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# SENATE COMMITTEE ON PUBLIC SAFETY

Senator Aisha Wahab, Chair

2023 - 2024 Regular

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**Bill No:** SB 603                      **Hearing Date:** April 25, 2023  
**Author:** Rubio  
**Version:** February 15, 2023  
**Urgency:** No                                      **Fiscal:** No  
**Consultant:** MK

**Subject:** *Children’s advocacy centers: recordings*

## HISTORY

**Source:** Los Angeles County District Attorney’s Office

**Prior Legislation:** AB 2741 (Blanca Rubio) Chapter 353, Stats. 2020

**Support:** Crime Victims Alliance; Los Angeles County District Attorney's Office;  
Prosecutors Alliance California; Children’s Advocacy Center of California

**Opposition:** California Public Defenders Association (unless amended); Consumer Attorneys  
of California (unless amended)

## ANALYSIS REFLECTS AUTHORS AMENDMENTS TO BE OFFERED IN COMMITTEE

### PURPOSE

*The purpose of this bill is create a process and standards for the release of recordings of interviews taken by a children’s advocacy center in the course of investigation of a case of abuse.*

*Existing law* defines “child abuse and neglect” as including physical injury or death inflicted by other than accidental means upon a child by another person, sexual abuse, the willful harming or injuring of a child or the endangering of a person or health of a child. “Child abuse or neglect” does not include a mutual affray between minors. “Child abuse or neglect” does not include an injury caused by reasonable and necessary force used by a peace officer acting within the scope of their duties. (Penal Code §111165.6)

*Existing law* makes specified persons mandated reporters who shall make reports of suspected child abuse or neglect to any police department or sheriff. (Penal Code §§ 11165.7; 11165.9)-

*Existing law* provides that each county may use a children’s advocacy center to implement a coordinated multidisciplinary response to investigate reports involving child physical or sexual abuse, exploitation, or maltreatment and sets forth standards that a children’s advocacy center must meet. (Penal Code § 11166.4)

*Existing law* provides that, among the standards that a children's advocacy center must meet, the children's advocacy center shall verify that interviews conducted in the course of investigations are conducted in a forensically sound manner and occur in a child-focused setting designed to provide a safe, comfortable, and dedicated place of children and families. (Penal Code § 11166.4(b)(8))

*Existing law* provides that this section does not preclude a county from utilizing more than one children's advocacy center.

*Existing law* provides that the files, reports, records, communications, and working papers used or developed in providing services through a children's advocacy center are confidential and not public records.

*Existing law* allows for the sharing of confidential information among members of the children's advocacy center for the purposes of facilitating a forensic interview or case discussion or providing services the child or family but the shared records are to be treated as confidential information by all.

*Existing law* provides that any employee or designated agent of a child and family advocacy center that meets the requirements is immune from civil liability due to participation in the investigative process.

*This bill*, as proposed to be amended, additionally provides that such interviews are confidential and are not public records.

*This bill*, as proposed to be amended, provides that the children's advocacy center or other identified multidisciplinary team member custodian shall ensure that all recordings of child forensic interviews be released only in response to a court order. The court shall issue a protective order as part of the release, unless the court finds good cause that the disclosure of the interview shall be subject to such an order. The protective order shall include all the following language:

- That the recording be used only for the purposes of conducting the party's side of the case, unless otherwise ordered by the court.
- That the recording not be copied, photographed, duplicated, or otherwise reproduced except as a written transcript that does not reveal the identity of the child, unless otherwise ordered by the court.
- That the recording not be given displayed, or in any way provided to a third party, except as otherwise permitted or as necessary in preparation for or during trial.
- That the recording remain in the exclusive custody of the attorneys, their employees, or agents, including expert witnesses by either party, who shall be provided a copy and instructed to abide by the protective order.
- That, if the party is not represented by an attorney, the party, the party's employees and agents, including expert witnesses, shall not be given a copy of the recording but shall be given reasonable access to view or listen to the recording by the custodian of the recording. In a criminal case involving an In Pro Per defendant, if the court has appointed an investigator, the court may order a copy of the recording be provided to the investigator with a protective order consistent with this section and further order the investigator to return the recording to the court upon conclusion of the criminal case.

- That upon termination of representation of upon disposition of the matter after all appeals and writs of habeas corpus have been exhausted attorneys promptly return all copies of the recording.

*This bill* provides that notwithstanding the above, the children’s advocacy center or other identified multidisciplinary team member custodian shall release or consent to the release or use of any recording, upon request to any of the following:

- Law enforcement agencies authorized to investigate child abuse, or agencies authorized to prosecute juvenile or criminal conduct described in the forensic interview.
- County counsel evaluating an allegation of child abuse.

*This bill* provides that in any court proceeding, release of any recording pursuant to the civil, dependency, or criminal discovery process shall be accompanied by a protective order, unless the court finds good cause that disclosure of the recording should not be subject to such an order.

*This bill* provides that a child advocacy center where a forensic interview is conducted may use the recording for the purposes of supervision and peer review as required to meet national accreditation standards. Recordings that anonymize the child’s face or likeness may be used of training.

*This bill* provides that recognizing the inherent privacy interest that a child has with respect to the child’s recorded voice and image when describing highly sensitive details of abuse or neglect, any and all recordings of child forensic interviews shall not be subject to a Public Records Act Request and are exempt from any such request.

*This bill* provides the recording shall not become a public record in any legal proceeding.

*This bill* provides that the court shall order the recording be sealed and preserved at the conclusion of the criminal proceeding.

*This bill* provides that as used in this section “recording” includes audio, video, digital, or any other manner in which the child’s voice or likeness is memorialized.

