

Legislative Analysis



REQUIRE CONSENT FOR USE OF VIDEORECORDED WITNESS STATEMENTS

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

House Bill 5402 (proposed H-2 substitute)
Sponsor: Rep. Diana Farrington

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

House Bill 5403 (proposed H-2 substitute)
Sponsor: Rep. Sherry Gay-Dagnogo, M.Ed.

Committee: Judiciary
Complete to 2-16-18

SUMMARY:

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 was released to an authorized entity for training purposes.

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 Child Protective Services or law enforcement. Forensic interviews with children must follow protocols implemented under the Child Protection Law. 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, if authorized by the prosecutor of the county in which the interview had been conducted and only for custodians in that county.

“Custodian of the videorecorded statement” 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 require the consent of a minor witness’s nonoffending parent or legal guardian 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 within the Revised Judicature Act, entitled “Evidence” (MCL 600.2163a).

House Bill 5403 would amend the juvenile code, a chapter within the Probate Code (MCL 712A17b).

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.

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.

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■ 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.