

**SUBSTITUTE FOR
HOUSE BILL NO. 4299**

A bill to amend 1961 PA 236, entitled
"Revised judicature act of 1961,"
by amending section 2163a (MCL 600.2163a), as amended by 2012 PA
170.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 2163a. (1) As used in this section:

2 (a) "Custodian of the videorecorded statement" means the
3 ~~department of human services,~~ investigating law enforcement agency,
4 prosecuting attorney, or department of attorney general or another
5 person designated under the county protocols established as
6 required by section 8 of the child protection law, 1975 PA 238, MCL
7 722.628.

8 (b) "Developmental disability" means that term as defined in

1 section 100a of the mental health code, 1974 PA 258, MCL 330.1100a,
2 except that, for the purposes of implementing this section,
3 developmental disability includes only a condition that is
4 attributable to a mental impairment or to a combination of mental
5 and physical impairments and does not include a condition
6 attributable to a physical impairment unaccompanied by a mental
7 impairment.

8 (c) "Videorecorded statement" means a witness's statement
9 taken by a custodian of the videorecorded statement as provided in
10 subsection (5). Videorecorded statement does not include a
11 videorecorded deposition taken as provided in subsections (18) and
12 (19).

13 (d) "Vulnerable adult" means that term as defined in section
14 145m of the Michigan penal code, 1931 PA 328, MCL 750.145m.

15 (e) "Witness" means an alleged victim of an offense listed
16 under subsection (2) who is any of the following:

17 (i) A person under 16 years of age.

18 (ii) A person 16 years of age or older with a developmental
19 disability.

20 (iii) A vulnerable adult.

21 (2) This section only applies to the following:

22 (a) For purposes of subsection (1)(e)(i) and (ii),
23 prosecutions and proceedings under section 136b, 145c, 520b to
24 520e, or 520g of the Michigan penal code, 1931 PA 328, MCL
25 750.136b, 750.145c, 750.520b to 750.520e, and 750.520g. ~~7 or under~~
26 ~~former section 136 or 136a of the Michigan penal code, 1931 PA 328.~~

27 (b) For purposes of subsection (1)(e)(iii), 1 or more of the

1 following:

2 (i) Prosecutions and proceedings under section 110a, 145n,
3 145o, 145p, 174, or 174a of the Michigan penal code, 1931 PA 328,
4 MCL 750.110a, 750.145n, 750.145o, 750.145p, 750.174, and 750.174a.

5 (ii) Prosecutions and proceedings for an assaultive crime as
6 that term is defined in section 9a of chapter X of the code of
7 criminal procedure, 1927 PA 175, MCL 770.9a.

8 (3) If pertinent, the witness shall be permitted the use of
9 dolls or mannequins, including, but not limited to, anatomically
10 correct dolls or mannequins, to assist the witness in testifying on
11 direct and cross-examination.

12 (4) A witness who is called upon to testify shall be permitted
13 to have a support person sit with, accompany, or be in close
14 proximity to the witness during his or her testimony. A notice of
15 intent to use a support person shall name the support person,
16 identify the relationship the support person has with the witness,
17 and give notice to all parties to the proceeding that the witness
18 may request that the named support person sit with the witness when
19 the witness is called upon to testify during any stage of the
20 proceeding. The notice of intent to use a named support person
21 shall be filed with the court and shall be served upon all parties
22 to the proceeding. The court shall rule on a motion objecting to
23 the use of a named support person before the date ~~at which~~ **WHEN** the
24 witness desires to use the support person.

25 (5) A custodian of the videorecorded statement may take a
26 witness's videorecorded statement before the normally scheduled
27 date for the defendant's preliminary examination. The videorecorded

1 statement shall state the date and time that the statement was
2 taken; shall identify the persons present in the room and state
3 whether they were present for the entire ~~videorecording~~ **VIDEO**
4 **RECORDING** or only a portion of the ~~videorecording~~; **VIDEO RECORDING**;
5 and shall show a time clock that is running during the taking of
6 the videorecorded statement.