## COMMENTS

### 1. Need for This Bill

According to the author:

We have a responsibility to provide victims of child abuse with the strongest protections possible. There are currently no guidelines regarding the distribution of child forensic interview (CFI) recordings from children’s advocacy centers in California. Children, victims, and families could have their sensitive recordings fall into the wrong hands without the appropriate safeguards. SB 603 creates protections for victims and their families, by requiring a protective order before a recording can be distributed. This will allow for the appropriate release of these recordings to go to counsel in criminal and civil cases, while also limiting their distribution beyond what is necessary for investigation and litigation without a

protective order. Without these safeguards in place, children and their families may be discouraged from participated in recording forensic interviews, which are crucial to the investigation of child abuse.

## **2. Recordings of interviews of at a children's advocacy centers**

Existing law allows each county to use a children's advocacy center to coordinate a multidisciplinary response to investigate reports involving child physical, or sexual abuse, exploitation, or maltreatment. The law sets forth standards that each advocacy center shall meet.

The law does not, however, set forth a uniform process for releasing recordings that are made of the forensic interviews of children at these centers. Recordings that could be used in criminal or civil cases. This bill provides that these recordings shall be released only in response to a court order. The bill requires the court to issue a protective order when allowing the release of the documents, unless the court finds good cause for why a protective order shall not be released. The bill specifies what the court order shall include:

- That the recording shall only be used for the party's side of the case.
- That the recording shall not be copied etc. and if there is a written transcript the child shall not be identified.
- That the recordings not be given to third part, except for the employees or investigators of the attorney who have also been informed of the protective order.

If the party is not represented by an attorney, the party shall not be given a copy but shall instead be given reasonable access to view or listen to the recording.

If a criminal defendant is an In Pro Per defendant, if the court appointed an investigator, the court may order a copy of the recording be provided to the investigator with a protective order consistent with this section and further order the investigator to return the recording upon conclusion of the case.

This bill also clarifies that the recording shall not be a public record for the purposes of the PRA.

## **3. Access by the victim**

The Consumer Attorneys of California raise a concern that requiring a court order limits access to the recordings by the actual victim or their representatives. This may interfere with the victim bring a civil suit including any pre-filing settlements.

It is conceivable whether for a civil case or maybe even as part of therapy an adult who was a child victim of sexual assault or other misconduct may wish to have access to the recording. The statute of limitations for civil cases brought by a victim of sexual assault that happened as a child has been extended so that victim who did the interview could very well be an adult.

Should the bill perhaps consider a separate process for when the victim would like access to the recording?

#### **4. Return of the copies**

The California Public Defenders Association raised a concern that, as in print, this bill requires that upon termination of representation or upon disposition of the matter attorneys shall promptly return all copies of the recording because in criminal cases there often post-conviction motions. As proposed to be amended this bill would require the return after all appeals and writs of habeas corpus have been exhausted, so this may address CPDA's concern.

The attorney who has the underlying case will probably not be the attorney who does the appeal or habeas and even as a case progresses counsel may change. Does the reference to "termination of representation in case" raise any concerns in criminal cases? Should it be clarified the recording stays with case file and all the limitations of the protective order apply to whomever is the current attorney?

#### **5. Argument in Support**

The Prosecutors Alliance of California support this bill stating:

SB 603 aims to prevent the unauthorized release of child forensic interviews, which are recorded interviews of children conducted by specially trained forensic interviewers in cases involving suspected child abuse. During these interviews, children often disclose highly sensitive information related to physical and sexual abuse. Currently, California does not have clearly defined legal limits for the release of these recordings. This results in children's advocacy centers being directly subpoenaed for copies of these recordings without any guidelines on their distribution. There have been instances where once copies of these recordings have been obtained from children's advocacy centers, they have been duplicated, copied, and re-distributed to individuals who should not have access to the recordings. This provides a daily challenge for children's advocacy centers throughout California who seek to protect the rights and privacy interests of these vulnerable victims.

SB 603 would set consistent guidelines for the protection of child interviews conducted in response to suspected child abuse by statutorily mandating that such recordings only be released through an appropriate court order, with a protective order, and under limited circumstances. Similar rules are already in place for the release of suspected child abuse reports and suspect forensic examinations. Moreover, states such as Washington, Nebraska, and Tennessee have all codified protections for child forensic interviews.

#### **6. Argument in Opposition (unless amended)**

As noted in Comment 3 the Consumer Attorneys of California oppose this bill unless amended, stating specifically:

CAOC agrees with your goal of protecting children victims of sexual abuse and in ensuring access to justice for all victims. Attorneys who represent children of sexual abuse must not be limited in their access to information that can assist them in prosecuting cases against violators. As drafted, SB 603 limits otherwise available evidence to the children and their legal representatives. There are many examples of why a juvenile victim of crime might need access to their own

forensic evidence, but the basic premise is that they should have access to any evidence they have provided in order to assert their rights either in conjunction with a governmental agency or a civil attorney. This interview is of them.

This information and other evidence related to the crimes they have been subjected to should be a matter of right. They are rarely, if ever given access to a police department's file, and never to a District Attorney's file. That process is one-sided and must be balanced so that children who are victimized can assert their rights in whatever way they see fit pursuant to Marsy's Law. Further, if guardian ad litem is considering litigation, they should be able to obtain what is usually the only evidence of what occurred before making that decision. Similarly, no pre-filing settlements are possible without such evidence as all sides need to be able to evaluate what occurred. We should be doing everything we can to improve access to justice for children who are crime victims, not making it harder.

**-- END --**