases that could benefit from the legislation once enacted. The bill is supported by various children advocacy centers of Washington, as well as Washington prosecuting attorneys and the attorney general's office.

OTHER: Written transcripts of the child interviews must be allowed to be disclosed. These types of cases are often serious enough to greatly affect the communities within which the case occurs. It is important for the public to view the work product of these cases.

Persons Testifying: PRO: Representative Javier Valdez, Prime Sponsor; Tom McBride, Washington Association of Prosecuting Attorneys; Byron Manering, Children's Advocacy Centers of Washington and Brigid Collins.

OTHER: Rowland Thompson, Allied Daily Newspapers of Washington.

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