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Senate Bill 454 (Substitute S-1)
Sponsor: Senator Mike Nofs
Committee: Families, Seniors, and Human Services

Date Completed: 9-26-11

CONTENT

The bill would amend the Revised Judicature Act (RJA) to extend to vulnerable adults special accommodations for witnesses in certain court proceedings.

"Vulnerable adult" would mean that term as defined in Section 145m of the Michigan Penal Code. Under that section, "vulnerable adult" means one or more of the following:

- An individual who is at least 18 years old who requires supervision or personal care or lacks the personal and social skills required to live independently due to age, developmental disability, mental illness, or physical disability.
- An adult, as defined in Section 3(1)(b) of the Adult Foster Care Facility Licensing Act.
- An adult, as defined in Section 11(b) of the Social Welfare Act.

(Section 3(1)(b) of the Adult Foster Care Facility Licensing Act includes in the definition of "adult" a child placed in an adult foster care family home or small group home as authorized by the Department of Human Services.

Under Section 11(b) of the Social Welfare Act, "adult" means a vulnerable person who is at least 18 years old who is suspected of being or believed to be abused, neglected, or exploited. "Vulnerable" means a condition in which an adult is unable to protect himself or herself from abuse, neglect, or exploitation because of a mental or physical impairment or advanced age.)

Special Accommodations

In some cases, the RJA allows special accommodations, such as using a video recording of a witness statement and excluding the public from the courtroom, for witnesses who are under 16 years of age or who are 16 or older and have a developmental disability.

Under the bill, the provision of special accommodations to a witness, including video recording a witness statement, would apply to a vulnerable adult in prosecutions and proceedings for the following offenses:

- Home invasion (MCL 750.110a).
- Vulnerable adult abuse (MCL 750.145n).
- Violation of the Adult Foster Care Facility Licensing Act, rules promulgated under that Act, or related provisions of the Public Health Code, by an operator of an unlicensed

facility or an employee or individual acting on behalf of an unlicensed facility, if the violation is a proximate cause of the death of a vulnerable adult (MCL 750.145o).

- Certain conduct by a caregiver or other person with authority over a vulnerable adult (MCL 750.145p).
- Embezzlement by an agent, servant or employee, or trustee, bailee, or custodian (MCL 750.174).
- Obtaining or using a vulnerable adult's money or property, through fraud, deceit, misrepresentation, coercion, or unjust enrichment, to benefit the offender, knowing or having reason to know the vulnerable adult's status (750.174a).
- An assaultive crime, as that term is defined in Chapter X of the Code of Criminal Procedure (MCL 770.9a).

Video Recorded Deposition

The RJA allows a video recorded statement to be considered in court only for one or more of the following purposes:

- Admission as evidence at all pretrial proceedings, except that it may not be introduced at the preliminary examination instead of the live testimony of the witness.
- Admission for impeachment purposes.
- Consideration by the court in determining the sentence.
- Use as a factual basis for a no contest plea or to supplement a guilty plea.

The bill specifies that a video recorded deposition could be considered in court proceedings only as provided by law.

Excluding People from the Courtroom

Under the RJA, if, upon the motion of a party made before the preliminary examination or the trial, the court finds that excluding people not necessary to the proceedings from the courtroom and preventing the witness from directly viewing the defendant are necessary to protect the welfare of the witness, the court must order those special arrangements. In determining whether it is necessary to protect the welfare of the witness, the court must consider all of the following:

- The age of the witness.
- The nature of the offense or offenses.
- The desire of the witness or his or her family or guardian to have the testimony taken in a room closed to the public.

Under the bill, the court also would have to consider the physical condition of the witness.

MCL 600.2163a

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

The bill would have an indeterminate, but likely negligible, fiscal impact on State and local government. To the extent that the bill increased the administrative workload of various courts, local jurisdictions could incur additional costs.

Fiscal Analyst: Matthew Grabowski

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.