

Legislative Analysis



REQUIRE CONSENT FOR USE OF VIDEORECORDED WITNESS STATEMENTS

Phone: (517) 373-8080
<http://www.house.mi.gov/hfa>

House Bill 5402 reported as substitute H-3
Sponsor: Rep. Diana Farrington

Analysis available at
<http://www.legislature.mi.gov>

House Bill 5403 reported as substitute H-3
Sponsor: Rep. Sherry Gay-Dagnogo, M.Ed.

Committee: Judiciary
Complete to 3-6-18

BRIEF SUMMARY: House Bills 5402 and 5403 pertain to videorecorded forensic interviews of children conducted in neglect and/or physical abuse cases. The bills would expand the use of a videorecorded statement for training purposes in interviewing protocols and would require the consent of a parent or legal guardian before the statement could be so used.

FISCAL IMPACT: House Bills 5402 and 5403 would have an indeterminate fiscal impact on the state and on local units of government. Information is not available on the number of persons who might be convicted under provisions of the bills. New misdemeanor convictions would increase costs related to county jails and/or local misdemeanor probation supervision. The costs of local incarceration in a county jail and local misdemeanor probation supervision vary by jurisdiction. Any increase in penal fine revenues would increase funding for local libraries, which are the constitutionally designated recipients of those revenues. The bills would have an indeterminate fiscal impact on local court funding units. The fiscal impact would depend on how the bills' provisions affect court caseloads and related administrative costs.

THE APPARENT PROBLEM:

A forensic interview involving a child who may be the victim of (or witness to) neglect and/or physical or sexual abuse is an important part of an investigation when neglect and/or physical or sexual abuse of a child is reported to law enforcement or Child Protective Services. Forensic interviews with children must follow protocols implemented under the Child Protection Law. Most of the forensic interviews are videorecorded, and the recordings are allowed under current law to be used to train authorized persons, referred to as "custodians of the videorecorded statement," in the proper methods of interviewing children. Though the use of the recorded forensic interviews for training purposes must be authorized by the prosecutor in the county in which the videorecorded statement was taken, the consent of the parent or legal guardian of the child who was interviewed is not required.

Considering the sensitive nature of the recorded interviews, some feel that the parents or legal guardians of these minors (youths under 16 years of age or 16 or older with a developmental disability) should have a say as to whether the recordings are used to train other interviewers, prosecuting attorneys, or law enforcement officers.

In a related matter, because children and persons with developmental disabilities who may have suffered abuse or assaults are traumatized, and because children can be easily manipulated and led, forensic interviews require specialized training and established protocols must be closely adhered to. Use of the recorded interviews, both those done well and those done badly, can be important training tools to keep skills updated and ensure that protocols are followed. Currently, a recorded interview can only be used for training purposes in the county in which the statement was recorded, even if a particular recorded statement would be a valuable tool in teaching or reinforcing specific protocols. Therefore, it has been suggested that the law be amended to allow the recorded statements to be used across county lines, if consent has been obtained from a parent or legal guardian.

THE CONTENT OF THE BILLS:

House Bills 5402 and 5403 would amend the Revised Judicature Act and the juvenile code, respectively, to require the written consent of a nonoffending parent or legal guardian before a videorecorded statement by a minor in a child neglect and/or physical or sexual abuse case is released to an authorized entity for training purposes.

Currently, a videorecorded statement may be used for purposes of training the ***custodians of the videorecorded statement*** on the forensic interview protocols that the interviewers must follow, but only if authorized by the prosecutor of the county in which the interview had been conducted and then only for custodians in that county.

Custodian of the videorecorded statement currently includes the Department of Health and Human Services, investigating law enforcement agency, prosecuting attorney, Department of Attorney General, or another person designated under the county protocol established under requirements of the Child Protection Law. House Bills 5402 and 5403 would revise this definition to eliminate the Department of Health and Human Services as a custodian. [House Bills 4299 and 4300, which recently passed the House and are pending Senate action, similarly revised the definition of this term.]

