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BILL ANALYSIS



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Senate Bill 790 (as introduced 2-11-20)
Sponsor: Senator Jim Runestad
Committee: Judiciary and Public Safety

Date Completed: 9-16-20

CONTENT

The bill would amend the Revised Judicature Act to do the following:

- **Require a court to make a video recording of a public court proceeding available for public access, if one had been made.**
- **Require the video recording to be made available within 10 days after it was made and require it to be available for at least 60 days after it was made.**
- **Allow the video recording to be made available in any manner, including making it accessible from a public website or a link provided by electronic mail on request, providing a physical copy of the recording, or making it available for viewing at the courthouse.**
- **Allow a court to require a person who requested a video recording to complete a form approved by the State Court Administrative Office (SCAO).**
- **Allow a court to require the person to pay a maximum \$10 fee for each copy of each court proceeding requested.**
- **Specify that the bill would not require a court to make a video recording of a court proceeding.**

Under the bill, if a court made a video recording of a public court proceeding, it would have to make the recording available for public access as required under the bill.

A video recording that was made available for public access would have to be a complete recording of all public portions of the court proceeding and could not be edited to remove any portion of the recording that was viewable to any individual who was physically present at the proceeding. A video recording to which the bill applied would have to be made available for access within 10 days after the date the recording was made and continue to be available for at least 60 days after the date the recording was made.

A video recording to which the bill applied would have to be made available in any manner, including any of the following:

- Making the recording accessible from a public website.
- Making the recording accessible from a link provided by electronic mail on request.
- Providing a physical copy of the recording.
- Making the recording available for viewing at the courthouse.

A court could require a person who requested a video recording to which the bill applied to complete a form approved by SCAO that included all of the following:

- The case name and number.
- The date, time, and location of and the name of the judge who presided over the court proceeding.
- If less than the entire proceeding were requested, the portion requested.
- An acknowledgment that the recording was not the official record of the proceeding.
- The requesting person's agreement that it would comply with all laws regarding privacy of the information contained in the recording and would not public or disseminate any content that could be protected from disclosure.

If a video recording to which the bill applied were provided in physical form, the court could require a person to pay a maximum fee of \$10 for each copy of each court proceeding requested.

A video recording made available under the bill would not be the official record of a court proceeding. The bill would not require a court to make a video recording of a court proceeding.

The bill also would not apply to a court proceeding or portion of a court proceeding if the court had ordered the record sealed or access to the proceeding restricted as allowed by court rule or statute.

A video recording of a public proceeding made available under the bill would be a public document for purposes of Section 248 of the Michigan Penal Code. This provision would not limit the ability to prosecute under any other applicable law the false making or alteration of a video recording of a public proceeding made available under the bill. (Generally, under Section 248 of the Penal Code, a person who falsely makes, alters, forges, or counterfeits certain documents, including a public record, with intent to injure or defraud another person, is guilty of a felony punishable by up to 14 years' imprisonment.)

Proposed MCL 600.1429

Legislative Analyst: Stephen Jackson

FISCAL IMPACT

The bill would have a minor negative fiscal impact on SCAO and an indeterminate and minor fiscal impact on local units of government.

The fiscal impacts on the State and local units of government are expected to be minor because the bill would not require courts to make video recordings; however, for those that do, making them available upon request for a nominal fee of \$10 likely would not create a large expense for local courts, and could generate a small amount of revenue in addition to offsetting the expense of distributing video files. This would not have been the case thirty, or even twenty, years ago when video media had to be transferred via tape recording or disk. However, with modern video technology available, including digital cameras, cloud-based data storage, etc., the actual transfer of a video file, or access to that file online, from a court to an individual should not be expensive, and likely would not exceed the nominal fee of \$10.

The SCAO would have some minor upfront costs in the development and distribution of forms, or at least the approval of those forms drafted by local courts.

Fiscal Analyst: Michael Siracuse

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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.