

BILL ANALYSIS

Senate Research Center
86R22969 EAS-F

S.B. 2542
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Health & Human Services
4/22/2019
As Filed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The Department of Family and Protective Services (DFPS) functions as both a civil and criminal agency. The capacity in which DFPS functions poses obstacles for case workers as well as individuals involved with ongoing investigations. On one hand, DFPS is not a law enforcement agency, however, on the other hand, DFPS does become involved in criminal cases.

Given the capacity in which DFPS functions, having transparency for all parties involved is essential to the success of protecting the individual allegedly suffering from abuse or neglect. Confidentiality laws are in play for DFPS cases to protect the investigation and the report regarding the child or adult allegedly being abused or neglected. Considering the complexity of audiotaping DPFS cases, the use of audiotaping would be a reasonable alternative, both fiscally and practically, to the use of body cameras.

Understanding that DFPS is not a law enforcement body, S.B. 2542 creates a pilot program in Bexar County to weigh and consider the reality of implementing voice recording for DFPS cases involving investigation of a report of child abuse or neglect.

This pilot program would provide invaluable insight on how voice recordings can be utilized to help document a thorough investigation. The objective of S.B. 2542 is to protect social workers and the investigation, but also offer caregivers and jury members the ability to reflect and hear investigators from the onset of the investigation.

As proposed, S.B. 2542 amends current law relating to an audio recording device pilot program for certain Department of Family and Protective Services employees investigating a report of child abuse or neglect, creates a criminal offense, and authorizes a fee.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Chapter 40, Human Resources Code, by adding Subchapter D, as follows:

SUBCHAPTER D. AUDIO RECORDING DEVICE PILOT PROGRAM

Sec. 40.101. DEFINITIONS. Defines "audio recording device," "pilot program," and "private space."

Sec. 40.102. PILOT PROGRAM. Requires the Department of Family and Protective Services (DFPS) to establish a pilot program to provide audio recording devices to DFPS employees in Bexar County to evaluate the costs of implementing a statewide audio recording device program, including all known equipment costs and costs for data storage.

Sec. 40.103. INTERAGENCY CONTRACTS. Authorizes DFPS to enter into an interagency contract to receive audio recording device services and have the identified

operations performed through a program established by the Department of Information Resources.

Sec. 40.104. AUDIO RECORDING DEVICE POLICY. (a) Requires DFPS, as part of the pilot program, to adopt a policy ensuring that an audio recording device is activated only when investigating a report of child abuse or neglect and requires the policy to include:

- (1) guidelines for when a DFPS employee should activate an audio recording device or discontinue an audio recording currently in progress, considering the need for privacy in certain situations and at certain locations;
- (2) provisions relating to data retention, including a provision requiring the retention of an audio recording for a minimum period of 90 days;
- (3) provisions relating to storage of an audio recording, creation of backup copies of an audio recording, and maintenance of data security;
- (4) guidelines for public access, through open records requests, to an audio recording that is public information;
- (5) provisions entitling a DFPS employee to access any audio recording of an incident involving the DFPS employee before the DFPS employee is required to make a statement about the incident;
- (6) procedures for supervisory or internal review; and
- (7) the handling and documenting of equipment and malfunctions of equipment.

(b) Prohibits a policy described by Subsection (a) from requiring a DFPS employee to keep an audio recording device activated for the entire period of the DFPS employee's shift.

(c) Requires a policy adopted under this section to be consistent with the Federal Rules of Evidence and Texas Rules of Evidence.

Sec. 40.105. TRAINING. (a) Requires DFPS, before DFPS is authorized to operate the pilot program, to provide training to employees who will use audio recording devices and any other personnel who will come into contact with audio data obtained from the use of an audio recording device.

(b) Requires DFPS to develop a curriculum for a training program under this section.

Sec. 40.106. RECORDING INTERACTIONS WITH THE PUBLIC. (a) Requires a DFPS employee equipped with an audio recording device to act in a manner that is consistent with the policy of DFPS with respect to when and under what circumstances an audio recording device is required to be activated.

(b) Requires a DFPS employee who does not activate an audio recording device in responding to an investigation of child abuse or neglect to include in the employee's documentation or otherwise note in the child's case file the reason for not activating the audio recording device.

(c) Provides that any justification for failing to activate the audio recording device because it is unsafe, unrealistic, or impracticable is based on whether a reasonable DFPS employee under the same or similar circumstances would have made the same decision.

Sec. 40.107. USE OF PERSONAL EQUIPMENT. Authorizes a DFPS employee who is on duty to only use an audio recording device that is issued and maintained by DFPS.

Sec. 40.108. NOTIFICATION OF AUDIO RECORDING DEVICE. (a) Requires a DFPS employee, before conducting an interview in an investigation of a report of child abuse or neglect, to notify the person the employee is interviewing that the DFPS employee is using an audio recording device.

(b) Authorizes DFPS to develop a form for the notification required by Subsection (a).

Sec. 40.109. OFFENSE. (a) Provides that a DFPS employee commits an offense if the employee releases a recording created with an audio recording device under this subchapter without permission of DFPS or if the employee fails to provide the notice required by Section 40.108.

(b) Provides that an offense under this section is a Class A misdemeanor.

