

FINAL BILL REPORT

ESHB 2700

C 171 L 18
Synopsis as Enacted

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).

House Committee on Early Learning & Human Services
Senate Committee on Human Services & Corrections

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.

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.

A children's advocacy center is a child-focused facility in good standing with the Children's Advocacy Centers of Washington that 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 medical evaluations, advocacy, therapy, and case review by multidisciplinary teams.

Summary:

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 penalties 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 act 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.

Votes on Final Passage:

House	98	0	
Senate	49	0	(Senate amended)
House	96	0	(House concurred)

Effective: March 22, 2018
July 1, 2018 (Section 3)