

SENATE BILL REPORT

SB 6387

As Reported by Senate Committee On:
Human Services & Corrections, January 30, 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, 1/30/18 [DPS].

Brief Summary of First Substitute Bill

- Requires audio and video recordings of child forensic interviews in child abuse and neglect 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

Majority Report: That Substitute Senate Bill No. 6387 be substituted therefor, and the substitute bill do pass.

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

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,

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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 (First Substitute): 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 court 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. Such audio and video recordings are confidential under federal law and chapter 13.50 RCW, 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. 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 RCW 13.50.100(10), 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.

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

EFFECT OF CHANGES MADE BY HUMAN SERVICES & CORRECTIONS COMMITTEE (First Substitute):

- Specifies the content of the child forensic interview to include child abuse and neglect along with exposure to violence.
- Limits both the protective order requirement and PRA exemption to audio and video recordings as opposed to digital recordings.
- Specifies that such audio and video recordings are confidential under federal law and chapter 13.50 RCW, 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.
- Specifies that failure to disclose such an audio or video recording is not grounds for a penalty or other sanction under the PRA and RCW 13.50.100(10), 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.
- Clarifies that the protective order requirements and PRA exemption do not restrict the ability of the DSHS or law enforcement from sharing child welfare information.
- Requires that audio and video recordings of child forensic interviews disclosed in 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 an order.
- Clarifies that written transcripts of child forensic interviews that do not reveal the identity of the child are not subject to the protective order requirement.
- Requires that a party in a civil or criminal case not represented by an attorney be given reasonable access to view the recording by the custodian of the recording.

- Applies the PRA exemption retroactively to all outstanding public records requests submitted before the effective date of the act.
- Adds an emergency clause.

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 Original Bill: *The committee recommended a different version of the bill than what was heard.* 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.