



Romney Building, 10th Floor
Lansing, Michigan 48909
Phone: 517/373-6466

CHILD WITNESS ACCOMMODATIONS

Senate Bill 882 with House committee amendment

Sponsor: Sen. Loren Bennett

Senate Bill 883 with House committee amendment

Sponsor: Sen. Walter North

Senate Bill 884 with House committee amendment

Sponsor: Sen. Michael J. Bouchard

Senate Bill 885 with House committee amendment

Sponsor: Sen. Robert Geake

Senate Committee: Families, Mental Health and Human Services
House Committee: Judiciary

First Analysis (5-13-98)

Senate Bills 882-885 (5-13-98)

THE APPARENT PROBLEM:

In September of 1993, the State Bar of Michigan established the Task Force on Children's Justice, which began a two-year study of the state's existing rules, statutes, standards and procedures in order to make recommendations to improve the effect of the judicial system on matters that involve children.

The task force's mission was to improve the delivery of justice to Michigan's children. The group was made up of three committees: 1) officers of the court, who developed standards of practice for professionals and para-professionals who represent the interests of children in court proceedings; 2) court users, who recommended procedures and policies to guide professionals who, as a result of serving children and families, interact with the court system; and 3) court administration and jurisdiction, a committee that addressed a range of issues pertaining to the treatment of children in court proceedings and made recommendations aimed at making Michigan's court system more child-focused. In September of 1995 the task force issued its final report. Some of the task force's recommendations necessitate legislative action.

One of the recommendations was to change the law allowing for special arrangements for child witnesses. Special arrangements can range from the use of a support person during testimony, the use of anatomically correct dolls, or rearranging or even closing the courtroom during the child's testimony. In order to allow for special arrangements to be allowed for the testimony of a particular witness, the court must consider and make particularized findings that arrangements are necessary to protect the welfare of the child witness. The court must consider the child's age and psychological maturity, the nature of the offense, and the desire of the witness and guardians to have the testimony closed to the public. The task force concluded that determination of a child's psychological maturity often subjects the child to certain discovery techniques and may involve psychological assessment and examination that frustrates the purpose of protecting the child's welfare. The task force recommended that psychological maturity no longer be considered to determine whether a child witness should be allowed special arrangements and to increase the applicability of the statute from

children under the age of fifteen to include all children under the age of sixteen. It has been suggested that these changes should be enacted the protection and well-being of Michigan's children.

THE CONTENT OF THE BILLS:

Senate Bills 882 through 885 would amend various laws to revise provisions for the accommodation and protection of child witnesses in certain proceedings. Senate Bill 882 would amend the Revised Judicature Act (RJA) (MCL 600.2163a); Senate Bill 883 would amend the juvenile code (MCL 712A.17 & 712A.17b); Senate Bill 884 would amend the teachers' tenure act (MCL 38.104a); and Senate Bill 885 would amend the Administrative Procedures Act (MCL 24.275a).

Each of these statutes provide for special accommodations to be made for a witness who is under 15 years of age or who is 15 or older with a developmental disability. The accommodations include using dolls or mannequins; having a support person accompany the witness; videotaping testimony; and protecting the welfare of the witness by closing the hearing and arranging the courtroom so that the defendant is not in direct sight of the witness.

The bills would change the definition of "developmental disability" and would specify that for the purposes of providing special accommodations a developmental disability would refer to a condition that was attributable to a mental rather than a physical impairment or a combination of mental and physical impairment. The bills would also change the ages to which the special accommodations would apply. Under the bills, the accommodations would apply if the alleged victim were under 16 years of age or were 16 or older with a developmental disability.

In addition, Senate Bill 882 would add to the list of offenses to which the special witness accommodations apply; and Senate Bills 882 and 883 would eliminate the consideration of the child witness' psychological maturity from the factors to be considered in determining whether to close a hearing.

Developmental Disability. The bills would delete the definition of developmental disability contained in the RJA, juvenile code, teachers' tenure act, and Administrative Procedures Act witness accommodation provisions and define "developmental disability" as that term is defined in the Mental Health Code. The bills would also specifically state that for

the purposes of allowing for special accommodations, developmental disability would include only a condition that was attributable to a mental impairment or to a combination of mental and physical impairments, and not a condition attributable to a physical impairment alone.

Under the Mental Health Code, "developmental disability," if applied to a person older than five years of age, means a severe, chronic condition that meets all of the following requirements:

- Is attributable to a mental or physical impairment or a combination of mental and physical impairments.
- Is manifested before the individual is 22 years old.
- Is likely to continue indefinitely.
- Results in substantial functional limitation in three or more of the following areas of major life activity: self-care; receptive and expressive language; learning; mobility; self-direction; capacity for independent living; or economic self-sufficiency.
- Reflects the individual's need for a combination and sequence of special, interdisciplinary, or generic care, treatment, or other services that are of lifelong or extended duration and are individually planned and coordinated.

If applied to a minor from birth to five years of age, "developmental disability" means a substantial developmental delay or a specific congenital or acquired condition with a high probability of resulting in developmental disability, as defined above for a person older than five years of age, if services are not provided.

Offenses. Under the RJA, the special witness accommodation provisions apply to prosecutions and proceedings for child abuse (MCL 750.136b), involvement in child sexually abusive activity or material (MCL 750.145c), or criminal sexual conduct (CSC) in the first-degree (MCL 750.520b). Senate Bill 882 would add to that list: second-, third-, and fourth-degree CSC and assault with intent to commit CSC (MCL 750.520c-750.520e and 750.520g).

Under the juvenile code, the witness accommodation provisions apply to proceedings for child abuse;

involvement in child sexually abusive activity or material; first-, second-, third-, or fourth-degree CSC; or assault with intent to commit CSC.

Under the teachers' tenure act and the Administrative Procedures Act, the witness accommodation provisions apply to hearings held under those acts in which a witness testifies as an alleged victim of sexual, physical, or psychological abuse.

Closed Hearing Criteria. Under the RJA and the juvenile code, a hearing may be closed to all but those necessary for the proceedings and, under the RJA, the courtroom may be arranged so that the defendant is far from the witness and not directly in front of the witness stand. Under the RJA and the code, the court must consider the following factors in determining whether to close a proceeding:

- The age of the witness.
- The psychological maturity of the witness.
- The nature of the proceeding or offense.
- The desire of the witness or his or her family or guardian to have the proceeding closed.

Senate Bills 882 and 883 would remove from those criteria the psychological maturity of the witness.

FISCAL IMPLICATIONS:

Fiscal information is not available.

ARGUMENTS:

For:

All too often the requirement that the court make a finding regarding a child's psychological maturity has been used as an opportunity for discovery by opposing counsel. This can be as damaging to the child as testifying itself and thereby can frustrate the protective intent of the provisions. Furthermore, psychological maturity has no legal definition and the type of questions that may be asked under the guise of determining such maturity is virtually unlimited. The remaining factors are more than sufficient to base a reasonable determination of need for special consideration.

For:

Increasing the age of applicability for special arrangements from under 15 to under 16 is consistent with other recommendations of the Children's Task Force. Making this change effective for most types of hearings, not merely criminal hearings, is necessary because other hearings are just as intimidating for children.

Against:

The bills should include an effective date at least 60-90 days after the bills are enacted. Without such an effective date the bills will not give adequate warning to those who participate in the system -- judges, lawyers, police, and child protection workers.

POSITIONS:

The State Bar of Michigan supports the bills. (5-13-98)

The Prosecuting Attorneys Association of Michigan supports the bills. (5-13-98)

Analyst: W. Flory

■ 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.