

By: Menéndez

S.B. No. 2542

A BILL TO BE ENTITLED

AN ACT

1
2 relating to an audio recording device pilot program for certain
3 Department of Family and Protective Services employees
4 investigating a report of child abuse or neglect; creating a
5 criminal offense; authorizing a fee.

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

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

9 SUBCHAPTER D. AUDIO RECORDING DEVICE PILOT PROGRAM

10 Sec. 40.101. DEFINITIONS. In this subchapter:

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

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

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

18 Sec. 40.102. PILOT PROGRAM. The department shall establish
19 a pilot program to provide audio recording devices to department
20 employees in Bexar County to evaluate the costs of implementing a
21 statewide audio recording device program, including all known
22 equipment costs and costs for data storage.

23 Sec. 40.103. INTERAGENCY CONTRACTS. The department may
24 enter into an interagency contract to receive audio recording

1 device services and have the identified operations performed
2 through a program established by the Department of Information
3 Resources.

4 Sec. 40.104. AUDIO RECORDING DEVICE POLICY. (a) As part of
5 the pilot program, the department shall adopt a policy ensuring
6 that an audio recording device is activated only when investigating
7 a report of child abuse or neglect and must include:

8 (1) guidelines for when a department employee should
9 activate an audio recording device or discontinue an audio
10 recording currently in progress, considering the need for privacy
11 in certain situations and at certain locations;

12 (2) provisions relating to data retention, including a
13 provision requiring the retention of an audio recording for a
14 minimum period of 90 days;

15 (3) provisions relating to storage of an audio
16 recording, creation of backup copies of an audio recording, and
17 maintenance of data security;

18 (4) guidelines for public access, through open records
19 requests, to an audio recording that is public information;

20 (5) provisions entitling a department employee to
21 access any audio recording of an incident involving the department
22 employee before the department employee is required to make a
23 statement about the incident;

24 (6) procedures for supervisory or internal review; and

25 (7) the handling and documenting of equipment and
26 malfunctions of equipment.

27 (b) A policy described by Subsection (a) may not require a

1 department employee to keep an audio recording device activated for
2 the entire period of the department employee's shift.

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

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

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

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

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

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

18 (b) A department employee who does not activate an audio
19 recording device in responding to an investigation of child abuse
20 or neglect must include in the employee's documentation or
21 otherwise note in the child's case file the reason for not
22 activating the audio recording device.

23 (c) Any justification for failing to activate the audio
24 recording device because it is unsafe, unrealistic, or
25 impracticable is based on whether a reasonable department employee
26 under the same or similar circumstances would have made the same
27 decision.

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

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

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

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

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

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

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

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

26 (b) The department may release to the public a recording
27 described by Subsection (a) if the department determines that the

1 release furthers the department's purpose.

2 Sec. 40.111. RELEASE OF INFORMATION RECORDED BY AUDIO
3 RECORDING DEVICE. (a) A member of the public is required to provide
4 the following information when submitting a written request to the
5 department for information recorded by an audio recording device:

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

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

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

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

15 (c) Except as provided by Subsection (d), information
16 recorded by an audio recording device and held by the department
17 under this subchapter is not subject to the requirements of Section
18 552.021, Government Code.

19 (d) Information that is or could be used as evidence in a
20 criminal prosecution is subject to the requirements of Section
21 552.021, Government Code.

22 (e) The department may:

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

26 (2) assert any exceptions to disclosure in Chapter
27 552, Government Code, or other law; or

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

4 (f) The department may not release any portion of a
5 recording made in a private space, or of a recording involving the
6 investigation of conduct that constitutes a misdemeanor punishable
7 by fine only and does not result in arrest, without written
8 authorization from the person who is the subject of that portion of
9 the recording or, if the person is deceased, from the person's
10 authorized representative.

11 (g) The attorney general shall set a proposed fee to be
12 charged to members of the public who seek to obtain a copy of a
13 recording under this section. The fee amount must be sufficient to
14 cover the cost of reviewing and making the recording. The
15 department may provide a copy without charge or at a reduced charge
16 if the department determines that waiver or reduction of the charge
17 is in the public interest.

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

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

22 (2) does not relate to a department purpose.

23 Sec. 40.112. AUDIO RECORDING DEVICE RECORDINGS; REQUEST FOR
24 ATTORNEY GENERAL DECISION. (a) Notwithstanding Section 552.301(b),
25 Government Code, a governmental body's request for a decision from
26 the attorney general about whether a requested audio recording
27 device recording falls within an exception to public disclosure is

1 considered timely if made not later than the 20th business day after
2 the date of receipt of the written request.

3 (b) Notwithstanding Section 552.301(d), Government Code, a
4 governmental body's response to a requestor regarding a requested
5 audio recording device recording is considered timely if made not
6 later than the 20th business day after the date of receipt of the
7 written request.

8 (c) Notwithstanding Section 552.301(e), Government Code, a
9 governmental body's submission to the attorney general of the
10 information required by that subsection regarding a requested audio
11 recording device recording is considered timely if made not later
12 than the 25th business day after the date of receipt of the written
13 request.

14 (d) Notwithstanding Section 552.301(e-1), Government Code,
15 a governmental body's submission to a requestor of the information
16 required by that subsection regarding a requested audio recording
17 device recording is considered timely if made not later than the
18 25th business day after the date of receipt of the written request.

19 Sec. 40.113. PRODUCTION OF AUDIO RECORDING DEVICE RECORDING
20 IN RESPONSE TO VOLUMINOUS PUBLIC INFORMATION REQUESTS. (a)
21 Notwithstanding Section 552.221(d), Government Code, if the
22 department receives a voluminous request in accordance with Section
23 40.111(a), the department is considered to have promptly produced
24 the information for purposes of Section 552.221, Government Code,
25 if the department takes the actions required under Section 552.221,
26 Government Code, before the 21st business day after the date of
27 receipt of the written request.

1 (b) For purposes of this section, "voluminous request"
2 includes:

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

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

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

13 Sec. 40.114. REPORT. Not later than September 1, 2022, the
14 department shall prepare and submit a written report on the pilot
15 program to the governor, the lieutenant governor, the speaker of
16 the house of representatives, and each member of the legislature.
17 The report must include:

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

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

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

25 Sec. 40.115. EXPIRATION. This chapter expires September 1,
26 2023.

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