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House Bill 4798 (Substitute H-3 as passed by the House)  
House Bill 4974 (Substitute H-3 as passed by the House)  
Sponsor: Representative Graham Filler (H.B. 4798)  
Representative Tenisha Yancey (H.B. 4974)  
House Committee: Judiciary  
Senate Committee: Judiciary and Public Safety

Date Completed: 2-3-22

### **CONTENT**

**House Bill 4798 (H-3) and House Bill 4974 (H-3) would amend the Crime Victim's Rights Act and Chapter VII (Grand Juries, Indictments, Informations and Proceedings Before Trial) of the Code of Criminal Procedure, respectively, to do the following:**

- **Require a prosecuting attorney to keep the personal information of a victim or witness, as applicable, confidential except under certain circumstances.**
- **Allow a court to order, on motion by a defendant, a prosecuting attorney to provide personal information to the defense counsel or the defendant.**
- **Specify that the bills would not authorize the disclosure of the confidential address of an Address Confidentiality Program participant.**
- **Specify that a person who was required to keep confidential or redact personal information and who intentionally and willfully disclosed that personal information in violation of the bill would be guilty of a misdemeanor.**

Specifically, the bills would add new sections to the Crime Victim's Rights Act and Chapter VII of the Code of Criminal Procedure to require, except as otherwise provided, a prosecuting attorney to keep a victim's or witness's, as appropriate, personal information confidential unless it was part of the res gestae of the charged crime.<sup>1</sup> "Personal information" would mean the following information of a victim or witness but would not include the location of a charged crime:

- Home address.
- Telephone number and cellular telephone number.
- Driver license number or official State personal identification card number.
- Social Security number.
- Date of birth.
- Place and address of employment.

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<sup>1</sup> According to *Black's Law Dictionary*, "res gestae" ("things done") means the events at issue, or other events contemporaneous with them. Generally, words or statements made about the res gestae are admissible as an exception to the hearsay rule (for example, excited utterances or present sense impressions).

- Employee identification number.
- Mother's maiden name.
- Demand deposit account, savings account, or checking account number, or other financial identification information.
- Credit card number.
- Email address.
- Internet identifier.
- Home address, telephone number, and cellular telephone number of a family member.

"Internet identifier" would mean a designation used for self-identification or routing used in posting on the internet or in other internet communications.

The prosecuting attorney would have to redact a victim's or witness's personal information to be kept confidential from any document provided to the defense counsel or the defendant and any document that the prosecuting attorney submitted as an ordinary court document or that would be entered into the court file.

The bills would not alleviate the obligation otherwise required under law to make a victim or witness available for interview by the other party.

On motion by the defendant, the court could order the prosecuting attorney to provide personal information to the defense counsel or the defendant. A motion would have to demonstrate that the personal information requested was reasonably necessary to provide an adequate defense and would have to explain the limited purpose for which the personal information was sought.

If the court granted a motion, the order would have to do all the following:

- Limit the disclosure of the personal information to the extent the disclosure was reasonably necessary to provide an adequate defense.
- Specify the limited purpose for which the personal information could be used.
- Except as provided, require the personal information to remain in the exclusive custody of the defense counsel or the defendant if the defendant were not represented by counsel.
- Include conditions and terms for the defense counsel or, if the defendant were not represented by counsel, the defendant, to provide the personal information to the defense counsel's or the defendant's agent, employee, or expert witness if necessary for a limited purpose approved by the court.
- Prohibit the reproduction, copying, or dissemination of the personal information unless authorized in the order.

The bills would not authorize the disclosure of the confidential address of an Address Confidentiality Program participant. "Confidential address" would mean that term as defined in the Address Confidentiality Program Act: the address of an Address Confidentiality Program participant's residence, as specified on an application to be a Program participant or on a notice of change of information that is classified confidential by the Department of the Attorney General.

The bills would not preclude the release of information to a victim advocacy organization or agency for the purpose of providing victim services.

A person who was required to keep confidential or redact personal information and who intentionally and willfully disclosed that personal information in violation of the bill would be guilty of a misdemeanor punishable by up to 93 days' imprisonment or a maximum fine of \$500, or both.

