

VIDEORECORD CHILD FORENSIC INTERVIEWS

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House Bill 4298 as introduced
Sponsor: Rep. Robert L. Kosowski

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

House Bill 4299 as introduced
Sponsor: Rep. Jim Runestad

House Bill 4300 as introduced
Sponsor: Rep. Pamela Hornberger

Committee: Judiciary
Complete to 5-1-17

SUMMARY:

Taken together, the bills would amend various acts to:

- Require an electronic recording of an interview of a child in a child abuse or neglect investigation. "Electronic recording" refers to a video recording of a witness statement.
- Allow that statement to be considered in a hearing to expunge irrelevant or inaccurate evidence from the Central Registry (of child abuse and neglect).
- Specify who may view a videorecorded statement.
- Increase the penalty for unauthorized disclosure of a statement.
- Specify how long a court must retain a videorecorded statement.

The bills are tie-barred to each other, meaning no bill could become law unless all are enacted. The bills would take effect 90 days after enactment.

House Bill 4298 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 (MCL 722.638f). At the time a child is interviewed in an accredited or accreditable child assessment center at the request of a Department of Health and Human Services investigator or law enforcement officer, the bill would require the person conducting the interview to make an electronic recording of the interview in its entirety. The recording would have to be started at the beginning of the interview and not be turned off until the interview was completed.

The Department of Health and Human Services (DHHS) would have to allow access to and retain electronic recordings in the same manner as provided by Section 2163a of the Revised Judicature Act (as revised by House Bill 4299).

(Currently, retention of video recordings are governed by protocols established by county prosecutors. In general, video recordings are likely to be retained at the facility in which the interview took place. In a criminal investigation, the investigating law enforcement

agency and/or court would likely retain and store forensic video recordings. Access to the video recordings is limited and only those authorized by statute may view them and then only for authorized purposes.)

House Bills 4299 and 4300 would make similar revisions to the Revised Judicature Act (MCL 600.2163a) and Juvenile Code (MCL 712A.17b), respectively.

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. The special accommodations apply to criminal prosecutions and juvenile proceedings and include, among other things, videotaping witness statements.

Use of a videorecorded statement by a court

A court may consider a videorecorded statement in a proceeding only if authorized in statute. For instance, a videorecorded statement may be considered by the court in determining the sentence or used as a factual basis for a no contest plea or to supplement a guilty plea. **The bills** would also allow a videorecorded statement to be considered by a hearing officer in a hearing pertaining to a Central Registry case held under Section 7(6) of the Child Protection Law.

[Section 7(6) of the Child Protection Law establishes a mechanism by which the subject of a report or record made under the act may request the Department of Health and Human Services (DHHS) to hold a hearing to determine whether the report or record in whole or in part should be amended or expunged from the Central Registry. "Central Registry" is the system maintained at the DHHS that is used to keep a record of all reports filed with the department under the Child Protection Act in which relevant and accurate evidence of child abuse or neglect is found to exist.

*Thus, in a section pertaining to use of videorecorded statements by a court in a court proceeding, **the bills** would allow the videorecorded statements to be used in a departmental hearing.]*

Copy of videorecorded statement provided to the defense

The RJA and Juvenile Code require, upon request, the prosecuting attorney to provide the defendant and, if represented, the defendant's 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. **The bills** would also apply this requirement to a probation hearing or a hearing held under Section 7(6) of the Child Protection Law (petitions to amend or expunge a Central Registry record). In doing so, the bills would allow access to video recordings of forensic interviews to a subject of a Central Registry case and for a purpose other than for the prosecution or defense of a criminal abuse or neglect allegation. (Note: Not all Central Registry cases result in criminal prosecution; therefore, a local prosecutor may not be in possession of the videorecorded statement.)

Further, 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 can 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.

Penalty

Currently, a person who intentionally releases a videorecorded statement in violation of the RJA or Juvenile Code is guilty of a misdemeanor punishable by imprisonment for not more than 93 days and/or a fine of not more than \$500. **The bills** would increase the maximum term of imprisonment to one year and the maximum fine to \$1,000.

Retention of videorecorded statements

The bills would require a court to retain a videorecorded statement as required by state Supreme Court rule. All other entities would have to store a videorecorded statement made under the bills in accordance with the county protocols established under Section 8 of the Child Protection Act, which references protocols developed by the Governor's Task Force on Children's Justice and published in certain department publications.

FISCAL IMPACT:

Corrections and the Judiciary:

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 for local libraries. New 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. The bill would have an indeterminate fiscal impact on the judiciary and local court funding units. The fiscal impact would depend on how the provisions of the bills affected caseloads and related administrative costs. Any increase in penal fine revenues would increase funding for local libraries, which are the constitutionally-designated recipients of those revenues.

DHHS and other governmental entities:

The bills would have a minimal fiscal impact on the State of Michigan and local units of government. The state currently considers the videorecording of the interviews of children during a child abuse or neglect investigation as a best practice. The bills' requirements that the Department of Health and Human Services must retain these video recordings and allow access to them may increase costs to the Department, depending upon the amount of recordings to be stored and the number of requests they receive to view them.

BACKGROUND:

These bills are similar to House Bills 4547-4549 of the 2015–2016 legislative session. For a discussion of those bills, see:

<http://www.legislature.mi.gov/documents/2015-2016/billanalysis/House/pdf/2015-HLA-4547-F6E35752.pdf>

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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.