

Introduced by Senator Rubio

February 15, 2023

An act to amend Section 11166.4 of the Penal Code, relating to child abuse.

LEGISLATIVE COUNSEL'S DIGEST

SB 603, as amended, Rubio. Children's advocacy centers: recordings.

Existing law authorizes a county to use a children's advocacy center to implement a coordinated multidisciplinary response, as specified, to investigate reports involving child physical or sexual abuse, exploitation, or maltreatment. Existing law requires a county that utilizes a child advocacy center for these purposes to meet specified standards, including, among other things, that the children's advocacy center must 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 for children and families.

This bill would require the children's advocacy center *or other identified multidisciplinary team member* custodian to ensure that all recordings of child forensic interviews be released only in response to a court order. The bill would require the court to issue a protective order as part of the release, unless the court finds good cause that disclosure of the interview should not be subject to such an order. Notwithstanding that provision, the bill would require the children's advocacy center *or other identified multidisciplinary team member* custodian to release a recording, upon request, to specified parties, including, among others, law enforcement agencies authorized to investigate child abuse. The

bill would authorize the child advocacy center to use the recording for training, among other things. The bill would also prohibit the recording from becoming a public record in any legal proceeding, and would require the court to order the recording be sealed and preserved at the conclusion of a criminal proceeding.

Existing constitutional provisions require that a statute that limits the right of access to the meetings of public bodies or the writings of public officials and agencies be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest.

This bill would make legislative findings to that effect.

Vote: majority. Appropriation: no. Fiscal committee: no.
 State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 11166.4 of the Penal Code is amended
 2 to read:
 3 11166.4. (a) Each county may use a children’s advocacy center
 4 to implement a coordinated multidisciplinary response pursuant
 5 to Section 18961.7 of the Welfare and Institutions Code, to
 6 investigate reports involving child physical or sexual abuse,
 7 exploitation, or maltreatment.
 8 (b) A county that utilizes a child advocacy center to coordinate
 9 its multidisciplinary response pursuant to subdivision (a) shall
 10 require the children’s advocacy center to meet the following
 11 standards:
 12 (1) The multidisciplinary team associated with the children’s
 13 advocacy center shall consist of a representative of the children’s
 14 advocacy center and at least one representative from each of the
 15 following disciplines: law enforcement, child protective services,
 16 district attorney’s offices, medical providers, mental health
 17 providers, and victim advocates. Members of the multidisciplinary
 18 team may fill more than one role, within the scope of their practice,
 19 as needed.
 20 (2) The multidisciplinary team associated with the children’s
 21 advocacy center shall have cultural competency and diversity
 22 training to meet the needs of the community it serves.
 23 (3) The children’s advocacy center shall have a designated legal
 24 entity responsible for the governance of its operations. This entity

1 shall oversee ongoing business practices of the children’s advocacy
2 center, including setting and implementing administrative policies,
3 hiring and managing personnel, obtaining funding, supervising
4 program and fiscal operations, and conducting long-term planning.

5 (4) The children’s advocacy center shall provide a dedicated
6 child-focused setting designed to provide a safe, comfortable, and
7 neutral place where forensic interviews and other children’s
8 advocacy center services may be appropriately provided for
9 children and families.

10 (5) The children’s advocacy center shall use written protocols
11 for case review and case review procedures, and shall use a case
12 tracking system to provide information on essential demographics
13 and case information.

14 (6) The children’s advocacy center shall verify that members
15 of the multidisciplinary team responsible for medical evaluations
16 have specific training in child abuse or child sexual abuse
17 examinations.

18 (7) The children’s advocacy center shall verify that members
19 of the multidisciplinary team responsible for mental health services
20 are trained in and deliver trauma-focused, evidence-supported
21 mental health treatments.

22 (8) The children’s advocacy center shall verify that interviews
23 conducted in the course of investigations are conducted in a
24 forensically sound manner and occur in a child-focused setting
25 designed to provide a safe, comfortable, and dedicated place for
26 children and families. *These interviews are confidential and are*
27 *not public records.*

28 (9) (A) The children’s advocacy center *or other identified*
29 *multidisciplinary team member* custodian shall ensure that all
30 recordings of child forensic interviews be released only in response
31 to a court order. The court shall issue a protective order as part of
32 the release, unless the court finds good cause that disclosure of the
33 interview should not be subject to such an order. The protective
34 order shall include all of the following language:

35 (i) That the recording be used only for the purposes of
36 conducting the party’s side of the case, ~~unless otherwise agreed~~
37 ~~by the parties or~~ ordered by the court.

38 (ii) That the recording not be copied, photographed, duplicated,
39 or otherwise reproduced except as a written transcript that does

1 not reveal the identity of the child, unless otherwise agreed to by
2 the parties or ordered by the court.

