

SENATE BILL REPORT

SB 5087

As Reported By Senate Committee On:
Law & Justice, March 3, 1997

Title: An act relating to interviews of children conducted by the department of social and health services.

Brief Description: Regulating the use of taped interviews of child victims of sex abuse for use as evidence.

Sponsors: Senators Roach, Swecker, Schow and Oke.

Brief History:

Committee Activity: Law & Justice: 1/27/97, 3/3/97 [DPS, DNPS].

SENATE COMMITTEE ON LAW & JUSTICE

Majority Report: That Substitute Senate Bill No. 5087 be substituted therefor, and the substitute bill do pass.

Signed by Senators Roach, Chair; Johnson, Vice Chair; Goings, Hargrove, Haugen, Kline, Long, Stevens and Zarelli.

Minority Report: Do not pass substitute.

Signed by Senator Fairley.

Staff: Martin Lovinger (786-7443)

Background: When allegations of sexual child abuse are made or concerns about such abuse are reported, often some of the most important interviews of the child in terms of subsequent prosecutions are conducted by employees of the Department of Social and Health Services (DSHS). These interviews can set the tone for the prosecution. A number of high profile cases have raised serious questions about the way in which these interviews have been conducted and the reliability of the information elicited.

Inaccurate information can lead to charges against innocent people, who may suffer considerable harm as a result. People wrongfully charged with child sexual abuse can lose their families, jobs, and freedom. The child who is the victim of sexual abuse can be harmed by the use of inaccurate information attributed to the child. Recent situations have shown that even the person conducting such interviews is at risk of harm. Publicity about improper investigations of child sexual abuse allegations can undermine public support for law enforcement efforts to combat child sexual abuse.

It has been suggested that one cost-effective and significant step that can be taken to protect the rights of child victims, their families, those accused of child abuse, and those conducting the interviews, and at the same time increase the reliability of interviews with alleged child

sexual abuse victims, is to require that these interviews be taped in either audio or video format.

Summary of Substitute Bill: An interview by DSHS of a child regarding allegations of sexual abuse must be recorded by audiotape or by videotape if equipment is readily available. Failure to tape the interview does not affect the admissibility of the statement as evidence if the failure was not willful. If the failure is willful, there is a presumption that the statements are inadmissible.

DSHS may not make copies of the tape. The original must be immediately transmitted to the prosecutor's office or law enforcement agency to be preserved as evidence. The tape can only be listened to or viewed by the person accused of sexual abuse or that person's attorney as necessary to prepare a defense, but it must remain in the custody of the prosecutor or law enforcement. If the tape is introduced as evidence, custody is transferred to the court. If the charges are dismissed or the accused is found not guilty, the tape must be destroyed. The use of any tape other than for personnel evaluations by DSHS is prohibited. Recordings under this bill are exempt from the Privacy Act prohibition against recording conversations with consent of only one party.

In interviewing a child with regard to sexual abuse or neglect, DSHS or a law enforcement agency must make reasonable efforts to accommodate the wishes of the child that a third party be present.

A person is guilty of tampering if he or she attempts to induce a witness to an official proceeding or investigative interview to alter his or her statements in any way.

Substitute Bill Compared to Original Bill: The substitute clarifies that all interviews by DSHS of children regarding allegations of sexual abuse must be recorded; specifies that the recording will be by audiotape, unless videotape equipment is readily available; specifies that recordings under this bill are exempt from the Privacy Act prohibition on recording conversations with consent of only one party; makes tampering with a witness to an investigative interview a class C felony; and prohibits use of taped recording for any purpose other than personnel evaluations by DSHS.

Appropriation: None.

Fiscal Note: Available.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Testimony For: Interviews of alleged child sex abuse victims can affect many people and ruin lives. The interview process can affect reliability, but electronic recordings can help protect reliability, because it provides good documentation. The initial state interviews carry great weight. The right not to be taped is statutory, not constitutional, and can be authorized by the Legislature.

Testimony Against: The link between the actions of a state agency and the admissibility of evidence is troubling, because the evidence is important to the victim, the police, and the prosecution. Taping interviews is not a cure-all for current problems with child interviews.

Money should be spent on training instead of taping. Disclosures by children about sexual abuse is a gradual process and taping the initial interview will provide it with more weight than subsequent interviews.

Testified: John Hill, Director, Pierce County Office of Public Defense (pro); Tom McBride, WAPA and Washington State Council of Police Officers (con); Marlene Watkins, Vancouver Child Abuse Intervention Center (con); Bob Kanekoa, Vancouver Child Abuse Intervention Center (con).