

VIDEORECORD CHILD FORENSIC INTERVIEWS

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House Bill 6290 as introduced
Sponsor: Rep. Pamela Hornberger

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

House Bill 6291 as introduced
Sponsor: Rep. David LaGrand

House Bill 6292 as introduced
Sponsor: Rep. Jeff Yaroch

Committee: Judiciary
Complete to 9-19-22

SUMMARY:

The bills would amend different acts to do all of the following:

- Require an electronic recording of an interview of a child conducted in a child assessment center in a child abuse or neglect investigation. (“Electronic recording” refers to a videorecording of a witness statement.) (HB 6292)
- Allow an exception from the above requirement for good cause, such as equipment failure or an exigent circumstance. (HB 6292)
- Allow a hearing officer in a hearing pertaining to a Central Registry case to consider a videorecorded statement. (HB 6291)
- Allow a videorecorded statement to be admissible as evidence at trial, and also admissible at a preliminary examination, under certain conditions. (HB 6291)
- Eliminate a reference to the Department of Health and Human Services (DHHS) currently contained in the definition of “custodian of the videorecorded statement.” (HB 6291)
- If a copy of a videorecorded statement is ordered to be given to the defense in certain proceedings, require the court order to specify who may or shall view it. (HBs 6291 and 6290)
- Increase the penalty for unauthorized disclosure of a statement. (HBs 6290 and 6291)
- Provide that a videorecorded statement must be retained under county protocols established under section 8 of the Child Protection Law. (HBs 6290 and 6291)

House Bill 6292 would add a new section to the Child Protection Law, which pertains to complaints of child abuse or child neglect made to Children’s Protective Services (CPS) and how complaints are handled. At the time a child is interviewed in an **accredited or creditable child assessment center** under the protocols established by the county as required under section 8(6) of the act, the bill would require the person conducting the interview to make an electronic recording of the interview in its entirety, absent good cause, including, but not limited to, inoperability of the recording equipment or other exigent circumstances. The recording would have to be started at the beginning of the interview and could not be turned off until the interview was completed.

Accredited or creditable child assessment center would mean a facility or service provider that has received accreditation or is eligible for accreditation from the National Children’s Alliance.

A custodian of the videorecorded statement would have to retain, and allow access to, electronic recordings in the same manner as provided under section 2163a of the Revised Judicature Act (as revised by HB 6291).

Failure to make an electronic recording of an interview under the new provision, including failure to record the interview in its entirety, would not prevent a forensic interviewer, the individual being interviewed, or other witness present during the taking of the statement from testifying in court as to the circumstances and content of the individual’s statement if the court determines that the statement is otherwise admissible.

MCL 722.638f

House Bills 6290 and 6291 would respectively amend Chapter XIIA of the Probate Code (which is known as the juvenile code) and the Revised Judicature Act (RJA). Provisions in each of those two acts allow special accommodations for a witness who is under 16 years old or developmentally disabled *and* who is an alleged victim of abuse or criminal sexual conduct, although the RJA also applies to vulnerable adults. The special accommodations apply to criminal prosecutions and juvenile proceedings and include, among other things, videotaping witness statements.

Failure to record an interview

Failure to make a videorecording of an interview under the bills, including failure to record the interview in its entirety, would not prevent a forensic interviewer, the individual being interviewed, or other witness present during the taking of the videorecorded statement from testifying in court as to the circumstances and content of the individual’s statement if the court determines that the testimony is otherwise admissible.

Use of a videorecorded statement by a court

House Bill 6290 would amend the juvenile code to apply the provisions pertaining to videorecorded statements to a proceeding brought under section 7j of the Child Protection Law (***central registry cases***). [Section 7j of the Child Protection Law, which was added by 2022 PA 64, takes effect November 1, 2022. Among other things, section 7j allows an individual who has been placed on the ***central registry*** to request, and requires a court to request, that the individual’s name be removed from the central registry if the individual prevails in a motion to the convicting court that the individual was not convicted of an offense that requires listing on the registry or that the conviction that placed the individual on the registry has been expunged.]

Central registry, as defined the Child Protection Law, means a repository of names of individuals who are identified as perpetrators related to a ***central registry case*** in DHHS’s statewide electronic case management system.

Central registry case means that DHHS confirmed that a person responsible for the child’s health or welfare committed serious abuse or neglect, sexual abuse, or sexual

exploitation of a child or allowed a child to be exposed to or have contact with methamphetamine production.