3 (iii) That the recording not be given, displayed, or in any way
4 provided to a third party, except as permitted in clause (iv) or (v)
5 of this subparagraph or as necessary in preparation for or during
6 trial.

7 (iv) That the recording remain in the exclusive custody of the
8 attorneys, their employees, or agents, including expert witnesses
9 retained by either party, who shall be provided a copy of and
10 instructed to abide by the protective order.

11 (v) That, if the party is not represented by an attorney, the party,
12 the party's employees and agents, including expert witnesses, shall
13 not be given a copy of the recording but shall be given reasonable
14 access to view or listen to the recording by the custodian of the
15 recording. *In a criminal case involving an in pro per defendant,*
16 *if the court has appointed an investigator, the court may order a*
17 *copy of the recording be provided to the investigator with a*
18 *protective order consistent with this section and further order the*
19 *investigator to return the recording to the court upon conclusion*
20 *of the criminal case.*

21 (vi) That upon termination of representation or upon disposition
22 of the matter at the trial court level, attorneys and other custodians
23 of recordings matter, after all appeals and writs of habeas corpus
24 have been exhausted, attorneys promptly return all copies of the
25 recording.

26 (B) Notwithstanding subparagraph (A), the children's advocacy
27 center or other identified multidisciplinary team member custodian
28 shall release or consent to the release or use of any recording, upon
29 request, to any both of the following:

30 (i) Law enforcement agencies authorized to investigate child
31 abuse, or agencies authorized to prosecute juvenile or criminal
32 conduct described in the forensic interview.

33 (ii) County counsel evaluating an allegation of child abuse.

34 ~~(iii)~~

35 (C) In any court proceeding, release of any recording pursuant
36 to the civil, dependency, or criminal discovery process shall be
37 accompanied by a protective order, unless the court finds good
38 cause that disclosure of the recording should not be subject to such
39 an order.

40 (E)

1 (D) The child advocacy center where a forensic interview is
2 conducted may use the recording for purposes of supervision and
3 peer review as required to meet national accreditation standards.
4 Recordings that anonymize the child's face or likeness may be
5 used for training.

6 ~~(D)~~

7 (E) (i) Recognizing the inherent privacy interest that a child
8 has with respect to the child's recorded voice and image when
9 describing highly sensitive details of abuse or neglect, any and all
10 recordings of child forensic interviews shall not be the subject to
11 a Public Records Act (Division 10 (commencing with Section
12 7920.000) of Title 1 of the Government Code) request and are
13 exempt from any such request.

14 (ii) The recording shall not become a public record in any legal
15 proceeding.

16 (iii) The court shall order the recording be sealed and preserved
17 at the conclusion of the criminal proceeding.

18 (c) This section does not preclude a county from utilizing more
19 than one children's advocacy center.

20 (d) The files, reports, records, communications, and working
21 papers used or developed in providing services through a children's
22 advocacy center are confidential and are not public records.

23 (e) Notwithstanding any other law providing for the
24 confidentiality of information or records relating to the
25 investigation of suspected child abuse or neglect, the members of
26 a multidisciplinary team associated with a children's advocacy
27 center, including agency representatives, child forensic
28 interviewers, and other providers at the children's advocacy center,
29 are authorized to share with other multidisciplinary team members
30 any information or records concerning the child and family and
31 the person who is the subject of the investigation of suspected
32 child abuse or neglect for the sole purpose of facilitating a forensic
33 interview or case discussion or providing services to the child or
34 family, provided, however, that the shared information or records
35 shall be treated as confidential to the extent required by law by the
36 receiving multidisciplinary team members.

37 (f) An employee or designated agent of a child and family
38 advocacy center that meets the requirements of subdivision (b) is
39 immune from any civil liability that arises from the employee's
40 or designated agent's participation in the investigation process and

1 services provided by the child and family advocacy center, unless
2 the employee or designated agent acted with malice or has been
3 charged with or is suspected of abusing or neglecting the child
4 who is the subject of the investigation or services provided. This
5 subdivision does not supersede or limit any other immunity
6 provided by law.

7 (g) As used in this section “recording” includes audio, video,
8 digital, or any other manner in which the child’s voice or likeness
9 is memorialized.

10 SEC. 2. The Legislature finds and declares that Section 1 of
11 this act, which amends Section 11166.4 of the Penal Code, imposes
12 a limitation on the public’s right of access to the meetings of public
13 bodies or the writings of public officials and agencies within the
14 meaning of Section 3 of Article I of the California Constitution.
15 Pursuant to that constitutional provision, the Legislature makes
16 the following findings to demonstrate the interest protected by this
17 limitation and the need for protecting that interest:

18 Recognizing the inherent privacy interest that a child has with
19 respect to the child’s recorded voice and image when describing
20 highly sensitive details of abuse or neglect, it is necessary to keep
21 this information private.