7 (6) A videorecorded statement may be considered in court
8 proceedings only for 1 or more of the following:

9 (a) ~~It may be admitted~~ **ADMISSION** as evidence at all pretrial
10 proceedings, ~~except that it may not be introduced~~ **INCLUDING**
11 **ADMISSION** at the preliminary examination ~~instead of~~ **IN ADDITION TO**
12 the live testimony of the witness **IF THE STATEMENT WAS TAKEN**
13 **ACCORDING TO THE FORENSIC INTERVIEWING PROTOCOL IMPLEMENTED AS**
14 **REQUIRED UNDER SECTION 8 OF THE CHILD PROTECTION LAW, 1975 PA 238,**
15 **MCL 722.628.**

16 (b) ~~It may be admitted~~ **ADMISSION** for impeachment purposes. **IF**
17 **ANY PART OF A VIDEORECORDED STATEMENT IS ADMITTED FOR IMPEACHMENT**
18 **PURPOSES, THE ENTIRE STATEMENT IS ADMISSIBLE.**

19 (c) ~~It may be considered~~ **CONSIDERATION** by the court in
20 determining the sentence.

21 (d) ~~It may be used~~ **USE** as a factual basis for a no contest
22 plea or to supplement a guilty plea.

23 **(E) CONSIDERATION BY A HEARING OFFICER IN A HEARING HELD UNDER**
24 **SECTION 7(6) OF THE CHILD PROTECTION LAW, 1975 PA 238, MCL 722.627.**

25 **(F) ADMISSION AS EVIDENCE AT TRIAL, SO LONG AS THE ADMISSION**
26 **IS CONSISTENT WITH ANY REQUIREMENTS OF THE CONFRONTATION CLAUSE OF**
27 **THE SIXTH AMENDMENT TO THE UNITED STATES CONSTITUTION AND IF THE**

1 **STATEMENT WAS TAKEN ACCORDING TO THE FORENSIC INTERVIEWING PROTOCOL**
2 **IMPLEMENTED AS REQUIRED BY SECTION 8 OF THE CHILD PROTECTION LAW,**
3 **1975 PA 238, MCL 722.628.**

4 (7) A videorecorded deposition may be considered in court
5 proceedings only as provided by law.

6 (8) In a videorecorded statement, the questioning of the
7 witness should be full and complete; shall be in accordance with
8 the forensic interview protocol implemented as required by section
9 8 of the child protection law, 1975 PA 238, MCL 722.628, or as
10 otherwise provided by law; and, if appropriate for the witness's
11 developmental level or mental acuity, shall include, but is not
12 limited to, all of the following areas:

13 (a) The time and date of the alleged offense or offenses.

14 (b) The location and area of the alleged offense or offenses.

15 (c) The relationship, if any, between the witness and the
16 accused.

17 (d) The details of the offense or offenses.

18 (e) The names of any other persons known to the witness who
19 may have personal knowledge of the alleged offense or offenses.

20 (9) A custodian of the videorecorded statement may release or
21 consent to the release or use of a videorecorded statement or
22 copies of a videorecorded statement to a law enforcement agency, an
23 agency authorized to prosecute the criminal case to which the
24 videorecorded statement relates, or an entity that is part of
25 county protocols established under section 8 of the child
26 protection law, 1975 PA 238, MCL 722.628, or as otherwise provided
27 by law. The defendant and, if represented, his or her attorney has

