

Legislative Analysis



VIDEO TESTIMONY OF CHILD ABUSE VICTIM

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House Bill 5270 without amendment
Sponsor: Rep. Tom McMillin

House Bill 5271 without amendment
Sponsor: Rep. Robert L. Kosowski

House Bill 5272 without amendment
Sponsor: Rep. Thomas B. Hooker

Committee: Judiciary
Complete to 6-2-14

A SUMMARY OF HOUSE BILLS 5270-5272 AS REPORTED BY COMMITTEE

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 videorecording of a witness statement.
- Allow that statement to be considered in a probation violation hearing or hearing to expunge irrelevant or inaccurate evidence from the Central Registry.
- 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 that a single bill could not become law unless all are enacted.

House Bill 5270 would add a new section to the Child Protection Law (MCL 722.638f), which pertains to complaints of child abuse or child neglect made to Children's Protective Services (CPS) and how complaints are handled. The bill would require a department investigator or law enforcement officer who interviews a child in an accredited or an accreditable child assessment center (or arranges an interview of a child in one of those locations, also known as child advocacy centers) 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 Human Services (DHS) would have to allow access to and retain electronic recordings in the same manner as provided by House Bill 5271.

House Bills 5271 and 5272 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.

The bills would allow a videorecorded statement to be considered in a hearing or in a proceeding held to determine if a report or record in the Central Registry should be amended or expunged on the grounds that it is not relevant or accurate evidence of abuse or neglect. ("Central Registry" is the system maintained at DHS 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.)

In a child abuse or neglect proceeding, a court may order that a copy of the videorecorded statement be given to the defense. The bills would allow the order to specify who may 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.

Currently, a person who intentionally releases a videorecorded statement in violation of the act 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.

Further, the bills would require a court to retain a videorecorded statement for at least one year after final resolution of the case. This would include, but not be limited to, all appellate proceedings. The storage must be 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.

Lastly, House Bill 5271 would allow the videorecorded statements to also be considered by a court in a probation violation hearing and require a prosecutor, upon request, to provide the defense with a means to view and hear the videorecorded statement before a probation hearing or a hearing as described above pertaining to amending or expunging irrelevant or inaccurate evidence of child abuse or neglect in the Central Registry.

FISCAL IMPACT:

House Bill 5270 would have a minimal, and likely negligible, fiscal impact on the state and local units of government as the state has as a best practice to videorecord child interviews during a child abuse or neglect investigation. A fiscal analysis on the impact on state or local corrections agencies is in process.

BRIEF DISCUSSION OF THE ISSUES:

Support

Supporters say that if all forensic interviews of child victims or witnesses of sexual abuse or crimes were videotaped, there would be a clear record of exactly what a child said to the interviewer. Such a record could prevent undue influence on a child by an interviewer through misleading questions or body language, or written reports that did not accurately reflect the words and/or intonation of the child. Many, if not most, child

advocacy centers already videotape child forensic interviews and see doing so as a best practice. The State of Michigan Governor's Task Force on Child Abuse and Neglect and Department of Human Services, in its "Forensic Interviewing Protocol" (3rd Edition), recommends "as a best practice the videorecording of investigative forensic interviews of children at child advocacy centers or in similar settings." The bills would, among other things, codify this recommendation.

Opposition

Critics say that a number of the provisions in the bills are problematic. For instance, some say access to the videotapes is too easy, especially if the parent is the one suspected or accused of harming the child. Abusers and molesters are master manipulators and could use information gleaned from the taped interviews to inflict further damage to the child. Some agencies also have concerns regarding the cost of the equipment, both the cost of initial purchase of the equipment and for maintenance and upgrades. Other concerns include that the bills could lead to an overemphasis on videotaping the interview rather than on the evidence; related storage and duplication costs; and interfering with the rapport between the child and the interviewer, increasing a child's anxiety and making it more difficult to create a relaxed environment. Further, not all child advocacy centers are accredited; reportedly one reason is that it is not always in the child's best interest to have the interview taped.

POSITIONS:

A representative of the Gladwin Baptist Church testified in support of the bills. (3-30-14)

A representative of the Michigan Chapter of the National Children's Alliance testified in support of the bills. (3-20-14)

Citizens for Parental Rights indicated support for the bills. (3-13-14)

Parentalrights.org indicated support for the bills. (3-13-14)

The Children's Advocacy Center, Ottawa County indicated support for the bills. (3-20-14)

The Department of Human Services does not have a position on the bills, but did express a number of concerns.

The Michigan Sheriffs' Association did not take a position on the bills, but expressed concerns with the potential expense for compliance and with making the videotaping a mandate. (3-13-14)

The Supreme Court Administrative Office has a neutral position on the bills. (3-14-14)

A representative of the Prosecuting Attorneys Association of Michigan testified in opposition to the bills. (3-20-14)

The Washtenaw County Child Advocacy Center submitted testimony in opposition to the bills. (3-20-14)

The Michigan Coalition to End Domestic and Sexual Violence indicated opposition to the bills. (3-20-14)

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.