

SENATE BILL REPORT

SB 6387

As of January 23, 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: Senators Cleveland, Ranker, Rivers, Frockt, Keiser, Carlyle and Kuderer.

Brief History:

Committee Activity: Human Services & Corrections: 1/22/18.

Brief Summary of Bill

- Requires digital recordings of child forensic interviews in abuse cases to be subject to a court protective order, while exempting such recordings from the Public Records Act (PRA) except by court order.

SENATE COMMITTEE ON HUMAN SERVICES & CORRECTIONS

Staff: Brandon Popovac (786-7465)

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

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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 abuse or exposure to violence.

Digital recordings of child forensic interviews or child interviews that are disclosed in a criminal or civil proceeding are subject to a protective order. The issuing court must provide that:

- the recording be used only to conduct the party's side of the case, unless otherwise agreed or ordered by the court;
- the recording not be copied, photographed, duplicated, or otherwise reproduced;
- the recording not be shown or provided to a third party, except 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, defense counsel 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.

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

Digital recordings of child forensic interviews and recordings of other child interviews depicting abuse or exposure to violence are exempt from the PRA except by court order upon a showing of good cause and with advance notice to the child's guardian.

Appropriation: None.

Fiscal Note: Not requested.

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

Effective Date: Ninety days after adjournment of session in which bill is passed, except for section 3 which takes effect on July 1, 2018.

Staff Summary of Public Testimony: PRO: The bill would protect our most vulnerable population and prevent child forensic interviews from falling into the hands of unauthorized persons and protect the child from re-victimization and further exploitation. In 2016, over 3300 children were forensically interviewed in children's advocacy centers in the state. Thousands more were interviewed by child protective services workers and law enforcement. Forensic interviews may involve children as young as three-years of age to disclose acts committed on them. There have been reported instances of recordings being released to others, including offenders or family members who seek to discredit the child and the media.

State and individual counties have a history of child forensic interview development. Child victims have anxiety about the release of recorded interviews to the public. Defense counsels have argued that the disclosure of interview recordings should be addressed during trial discovery and handled between the parties. Some courts express a concern that existing PRA exemption language would not exempt these types of recordings from disclosure. The bill would only apply to and exempt audio/video recordings and not a written record of the interview. There might be a need to amend language centered on the use of the protective order in civil proceedings.

The bill draws an appropriate line for what should not be disclosed under the PRA. Other states have addressed this same issue. The state should require child advocacy centers to conduct all child forensic interviews in these matters.

Persons Testifying: PRO: Tom McBride, Washington Association of Prosecuting Attorneys; Amy Russell, The Children's Advocacy Centers of Washington; Arthur West, citizen.

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