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SFA**BILL ANALYSIS**

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Senate Bill 1356 (as introduced 5-23-02)
Sponsor: Senator Bev Hammerstrom
Committee: Judiciary

Date Completed: 9-24-02

CONTENT

The bill would amend the Revised Judicature Act (RJA) to revise the procedures for securing and using videotape statements of witnesses in some cases. The bill would do all of the following:

- Refer to "videorecorded", rather than "videotape", statements.**
- Expand the allowable uses of a videorecorded statement.**
- Require that a videorecorded statement conform to the protocol implemented under the Child Protection Law (CPL).**
- Allow a videorecorded statement to be used for training the custodians of the statement on the CPL protocol, if authorized by the prosecuting attorney.**
- Allow the release of a videorecorded statement for law enforcement purposes.**
- Revise the conditions under which a defendant and his or her attorney may view a videorecorded statement.**
- Provide that a videorecorded statement that became part of a court record would be subject to an order to protect the privacy of the witness.**
- Specify that a videorecorded statement would not be subject to release under any other statute or to disclosure under the Michigan Court Rule governing discovery in criminal cases.**
- Establish a criminal penalty for releasing a videorecorded statement in violation of the RJA.**

Videorecorded Statement

The RJA allows a law enforcement agency to take a videotape statement of a witness before the normally scheduled date of the defendant's preliminary examination. "Witness" means a person who is under 16 years of age or who is 16 or older with a developmental disability, and who is an alleged victim of any of the following crimes:

- First-, second-, third-, or fourth-degree child abuse.
- Involvement in child sexually abusive activity or material.
- First-, second-, third-, or fourth-degree criminal sexual conduct (CSC).
- Assault with intent to commit CSC.

The bill would refer to a "videorecorded" statement rather than a "videotape" statement. "Videorecorded statement" would mean a witness's statement taken by a custodian of the videorecorded statement as provided in the RJA, but would not include a videorecorded deposition taken instead of live testimony. "Custodian of the videorecorded statement" would mean the Family Independence Agency (FIA), investigating law enforcement agency, prosecuting attorney, or Department of Attorney General or another person designated under the county protocols established under the CPL. (The Child Protection Law requires that, in

each county, the prosecuting attorney and the FIA establish procedures for involving law enforcement officials in cases of suspected child abuse or child neglect reported to the FIA. In each county, the prosecuting attorney and the FIA must adopt and implement standard child abuse and neglect investigation and interview protocols using as a model protocols developed by the Governor's Task Force on Children's Justice.)

Use and Release of Videorecorded Statements

Taking a Statement. The RJA provides that, in order to avoid excessive questioning of a witness, the investigating law enforcement agency may take a videotape of a witness before the normally scheduled date for the defendant's preliminary examination. The bill specifies, instead, that a custodian of the videorecorded statement could take a witness's videorecorded statement before the normally scheduled date for the preliminary examination.

Consideration in Court Proceedings. The RJA allows a videotape statement to be considered in court proceedings only for one or more of the following:

- Admission as evidence at all pretrial proceedings, except that it may not be introduced at the preliminary examination instead of the witness's live testimony.
- Admission for impeachment purposes.
- Consideration by the court in determining the sentence.

The bill would allow a videorecorded statement to be considered in court proceedings for those purposes and as a factual basis for a no-contest plea or to supplement a guilty plea.

Content of a Statement. The RJA provides that, in a videotape statement, the questioning of the witness should be full and complete and must include, but is not limited to, all of the following:

- The time and date of the alleged offense or offenses.
- The location and area of the alleged offense or offenses.
- The relationship, if any, between the witness and the accused.
- The details of the offense or offenses.
- The names of any other people known to the witness who may have personal knowledge of the alleged offense or offenses.

Under the bill, the information listed above would have to be included in a videorecorded statement "if appropriate for the witness's developmental level". The bill also would require that the questioning of the witness be in accordance with the forensic interview protocol implemented as required by the CPL.

Release of a Statement. The bill specifies that a custodian of the videorecorded statement could release or consent to the release or use of a videorecorded statement, or copies of it, to a law enforcement agency, an agency authorized to prosecute the criminal case to which the videorecorded statement related, or an entity that was part of the county protocols established under the CPL.

If authorized by the prosecuting attorney in the county in which the statement was taken, a videorecorded statement could be used for purposes of training the county's custodians of the videorecorded statement on the forensic interview protocol implemented under the CPL.

Defendant's Access to a Statement. Under the RJA, the defendant and his or her attorney have the right to view and hear a videotape statement at least 48 hours before the normally scheduled date for the defendant's preliminary examination. Under the bill, instead, the

defendant and his or her attorney would have the right to view and hear a videorecorded statement before the defendant's preliminary examination. Upon request, the prosecuting attorney would have to provide the defendant and his or her attorney with reasonable access and means to view and hear the videorecorded statement at a reasonable time before the defendant's pretrial or trial of the case. On good cause shown, the court could order that a copy of the videorecorded statement be given to a defendant to use for purposes of a court proceeding and that it be returned without copying.

Limited Disclosure. A videorecorded statement that became part of the court record would be subject to a protective order of the court for the purpose of protecting the privacy of the witness. A videorecorded statement could not be copied or reproduced in any manner except as provided in the RJA.

A videorecorded statement would be exempt from disclosure under the Freedom of Information Act, would not be subject to release under another statute, and would not be subject to disclosure under the Michigan Court Rule governing discovery in a criminal proceeding. The production or release of a transcript of a videorecorded statement would not be prohibited, however.

Criminal Penalties

Except as provided in the RJA, an individual, including a custodian of the videorecorded statement, the witness, or the witness's parent, guardian, guardian ad litem, or attorney, could not release or consent to release of a videorecorded statement or a copy of it.

Intentionally releasing a videorecorded statement in violation of the RJA would be a misdemeanor punishable by up to 93 days' imprisonment, a maximum fine of \$500, or both.

MCL 600.2163a

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

The bill would have an indeterminate fiscal impact on the State due to increased administrative costs for any additional training necessary for the custodians of the videorecordings.

There are no data to indicate how many offenders would be convicted of intentionally releasing a videorecorded statement. An offender would be guilty of a misdemeanor punishable by up to 93 days' incarceration in a local facility. Local units of government would incur the costs, which vary by county from \$27 to \$65 per day.

The bill would no fiscal impact on the courts or on State or local law enforcement agencies.

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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.