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By:  Menéndez S.B. No. 2542

A BILL TO BE ENTITLED

AN ACT

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; creating a criminal offense; authorizing a fee.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1.  Chapter 40, Human Resources Code, is amended by adding Subchapter D to read as follows:

SUBCHAPTER D. AUDIO RECORDING DEVICE PILOT PROGRAM

Sec. 40.101.  DEFINITIONS. In this subchapter:

(1)  "Audio recording device" means a device that is capable of recording audio or transmitting unedited audio.

(2)  "Pilot program" means the audio recording device pilot program for department employees established under this chapter.

(3)  "Private space" has the meaning assigned by Section 1701.651, Occupations Code.

Sec. 40.102.  PILOT PROGRAM. The department shall establish a pilot program to provide audio recording devices to department 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. The department may 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) As part of the pilot program, the department shall adopt a policy ensuring that an audio recording device is activated only when investigating a report of child abuse or neglect and must include:

(1)  guidelines for when a department 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 department employee to access any audio recording of an incident involving the department employee before the department 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)  A policy described by Subsection (a) may not require a department employee to keep an audio recording device activated for the entire period of the department employee's shift.

(c)  A policy adopted under this section must be consistent with the Federal Rules of Evidence and Texas Rules of Evidence.

Sec. 40.105.  TRAINING. (a) Before the department may operate the pilot program, the department must provide training to:

(1)  employees who will use audio recording devices; and

(2)  any other personnel who will come into contact with audio data obtained from the use of an audio recording device.

(b)  The department shall develop a curriculum for a training program under this section.

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

(b)  A department employee who does not activate an audio recording device in responding to an investigation of child abuse or neglect must 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)  Any justification for failing to activate the audio recording device because it is unsafe, unrealistic, or impracticable is based on whether a reasonable department employee under the same or similar circumstances would have made the same decision.

Sec. 40.107.  USE OF PERSONAL EQUIPMENT. A department employee who is on duty may only use an audio recording device that is issued and maintained by the department.

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

(b)  The department may develop a form for the notification required by Subsection (a).

Sec. 40.109.  OFFENSE. (a) A department employee commits an offense if:

(1)  the employee releases a recording created with an audio recording device under this subchapter without permission of the department; or

(2)  the employee fails to provide the notice required by Section 40.108.

(b)  An offense under this section is a Class A misdemeanor.

Sec. 40.110.  RECORDINGS AS EVIDENCE. (a) Except as provided by Subsection (b), an audio recording created with an audio recording device and documenting an incident that is related to an administrative or criminal investigation of a department employee may not be deleted, destroyed, or released to the public until all criminal matters have been finally adjudicated and all related administrative investigations have concluded.

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

Sec. 40.111.  RELEASE OF INFORMATION RECORDED BY AUDIO RECORDING DEVICE. (a) A member of the public is required to provide the following information when submitting a written request to the department 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)  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)  Except as provided by Subsection (d), information recorded by an audio recording device and held by the department under this subchapter is not subject to the requirements of Section 552.021, Government Code.

(d)  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)  The department may:

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

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

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

(f)  The department may not release 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)  The attorney general shall set a proposed fee to be charged to members of the public who seek to obtain a copy of a recording under this section. The fee amount must be sufficient to cover the cost of reviewing and making the recording. The department may provide a copy without charge or at a reduced charge if the department determines that waiver or reduction of the charge is in the public interest.

(h)  A recording is confidential and excepted from the requirements of Chapter 552, Government Code, if the recording:

(1)  was not required to be made under this subchapter or another law or under a policy adopted by the department; and

(2)  does not relate to a department purpose.

Sec. 40.112.  AUDIO RECORDING DEVICE RECORDINGS; REQUEST FOR ATTORNEY GENERAL DECISION. (a) Notwithstanding Section 552.301(b), 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)  Notwithstanding Section 552.301(d), 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)  Notwithstanding Section 552.301(e), 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)  Notwithstanding Section 552.301(e-1), 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) Notwithstanding Section 552.221(d), Government Code, if the department receives a voluminous request in accordance with Section 40.111(a), the department is considered to have promptly produced the information for purposes of Section 552.221, Government Code, if the department 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)  For purposes of this section, "voluminous request" includes:

(1)  a request for audio recording device recordings from more than five separate incidents;

(2)  more than five separate requests for audio recording device recordings from the same person in a 24-hour period, regardless of the number of incidents included in each request; or

(3)  a request or multiple requests from the same person in a 24-hour period for audio recording device recordings that, taken together, constitute more than five total hours of audio recordings.

Sec. 40.114.  REPORT. Not later than September 1, 2022, the department shall 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. The report must include:

(1)  an evaluation of the interaction between department employees involved in the pilot program and the public;

(2)  an evaluation of the extent to which the department policies regarding audio recording devices were followed during the pilot program; and

(3)  a recommendation on whether the pilot program should continue, be expanded, or be terminated.

Sec. 40.115.  EXPIRATION. This chapter expires September 1, 2023.

SECTION 2.  This Act takes effect September 1, 2019.