

VIDEORECORDED WITNESS STATEMENTS

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Senate Bill 813 (S-3) as passed by the Senate

Sponsor: Sen. John Cherry

House Committee: Criminal Justice

Senate Committee: Civil Rights, Judiciary, and Public Safety

Complete to 12-10-24

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

SUMMARY:

Senate Bill 813 would amend the Revised Judicature Act to modify the purposes for which a *videorecorded statement* given by a *witness* may be admitted as evidence in proceedings related to various violent, assaultive, or abusive crimes.¹ Current law allows for the admission of these statements in all pretrial and trial proceedings except for preliminary examinations (which require in-person testimony by a witness) and also allows the use of these statements for impeachment purposes in any proceeding. The bill would newly allow for the admission of videorecorded statements in preliminary examinations in lieu of the witness's live testimony, as well as restrict the admission of videorecorded statements for impeachment purposes exclusively to trial proceedings.

Videorecorded statement means a witness's statement taken by a lawful *custodian of the videorecorded statement* that includes the date and time the statement was taken, identifies the persons present in the room, and identifies whether the persons were present for the entirety (or a portion) of the videorecording.

Witness means an alleged victim of an offense listed above who is any of the following:

- A person under 16 years of age.
- A person 16 years of age or older with a developmental disability.
- A *vulnerable adult*.²

Custodian of the videorecorded statement means the Department of Health and Human Services (DHHS), investigating law enforcement agency, prosecuting attorney, the Department of the Attorney General, or another person designated under the county protocols established pursuant to section 8 of the Child Protection Law. [The bill would remove DHHS from this definition.]

¹ The relevant proceedings are those involving child abuse, child sexually abusive activity, first-degree criminal sexual conduct, assault with intent to commit criminal sexual conduct, home invasion, vulnerable adult abuse, operation of an unlicensed adult foster care facility, embezzlement by an agent or custodian, or various other assaultive crimes covered by section 9a of the Code of Criminal Procedure.

² A *vulnerable adult* is defined by section 145m of the Michigan Penal Code as an individual 18 or older who, because of age, developmental disability, mental illness, or physical disability, requires supervision or personal care or lacks the personal and social skills required to live independently; a person 18 or older who is unable to protect themselves from abuse, neglect, or exploitation because of a mental or physical impairment or advanced age and who is suspected of being abused, neglected, or exploited; or a child who is placed in an adult foster care family home or an adult foster care small group home under the child care licensing act, 1973 PA 116.

The bill would also modify the provisions of the act that regulate the release of videorecorded witness statements to defendants. Currently, the act requires a prosecuting attorney, upon request, to provide the defendant and their attorney (if applicable) with access and means to view and hear the witness's videorecorded statement at a reasonable time before the defendant's pretrial or trial. The bill would newly restrict the release of a copy of the videorecorded statement to the defendant's attorney only and would prohibit the defendant's attorney from providing the defendant with access to the copy or providing the defendant with their own copy of the recording. The bill also would allow *pro se* defendants (i.e., defendants representing themselves in court) access to a written transcript of the witness's videorecorded statement only and not to the recording itself. Under the bill, court orders regarding the release of these statements to the defense would, at a minimum, be required to include the following:

- A list of persons who may view the videorecorded statement.
- The time by which the videorecorded statement is required to be returned.
- A reason for the release of the videorecorded statement.

The bill would also increase the penalties for individuals who intentionally release a videorecorded statement in violation of a court order, which is currently a misdemeanor punishable by imprisonment for up to 93 days, a fine of up to \$500, or both. Under the bill, these penalties would be increased to a maximum term of imprisonment of one year and a maximum fine of \$2,500.

In addition, the bill would newly require that videorecorded statements must adhere to and be retained under the forensic interviewing protocol established by section 8 of the Child Protection Law. The bill would also provide that, if a videorecorded statement is unavailable or fails to play in its entirety, a forensic interviewer may testify in court as to the circumstances and content of the witness's statement (as long as the court determines the testimony is otherwise admissible).

The bill would also remove the act's requirement that the custodian of a videorecorded statement must identify the persons present in the room during the recording and state whether those persons were present for the entire recording or only a portion of it. Finally, the bill would provide that DHHS is not responsible for storing or retaining videorecorded statements under the act.

The bill would take effect 180 days after being enacted.

MCL 600.2163a

FISCAL IMPACT:

Senate Bill 813 would have an indeterminate fiscal impact on local units of government. 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 or a fine of not more than \$500, or both. Under the bill, the imprisonment time would be increased to one year and the fine would be increased to \$2,500. The number of convictions that would result under provisions of the bill is not known. Increasing imprisonment time would increase costs related to county jails and/or local misdemeanor probation supervision. Costs of local incarceration in county jails and local misdemeanor probation supervision, and how those costs

are financed, vary by jurisdiction. Increasing the fine amount would result in an increase in funding for public and county law libraries, which are the constitutionally designated recipients of those revenues. The fiscal impact on local court systems would depend on how provisions of the bill affected court caseloads and 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.

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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.