Under the bills, the consent of a minor witness's nonoffending parent or legal guardian would be required, in addition to the county prosecutor's authorization, before the videorecorded statement could be used for training purposes. The bills would also allow the videorecorded statements to be used to train persons in another county that would meet the definition of custodian of the videorecorded statement had the statement been taken in that other county.

The consent required under the bills would have to be obtained through the execution of a written, fully informed, time-limited, and revocable release of information. In addition, an individual participating in training under the bills' provisions would have to execute a nondisclosure agreement to protect witness confidentiality.

Nonoffending parent or legal guardian would mean a witness's natural or adoptive parent or stepparent or legally appointed or designated guardian who is

not alleged to have committed a violation of the laws of this or another state, the United States, or a court order connected in any manner to a witness's videorecorded statement.

Witness is defined in both acts as an alleged victim of certain listed offenses (e.g., an assaultive crime or criminal sexual conduct) who is a person under 16 years of age or a person 16 years of age or older with a developmental disability. (The Revised Judicature Act also includes a vulnerable adult in the definition of witness.)

[Currently, a person who intentionally releases a videorecorded statement in violation of the Revised Judicature Act or juvenile code is guilty of a misdemeanor punishable by imprisonment for not more than 93 days and/or a maximum fine of \$500.]

House Bill 5402 would amend Chapter 21 (Evidence) of the Revised Judicature Act, (MCL 600.2163a).

House Bill 5403 would amend the juvenile code, a chapter within the Probate Code (MCL 712A.17b).

The bills are tie-barred to each other, meaning that neither bill could take effect unless the other were also enacted. The bills would take effect 90 days after enactment.

ARGUMENTS:

For:

Long after a videorecorded forensic interview of a child or a person with developmental disabilities is taken in a criminal or abuse and neglect case, the tape of the interview may be played over and over in training sessions for those who conduct forensic interviews of children. For some child witnesses and victims, or their families, just knowing that the tapes may still be in circulation with unknown people hearing and watching them can be a form of revictimization. Under the bills, the videorecorded interviews could only be used in a training session if a parent or legal guardian who had not been implicated in the crime, abuse, or neglect that led to the interview gave his or her consent. Consent by the parent or guardian would have to be fully informed and be in writing. The consent would have to be limited; for instance, for a period of months or years. The consent must also be revocable in case the parent or guardian changes his or her mind at any point in the future. Enactment of the bills would go a long way in restoring dignity and a sense of control to child victims and witnesses and their families.

For:

When a child is a witness to a crime or is a victim, or suspected victim, of child abuse, neglect, or physical and/or sexual assault, getting an accurate statement of what happened from the child's perspective can be a crucial part of an investigation. These interviews must be conducted in a child-friendly manner and must be legally sound (e.g., not use leading questions) and developmentally sensitive. Interviewers must complete a three-day training on the state's forensic interviewing protocol followed by participation in an ongoing peer

review process. Having one's interview critiqued by colleagues can be an important learning opportunity, as can be watching how a colleague successfully interviewed a child with a particular type of disability or who had experienced an uncommon trauma.

The bills would allow these videorecorded forensic interviews to be used by statutorily authorized persons who worked in counties other than the one in which the interview statements were taken. Besides requiring the consent of the minor child's parent or guardian, the bills would also require all individuals participating in training sessions in which the videorecorded forensic statements would be used to sign a nondisclosure agreement. In this way, the bills would protect the confidentiality of each child witness. If a person violated the nondisclosure agreement, he or she could be charged with a misdemeanor offense punishable by up to 93 days in jail or a fine of up to \$500, or both, under current law, which prohibits the intentional release of a videorecorded statement in violation of the provisions pertaining to the videorecorded forensic interviews.

Against:

No arguments were offered in opposition to the bills.

POSITIONS:

A representative of the Michigan Chapter of the National Children's Alliance testified in support of the bills. (2-20-18)

A representative of CARE House, Oakland County, testified in support of the bills. (2-20-18)

The Michigan Domestic and Sexual Violence Prevention and Treatment Board indicated support for the bills. (2-27-18)

Legislative Analyst: Susan Stutzky
Fiscal Analyst: Robin Risko

■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.