## **BACKGROUND**

Under Michigan Court Rule (MCR) 6.201(A)(1), in addition to disclosures required by MCL 767.94a, a party upon request must provide all other parties the names and addresses of all lay and expert witnesses whom the party may call at trial or, in the alternative, a party may provide the name of a witness and make the witness available to the other party for interview. (Michigan Compiled Laws 767.94a requires a defendant or his or her attorney to disclose to the prosecuting attorney upon request certain material or information within the possession or control of the defendant or his or her attorney, including the name and last known address of each witness other than the defendant whom the defendant intends to call at trial provided the witness is not listed by the prosecuting attorney.) Michigan Court Rule 6.201(B)(2) requires a prosecuting attorney to provide, upon request, each defendant with any police report and interrogation records concerning the case unless the report is part of a continuing investigation.

The question of whether MCR 6.201(A)(1) and MCR 6.201(B)(2) are separate and independent discovery obligations was addressed in a recent Michigan Court of Appeals case, *People v. Jack*, \_\_\_ Mich. App. \_\_\_ (2021) (Docket No. 354524), a case arising out of the prosecution of the defendant for first-degree child abuse and open murder.

In November 2018, the prosecutor provided defense counsel with discovery materials, which included a copy of the list of names of witness that could be called at trial. The prosecutor did not provide defense counsel with any contact information for any of the witnesses. The prosecutor also provided a redacted police report. Defense counsel requested the names and addresses of all witness and copies of the police reports.

In March 2020, defense counsel filed a supplemental discovery request for unredacted police reports. The prosecutor responded in an April 2020 email asserting that the contact information for potential witnesses was redacted in the police reports consistent with MCR 6.201(A)(1). Defendant filed a motion to compel discovery arguing that MCR 6.201(B)(2) did not allow the prosecutor to redact the police report unless it was related to an ongoing investigation or there was protective order.

At a hearing on the defendant's motion, the prosecutor argued that she was not required to provide the addresses or other contact information for witnesses under MCR 6.201(A)(1) asserting that she had made the witnesses available to defense counsel to interview. The prosecutor also argued that providing witness contact information to the defendant presented a safety issue for the witnesses. For these reasons, the prosecutor redacted the information from the police report before providing it to defense counsel. The defendant argued that the disclosure of the police reports under MCR 6.201(B)(2) was separate from disclosure of a witness list under MCR 6.201(A)(1). Defense counsel also argued that the defendant did not pose a risk of harm to any witnesses because he was in custody at the time of the hearing and would remain in custody until trial.

The trial court granted the defendant's motion to compel and ordered that the prosecutor to produce the unredacted police reports to defense counsel. In coming to its decision, the trial court concluded that MCR 6.201(A)(1) does not allow the prosecutor to redact police reports required to be disclosed under MCR 6.201(B)(2), and that the witness list is a separate and distinct disclosure from the production of police reports that contained witness information required by MCR 6.201(B)(2). The trial court noted that the police reports could be redacted

if they were part of a continuing investigation or the prosecutor could seek a protective order. The prosecutor appealed.

On appeal, the Court of Appeals affirmed the trial court's order and remanded the case for further proceedings. In its opinion, the Court stated that the plain language of MCR 6.201 is unambiguous. MCR 6.201(A)(1) requires the mandatory disclosure of witness lists while MCR 6.201(B)(2) requires a prosecuting attorney to provide each defendant with any police report and interrogation records concerning the case unless they are part of an ongoing investigation. The Court emphasized that MCR 6.201(A)(1) and MCR 6.201(B)(2) are two separate provisions that deal with two distinct disclosure requirements.

Legislative Analyst: Stephen Jackson

### **FISCAL IMPACT**

The bills would have an indeterminate, but likely negative, fiscal impact on State and local government. While it is possible that the bills could have an indirect, negative impact on costs for courts and local prosecuting offices due to increased motions, it also is possible the bills could indirectly create savings by preventing witness and evidentiary tampering. The degree to which any costs or savings would occur cannot be calculated.

Moreover, new misdemeanor arrests and convictions under the bill could increase resource demands on law enforcement, court systems, community supervision, and jails. However, it is unknown how many people would be prosecuted under the bill's provisions. Any additional revenue from imposed fines would go to local libraries.

Fiscal Analyst: Joe Carrasco  
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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.