1 the right to view and hear a videorecorded statement before the
2 defendant's preliminary examination. Upon request, the prosecuting
3 attorney shall provide the defendant and, if represented, his or
4 her attorney with reasonable access and means to view and hear the
5 videorecorded statement at a reasonable time **BUT IN NO EVENT LESS**
6 **THAN 10 DAYS** before the defendant's pretrial or trial of the case,
7 **OR HEARING HELD UNDER SECTION 7(6) OF THE CHILD PROTECTION LAW,**
8 **1975 PA 238, MCL 722.627.** In preparation for a court proceeding and
9 under protective conditions, including, but not limited to, a
10 prohibition on the copying, release, display, or circulation of the
11 videorecorded statement, the court may order that a copy of the
12 videorecorded statement be given to the defense. **THE PROTECTIVE**
13 **CONDITIONS MAY INCLUDE A PROHIBITION ON DEFENSE COUNSEL PROVIDING A**
14 **DEFENDANT WITH HIS OR HER OWN COPY OF THE VIDEORECORDED STATEMENT**
15 **OR A PROHIBITION ON A DEFENDANT PROCEEDING PRO SE FROM RECEIVING OR**
16 **RETAINING HIS OR HER OWN COPY OF THE VIDEORECORDED STATEMENT. THE**
17 **ORDER SHALL SPECIFY WHO MAY VIEW THE VIDEORECORDED STATEMENT,**
18 **INDICATE THE TIME BY WHICH THE VIDEORECORDED STATEMENT IS REQUIRED**
19 **TO BE RETURNED, AND STATE A REASON FOR THE RELEASE OF THE**
20 **VIDEORECORDED STATEMENT.**

21 (10) If authorized by the prosecuting attorney in the county
22 in which the videorecorded statement was taken, a videorecorded
23 statement may be used for purposes of training the custodians of
24 the videorecorded statement in that county on the forensic
25 interview protocol implemented as required by section 8 of the
26 child protection law, 1975 PA 238, MCL 722.628, or as otherwise
27 provided by law.

1 (11) Except as provided in this section, an individual,
2 including, but not limited to, a custodian of the videorecorded
3 statement, the witness, or the witness's parent, guardian, guardian
4 ad litem, or attorney, shall not release or consent to release a
5 videorecorded statement or a copy of a videorecorded statement.

6 (12) A videorecorded statement that becomes part of the court
7 record is subject to a protective order of the court for the
8 purpose of protecting the privacy of the witness.

9 (13) A videorecorded statement shall not be copied or
10 reproduced in any manner except as provided in this section. A
11 videorecorded statement is exempt from disclosure under the freedom
12 of information act, 1976 PA 442, MCL 15.231 to 15.246, is not
13 subject to release under another statute, and is not subject to
14 disclosure under the Michigan court rules governing discovery. This
15 section does not prohibit the production or release of a transcript
16 of a videorecorded statement.

17 (14) If, upon the motion of a party made before the
18 preliminary examination, the court finds on the record that the
19 special arrangements specified in subsection (15) are necessary to
20 protect the welfare of the witness, the court shall order those
21 special arrangements. In determining whether it is necessary to
22 protect the welfare of the witness, the court shall consider all of
23 the following:

24 (a) The age of the witness.

25 (b) The nature of the offense or offenses.

26 (c) The desire of the witness or the witness's family or
27 guardian to have the testimony taken in a room closed to the

1 public.

2 (d) The physical condition of the witness.

3 (15) If the court determines on the record that it is
4 necessary to protect the welfare of the witness and grants the
5 motion made under subsection (14), the court shall order both of
6 the following:

7 (a) All persons not necessary to the proceeding shall be
8 excluded during the witness's testimony from the courtroom where
9 the preliminary examination is held. Upon request by any person and
10 the payment of the appropriate fees, a transcript of the witness's
11 testimony shall be made available.

12 (b) In order to protect the witness from directly viewing the
13 defendant, the courtroom shall be arranged so that the defendant is
14 seated as far from the witness stand as is reasonable and not
15 directly in front of the witness stand. The defendant's position
16 shall be located so as to allow the defendant to hear and see the
17 witness and be able to communicate with his or her attorney.

18 (16) If upon the motion of a party made before trial the court
19 finds on the record that the special arrangements specified in
20 subsection (17) are necessary to protect the welfare of the
21 witness, the court shall order those special arrangements. In
22 determining whether it is necessary to protect the welfare of the
23 witness, the court shall consider all of the following:

24 (a) The age of the witness.

25 (b) The nature of the offense or offenses.

26 (c) The desire of the witness or the witness's family or
27 guardian to have the testimony taken in a room closed to the

1 public.

2 (d) The physical condition of the witness.