Sec. 40.110. RECORDINGS AS EVIDENCE. (a) Prohibits an audio recording created with an audio recording device and documenting an incident that is related to an administrative or criminal investigation of a DFPS employee, except as provided by Subsection (b), from being deleted, destroyed, or released to the public until all criminal matters have been finally adjudicated and all related administrative investigations have concluded.

(b) Authorizes DFPS to release to the public a recording described by Subsection (a) if DFPS determines that the release furthers DFPS's purpose.

Sec. 40.111. RELEASE OF INFORMATION RECORDED BY AUDIO RECORDING DEVICE. (a) Requires a member of the public to provide the following information when submitting a written request to DFPS for information recorded by an audio recording device:

(1) the date and approximate time of the recording;

(2) the specific location where the recording occurred; and

(3) the name of one or more persons known to be a subject of the recording.

(b) Provides that a failure to provide all of the information required by Subsection (a) to be part of a request for recorded information does not preclude the requestor from making a future request for the same recorded information.

(c) Provides that information recorded by an audio recording device and held by DFPS under this subchapter, except as provided by Subsection (d), is not subject to the requirements of Section 552.021 (Availability of Public Information), Government Code.

(d) Provides that information that is or could be used as evidence in a criminal prosecution is subject to the requirements of Section 552.021, Government Code.

(e) Authorizes DFPS to:

(1) seek to withhold information subject to Subsection (d) in accordance with procedures provided by Section 552.301 (Request For Attorney General Decision), Government Code;

(2) assert any exceptions to disclosure in Chapter 552 (Public Information), Government Code, or other law; or

(3) release information requested in accordance with Subsection (a) after DFPS redacts any information made confidential under Chapter 552, Government Code, or other law.

(f) Prohibits DFPS from releasing any portion of a recording made in a private space, or of a recording involving the investigation of conduct that constitutes a misdemeanor punishable by fine only and does not result in arrest, without written authorization from the person who is the subject of that portion of the recording or, if the person is deceased, from the person's authorized representative.

(g) Requires the Texas attorney general (attorney general) to set a proposed fee to be charged to members of the public who seek to obtain a copy of a recording under this section. Requires the fee amount to be sufficient to cover the cost of reviewing and making the recording. Authorizes DFPS to provide a copy without charge or at a reduced charge if DFPS determines that waiver or reduction of the charge is in the public interest.

(h) Provides that a recording is confidential and excepted from the requirements of Chapter 552, Government Code, if the recording was not required to be made under this subchapter or another law or under a policy adopted by DFPS and does not relate to a DFPS purpose.

Sec. 40.112. AUDIO RECORDING DEVICE RECORDINGS; REQUEST FOR ATTORNEY GENERAL DECISION. (a) Provides that, notwithstanding Section 552.301(b) (relating to requiring a governmental body to ask for the attorney general's decision and state the exceptions that apply within a certain time), Government Code, a governmental body's request for a decision from the attorney general about whether a requested audio recording device recording falls within an exception to public disclosure is considered timely if made not later than the 20th business day after the date of receipt of the written request.

(b) Provides that, notwithstanding Section 552.301(d) (relating to requiring a governmental body that requests a certain attorney general decision to provide a certain statement to the requestor within a certain time), Government Code, a governmental body's response to a requestor regarding a requested audio recording device recording is considered timely if made not later than the 20th business day after the date of receipt of the written request.

(c) Provides that, notwithstanding Section 552.301(e) (relating to requiring a governmental body that requests a certain attorney general decision to submit a certain document to the attorney general within a certain time), Government Code, a governmental body's submission to the attorney general of the information required by that subsection regarding a requested audio recording device recording is considered timely if made not later than the 25th business day after the date of receipt of the written request.

(d) Provides that, notwithstanding Section 552.301(e-1) (relating to requiring a governmental body that submits certain written comments to the attorney general to send a copy of those comments to the requestor within a certain time), Government Code, a governmental body's submission to a requestor of the information required by that subsection regarding a requested audio recording device recording is considered timely if made not later than the 25th business day after the date of receipt of the written request.

Sec. 40.113. PRODUCTION OF AUDIO RECORDING DEVICE RECORDING IN RESPONSE TO VOLUMINOUS PUBLIC INFORMATION REQUESTS. (a) Provides that, notwithstanding Section 552.221(d) (relating to requiring an officer for public

information who cannot produce certain public information for inspection or duplication within a certain time to certify that fact in writing to the requestor and set a date and hour within a reasonable time when the information will be available for inspection or duplication), Government Code, if DFPS receives a voluminous request in accordance with Section 40.111(a), DFPS is considered to have promptly produced the information for purposes of Section 552.221 (Application For Public Information; Production of Public Information), Government Code, if DFPS takes the actions required under Section 552.221, Government Code, before the 21st business day after the date of receipt of the written request.

(b) Defines "voluminous request" for purposes of this section.

Sec. 40.114. REPORT. Requires DFPS, not later than September 1, 2022, to prepare and submit a written report on the pilot program to the governor, the lieutenant governor, the speaker of the house of representatives, and each member of the legislature. Requires the report to include an evaluation of the interaction between DFPS employees involved in the pilot program and the public, an evaluation of the extent to which DFPS policies regarding audio recording devices were followed during the pilot program, and a recommendation on whether the pilot program should continue, be expanded, or be terminated.

Sec. 40.115. EXPIRATION. Provides that this chapter expires September 1, 2023.

SECTION 2. Effective date: September 1, 2019.