House Bill 6291 would amend the RJA to revise the purposes for which a court could consider a videorecorded statement in a proceeding to include one or more of the following:

- Admission as evidence at all pretrial proceedings (current law). Under the bill, this could include admission at the preliminary examination *in addition to* (but not instead of) the live testimony of the witness *if* the statement was taken according to the forensic interviewing protocol implemented as required under section 8 of the Child Protection Law.
- Admission for impeachment purposes (current law). The bill would add that if any part of a videorecorded statement were admitted for impeachment purposes, the entire statement would be admissible.
- Consideration by the court in determining the sentence. (Current law.)
- Consideration by a hearing officer in a hearing pertaining to a central registry case held under section 7j of the Child Protection Law. (An individual who is the subject of a report or record may request DHHS to amend an inaccurate report or record. If the request is denied, the individual may request a hearing to review the request for amendment of the report or record.)
- As a factual basis for a no contest plea or to supplement a guilty plea. (Current law.)
- Admission as evidence at trial, if the admission is consistent with any requirements of the confrontation clause of the Sixth Amendment to the U.S. Constitution and if the statement was taken according to the forensic interviewing protocol implemented as required by section 8 of the Child Protection Law.

Copy of videorecorded statement provided to the defense

Both acts now provide that a defendant or respondent in an abuse or neglect case has a reasonable right to view and hear the videorecorded statement at a reasonable time before the defendant's pretrial or trial of the case or before the statement is entered into evidence. House Bill 6291 (RJA) would specify that this must be done no later than 10 days before the court proceeding and require that this be done for a hearing held on a petition under section 7j of the Child Protection Law (concerning a central registry case).

Currently, in a child abuse or neglect proceeding, a court may order that a copy of the videorecorded statement be given to the defense in preparation for a court proceeding and under protective conditions. The bills would require the order to specify who *may* (HB 6291) or *is required to* (HB 6290) view the videorecorded statement, indicate the time by which the recording is required to be returned, and state a reason for the release of the videorecorded statement. House Bill 6291 (RJA) would allow the protective conditions to include a prohibition on defense counsel providing a defendant with their own copy of the videorecorded statement or a prohibition on a defendant proceeding pro se from receiving or retaining their own copy. In addition, the order could include any other protective conditions the court considered necessary.

Penalty

Currently, a person who intentionally releases a videorecorded statement in violation of the RJA or the juvenile code is guilty of a misdemeanor punishable by imprisonment for up to 93 days or a fine of up to \$500, or both. The bills would increase the maximum term of

imprisonment to one year and the maximum fine to \$2,500. Under the bills, the amended sections would not affect the ability to investigate, arrest, prosecute, or convict an individual for any other violation of Michigan law.

Definition of “custodian of the videorecorded statement”

House Bill 6291 (RJA) would remove the DHHS from the definition of *custodian of the videorecorded statement* for purposes of the act. (*Custodian of the videorecorded statement* would, under the RJA, the juvenile code, and the Child Protection Law, mean the investigating law enforcement agency, prosecuting attorney, or Department of the Attorney General or another person designated under the county protocols established as required by section 8 of the Child Protection Law.)

Retention of videorecorded statements

The bills would require a videorecorded statement to be retained under the county protocols established under section 8 of the Child Protection Law (which references protocols developed by the Governor’s Task Force on Children’s Justice and published in certain department publications), and HB 6291 (RJA) would require a videorecorded statement to adhere to the forensic interviewing protocol implemented as required in section 8 of the Child Protection Law.

Further, both bills would specify that DHHS is not responsible for storing or retaining a videorecorded statement. (Currently, retention of videorecordings is governed by protocols established by county prosecutors. In general, videorecordings are likely to be retained at the facility in which the interview took place. In a criminal investigation, the investigating law enforcement agency or court, or both, would likely retain and store forensic videorecordings. Access to the videorecordings is limited, and only those authorized by statute may view them, and then only for authorized purposes.)

MCL 600.2163a (HB 6291, Revised Judicature Act)
MCL 712A.17b (HB 6290, juvenile code)

The bills are all tie-barred to each other, which means that none of the bills could take effect unless all of the bills were enacted. Each bill would take effect 180 days after its enactment.

BACKGROUND:

Bills addressing the electronic recording of interviews conducted in a child assessment center in a child abuse or neglect investigation were introduced in the House of Representatives in the 2013-14, 2015-16, and 2017-18 legislative sessions. House Bills 6290, 6291, and 6292 are almost identical to House Bills 4298, 4299, and 4300 of the 2017-18 legislative session, which were passed by the House.

FISCAL IMPACT:

The bills would have an indeterminate fiscal impact on the state and on local units of government. Given the increase in the maximum term of imprisonment and the increase in the amount of fines that could be assessed, the bills could increase costs on local correctional systems and could increase funding distributed to public and county law libraries.

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 public and county law libraries, which are the constitutionally designated recipients of those revenues. The fiscal impact to the state and to local courts would depend on how provisions of the bills affected caseloads in the courts and the related administrative costs. It is difficult to project the actual fiscal impact to courts due to variables such as law enforcement practices, prosecutorial practices, judicial discretion, case types, and complexity of cases.

The bills would have a minimal fiscal impact on DHHS. Under the provision of the bills, DHHS is no longer required to retain videorecordings, which may decrease costs, depending on the number of recordings that have previously been stored and the number of requests that have been received to view them.

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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.