3 (17) If the court determines on the record that it is
4 necessary to protect the welfare of the witness and grants the
5 motion made under subsection (16), the court shall order 1 or more
6 of the following:

7 (a) All persons not necessary to the proceeding shall be
8 excluded during the witness's testimony from the courtroom where
9 the trial is held. The witness's testimony shall be broadcast by
10 closed-circuit television to the public in another location out of
11 sight of the witness.

12 (b) In order to protect the witness from directly viewing the
13 defendant, the courtroom shall be arranged so that the defendant is
14 seated as far from the witness stand as is reasonable and not
15 directly in front of the witness stand. The defendant's position
16 shall be the same for all witnesses and shall be located so as to
17 allow the defendant to hear and see all witnesses and be able to
18 communicate with his or her attorney.

19 (c) A questioner's stand or podium shall be used for all
20 questioning of all witnesses by all parties and shall be located in
21 front of the witness stand.

22 (18) If, upon the motion of a party or in the court's
23 discretion, the court finds on the record that the witness is or
24 will be psychologically or emotionally unable to testify at a court
25 proceeding even with the benefit of the protections afforded the
26 witness in subsections (3), (4), (15), and (17), the court shall
27 order that the witness may testify outside the physical presence of

1 the defendant by closed circuit television or other electronic
2 means that allows the witness to be observed by the trier of fact
3 and the defendant when questioned by the parties.

4 (19) For purposes of the videorecorded deposition under
5 subsection (18), the witness's examination and cross-examination
6 shall proceed in the same manner as if the witness testified at the
7 court proceeding for which the videorecorded deposition is to be
8 used. The court shall permit the defendant to hear the testimony of
9 the witness and to consult with his or her attorney.

10 (20) This section is in addition to other protections or
11 procedures afforded to a witness by law or court rule.

12 (21) A person who intentionally releases a videorecorded
13 statement in violation of this section is guilty of a misdemeanor
14 punishable by imprisonment for not more than ~~93 days~~ **1 YEAR** or a
15 fine of not more than ~~\$500.00~~, **\$2,500.00**, or both. **THIS SECTION**
16 **DOES NOT AFFECT THE ABILITY TO INVESTIGATE, ARREST, PROSECUTE, OR**
17 **CONVICT AN INDIVIDUAL FOR ANY OTHER VIOLATION OF THE LAW OF THIS**
18 **STATE.**

19 (22) **A VIDEORECORDED STATEMENT MADE UNDER THIS SECTION SHALL**
20 **ADHERE TO THE FORENSIC INTERVIEWING PROTOCOL IMPLEMENTED AS**
21 **REQUIRED BY SECTION 8 OF THE CHILD PROTECTION LAW, 1975 PA 238, MCL**
22 **722.628, AND SHALL BE RETAINED UNDER THE COUNTY PROTOCOLS**
23 **ESTABLISHED UNDER SECTION 8 OF THE CHILD PROTECTION LAW, 1975 PA**
24 **238, MCL 722.628.**

25 (23) **THE DEPARTMENT OF HEALTH AND HUMAN SERVICES IS NOT**
26 **RESPONSIBLE FOR STORING OR RETAINING A VIDEORECORDED STATEMENT**
27 **UNDER THIS SECTION.**

1 (24) FAILURE TO MAKE A VIDEO RECORDING OF AN INTERVIEW UNDER
2 THIS SECTION, INCLUDING FAILURE TO RECORD THE INTERVIEW IN ITS
3 ENTIRETY, DOES NOT PREVENT A FORENSIC INTERVIEWER OR OTHER WITNESS
4 PRESENT DURING THE TAKING OF THE VIDEORECORDED STATEMENT FROM
5 TESTIFYING IN COURT AS TO THE CIRCUMSTANCES AND CONTENT OF THE
6 INDIVIDUAL'S STATEMENT IF THE COURT DETERMINES THAT THE TESTIMONY
7 IS OTHERWISE ADMISSIBLE.

8 Enacting section 1. This amendatory act takes effect 180 days
9 after the date it is enacted into law.

10 Enacting section 2. This amendatory act does not take effect
11 unless all of the following bills of the 99th Legislature are
12 enacted into law:

13 (a) House Bill No. 4298.

14 (b) House Bill No. 4300.